



**SEAGOVILLE, TEXAS
CITY COUNCIL MEETING AGENDA
MONDAY, MAY 20, 2019**

**City Council Chambers, City Hall
702 N. Hwy 175
Seagoville, Texas 75159**

WORK SESSION – 6:30 P.M.

Call to Order

A. Reception for Council and Leadership Seagoville

Adjourn

REGULAR SESSION - 7:00 P.M.

ROUTINE ANNOUNCEMENTS, RECOGNITIONS, and PROCLAMATIONS

Call to Order

Invocation

Pledge of Allegiance

Oaths of Office for Newly Elected City Council Members

Graduation –Leadership Seagoville

Mayor’s Report

Citizens Public Comment Period- *This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. Council may not discuss these items but may respond with factual data or policy information, or place the item on a future agenda. Citizens wishing to speak on posted agenda items will be called upon at that time. Anyone wishing to speak shall submit a Speaker Request Form to the City Secretary.*

CONSENT AGENDA- The Consent Agenda contains items which are routine in nature and will be acted upon in one motion.

- 1. Consider approving City Council Meeting minutes for May 6, 2019 (City Secretary)**

REGULAR AGENDA-

- 2. Discuss and consider selection of Mayor Pro Tem for 2019-2020 (City Council)**
- 3. Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to engage C&M Concrete for concrete repairs to Concorde Circle in an amount not to exceed One Hundred Four Thousand Five Hundred Twenty-Nine Dollars and No Cents (\$104,529.00); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed; and providing an effective date (Community Development)**
- 4. Discuss and consider approval of a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to engage C&M Concrete for concrete repairs to Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane in an amount not to exceed One Hundred Thirty-Three Thousand Eight Hundred Twenty-Eight Dollars and Twenty-Two Cents (\$133,828.22); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed; and providing an effective date (Community Development)**
- 5. Discuss and consider approval of an Ordinance of the City of Seagoville, Texas, amending Chapter 19 of the Code of Ordinances by repealing Article 19.07 in its entirety and replacing with a new Article 19.07, “Water Conservation Plan and Drought Contingency Plan”; providing for the adoption of a Water Conservation Plan; Providing for a Drought Contingency Plan; providing a repealing clause; providing a severability clause; providing a savings clause; providing a savings clause; providing a penalty of fine not to exceed the sum of Two Hundred Dollars (\$200.00) for each offense; providing for the disconnection of water service for noncompliance with the provisions of the Drought Contingency Plan; and providing an effective date (Water Utilities)**
- 6. Update concerning Storm Waster Ph. II MS4 General Permit (Water Utilities)**
- 7. Discuss possible catch and release Ordinance for fish at Bruce Central Park (Mayor Pro Tem Epps)**
- 8. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.**
- 9. Future Agenda Items – Council to provide direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.**

10. Recess into Executive Session

Council will recess into Executive Session in compliance with Texas Government Code:

(A) Section§ 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: City Manager

11. Reconvene Into Regular Session

Council will reconvene into open session, and take action, if any, on matters discussed in Executive Session.

(A) Section§ 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: City Manager

Adjourn

Posted Thursday, May 16, 2019 by 5:00 P.M.

Kandi Jackson
Kandi Jackson, City Secretary



As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed executive session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.

The City of Seagoville does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. If you have a request for services that will make this program accessible to you, please contact the City of Seagoville at least 72 hours in advance at (972) 287-6819. (TDD access 1-800-RELAY-TX)

DATES TO REMEMBER

- **Monday, June 3, 2019 Regular City Council Meeting.**
- **Monday, June 17, 2019 Regular City Council Meeting.**

Consent Session Agenda Item: 1

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Consider approving City Council Meeting minutes for May 6, 2019.

BACKGROUND OF ISSUE:

Approve City Council Meeting minutes for May 6, 2019

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval.

EXHIBITS:

May 6, 2019 Work Session Minutes
May 6, 2019 Regular Meeting Minutes



**MINUTES OF CITY COUNCIL
WORK SESSION
MAY 6, 2019**

The Work Session of the City Council of the City of Seagoville, Texas was called to order at 6:31 p.m. on Monday, May 6, 2019, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:

Dennis Childress	Mayor
Jon Epps	Mayor Pro Tem
Jose Hernandez	Councilmember
Rick Howard	Councilmember
Harold Magill	Councilmember
Mike Fruin	Councilmember

The following staff members were also present: Police Chief Ray Calverley, Community Development Director Ladis Barr, Junior Planner Jennifer Bonner, City Attorney Victoria Thomas, Finance Director Patrick Harvey, Director of Administrative Services Cindy Brown, and City Secretary Kandi Jackson.

A. Discuss regular session agenda items

1. Consider approving City Council Meeting minutes for April 15, 2019 (City Secretary)

No questions.

2. Discuss and consider approval of a Resolution finding that Oncor Electric Delivery Company LLC's application for approval to amend its Distribution Cost Recovery Factor pursuant to 16 TEX. ADMIN. CODE § 25.243 to increase distribution rates within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; requiring notice of this Resolution to the Company and legal counsel; and providing an effective date (Director of Administrative Services)

Councilmember Hernandez asked how much Oncor was proposing to increase the rate. Director of Administrative Services Brown stated Twenty-Nine Million, Four Hundred Thirty-Three Thousand, Eight Hundred Four Dollars (\$29,433,804).

6. Discuss and consider an Ordinance of the City of Seagoville, Texas, amending the Comprehensive Zoning Ordinance and Map of City of Seagoville, as amended, by granting a Special Use Permit ("SUP") subject to specified conditions authorizing a residential dwelling and a religious institution on property zoned "LM", Light Manufacturing, being approximately 12.4± acres of real property commonly referred to as 112 West Farmers Road, in the City of Seagoville, Dallas County, Texas and being legally described as Lot 1 of Sang B. Han Addition; providing for the approval of the concept plan, which is attached hereto and incorporated herein as Exhibit "A"; providing for a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and providing an effective date (Community Development)

No questions.

4. Discuss and consider approval of a Resolution of the City Council of the City of Seagoville, Texas approving an amendment to the Professional Engineering Service Agreement for the Crestview Lane Reconstruction with Halff Associates, Inc. by extending the reconstruction to East Malloy Bridge Road from its point of intersection with Crestview Lane to its point of intersection with US Highway 175, as set forth in the Supplemental Scope of Services attached hereto as Exhibit "A", in an amount not to exceed One Hundred Twenty Four Thousand Dollars and No Cents (\$124,000); authorizing the City Manager to execute said Agreement; providing for a repealing clause; providing for a severability clause; and providing an effective date (Community Development)

Community Development Director Barr stated this is an amendment to an agreement with Halff Associates, Inc. by extending the reconstruction to East Malloy Bridge Road from its point of intersection with Crestview Lane to its point of intersection with US Highway 175.

B. Police Department & Animal Control Update – Police Chief

Police Chief Calverley provided the Police Department & Animal Control Update.

Adjourned at 6:44 p.m.

APPROVED:

Mayor Dennis K. Childress

ATTEST:

Kandi Jackson, City Secretary



**MINUTES OF CITY COUNCIL
REGULAR SESSION
MAY 6, 2019**

The Regular Session of the City Council of the City of Seagoville, Texas was called to order at 7:00 p.m. on Monday, May 6, 2019, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:

Dennis Childress	Mayor
Jon Epps	Mayor Pro Tem
Jose Hernandez	Councilmember
Rick Howard	Councilmember
Harold Magill	Councilmember
Mike Fruin	Councilmember

The following staff members were also present: Police Chief Ray Calverley, Community Development Director Ladis Barr, Junior Planner Jennifer Bonner, City Attorney Victoria Thomas, Finance Director Patrick Harvey, Director of Administrative Services Cindy Brown, and City Secretary Kandi Jackson.

Invocation – *Invocation was led by Councilmember Magill.*

Pledge of Allegiance – *Pledge of Allegiance was led by Mayor Childress.*

Mayor’s Report – *Mayor Childress stated elections are over and congratulated Councilmember Fruin.*

Citizens Public Comment Period- *This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. Council may not discuss these items but may respond with factual data or policy information, or place the item on a future agenda. Citizens wishing to speak on posted agenda items will be called upon at that time. Anyone wishing to speak shall submit a Speaker Request Form to the City Secretary.*

None.

CONSENT AGENDA- The Consent Agenda contains items which are routine in nature and will be acted upon in one motion.

- 1. Consider approving City Council Meeting minutes for April 15, 2019 (City Secretary)**
- 2. Discuss and consider approval of a Resolution finding that Oncor Electric Delivery Company LLC’s application for approval to amend its Distribution Cost Recovery Factor pursuant to 16 TEX. ADMIN. CODE § 25.243 to increase distribution rates within the City should be denied; finding that the City’s reasonable rate case expenses shall be**

reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; requiring notice of this Resolution to the Company and legal counsel; and providing an effective date (Director of Administrative Services)

Motion to approve Consent Agenda Items 1 and 2 – Magill, seconded by Howard; motion passed with all ayes. 5/0

REGULAR AGENDA-

3. Presentation of City of Seagoville’s First Quarter Financial Report for Fiscal Year 2019 (Finance Director)

Finance Director Harvey presented the City of Seagoville’s First Quarter Financial Report for Fiscal Year 2019.

4. Discuss and consider approval of a Resolution of the City Council of the City of Seagoville, Texas approving an amendment to the Professional Engineering Service Agreement for the Crestview Lane Reconstruction with Halff Associates, Inc. by extending the reconstruction to East Malloy Bridge Road from its point of intersection with Crestview Lane to its point of intersection with US Highway 175, as set forth in the Supplemental Scope of Services attached hereto as Exhibit “A”, in an amount not to exceed One Hundred Twenty Four Thousand Dollars and No Cents (\$124,000); authorizing the City Manager to execute said Agreement; providing for a repealing clause; providing for a severability clause; and providing an effective date (Community Development)

Motion to approve a Resolution of the City Council of the City of Seagoville, Texas approving an amendment to the Professional Engineering Service Agreement for the Crestview Lane Reconstruction with Halff Associates, Inc. by extending the reconstruction to East Malloy Bridge Road from its point of intersection with Crestview Lane to its point of intersection with US Highway 175, as set forth in the Supplemental Scope of Services attached hereto as Exhibit “A”, in an amount not to exceed One Hundred Twenty Four Thousand Dollars and No Cents (\$124,000); authorizing the City Manager to execute said Agreement; providing for a repealing clause; providing for a severability clause; and providing an effective date – Magill, seconded by Howard; motion passed with all ayes. 5/0

5. Conduct a public hearing on a request to grant a Special Use Permit ("SUP") subject to specified conditions authorizing a residential dwelling and a religious institution on property zoned “LM”, Light Manufacturing, being approximately 12.4± acres of real property commonly referred to as 112 West Farmers Road, in the City of Seagoville, Dallas County, Texas and being legally described as Lot 1 of Sang B. Han Addition (Community Development)

Mayor Childress opened the public hearing at 7:15 p.m.

No one spoke for or against.

Mayor Childress closed the public hearing at 7:15 p.m.

6. Discuss and consider an Ordinance of the City of Seagoville, Texas, amending the Comprehensive Zoning Ordinance and Map of City of Seagoville, as amended, by granting a Special Use Permit ("SUP") subject to specified conditions authorizing a residential dwelling and a religious institution on property zoned "LM", Light Manufacturing, being approximately 12.4± acres of real property commonly referred to as 112 West Farmers Road, in the City of Seagoville, Dallas County, Texas and being legally described as Lot 1 of Sang B. Han Addition; providing for the approval of the concept plan, which is attached hereto and incorporated herein as Exhibit "A"; providing for a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and providing an effective date (Community Development)

Junior Planner Bonner stated this is an Ordinance of the City of Seagoville, Texas, amending the Comprehensive Zoning Ordinance and Map of City of Seagoville, as amended, by granting a Special Use Permit ("SUP") subject to specified conditions authorizing a residential dwelling and a religious institution on property zoned "LM", Light Manufacturing, being approximately 12.4± acres of real property commonly referred to as 112 West Farmers Road, in the City of Seagoville, Dallas County, Texas and being legally described as Lot 1 of Sang B. Han Addition; providing for the approval of the concept plan, which is attached hereto and incorporated herein as Exhibit "A".

Councilmember Howard asked how many houses would be on the property. Junior Planner Bonner stated one (1) and any expansions would be approved by Planning & Zoning (P&Z) and Council.

Councilmember Hernandez asked if Exhibit 5B is being agreed to in this zoning change. Junior Planner Bonner stated yes, and if there are any changes, the changes would come back to Planning & Zoning and Council for approval first.

Motion to approve an Ordinance of the City of Seagoville, Texas, amending the Comprehensive Zoning Ordinance and Map of City of Seagoville, as amended, by granting a Special Use Permit ("SUP") subject to specified conditions authorizing a residential dwelling and a religious institution on property zoned "LM", Light Manufacturing, being approximately 12.4± acres of real property commonly referred to as 112 West Farmers Road, in the City of Seagoville, Dallas County, Texas and being legally described as Lot 1 of Sang B. Han Addition; providing for the approval of the concept plan, which is attached hereto and incorporated herein as Exhibit "A"; providing for a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and providing an effective date – Hernandez, seconded by Fruin; motion passed with all ayes. 5/0

7. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.

Councilmember Hernandez thanked everyone for voting and he stated he will continue to work for the best interest and progress of the City of Seagoville.

Mayor Childress also thanked everyone for voting.

8. Future Agenda Items – Council to provide direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.

Councilmember Magill stated the cul de sac at 2713 Concord has deteriorated and is in need of repair.

Adjourned at 7:33 p.m.

APPROVED:

Mayor Dennis K. Childress

ATTEST:

Kandi Jackson, City Secretary

Regular Session Agenda Item: 2

Meeting Date: **May 20, 2019**

ITEM DESCRIPTION:

Discuss and consider selection of Mayor Pro-Tem for 2019-2020.

BACKGROUND OF ISSUE:

Each year following the May election the City Council considers the selection of Mayor Pro Tem. This individual represents the Mayor in his absence.

Section IV (A) of the City Council Rules of Procedure establishes guidelines for the election of the Mayor Pro Tem.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS

Copy of Section IV (A) of the City Council Rules of Procedure

A. Executive Session

The City Council may meet in executive sessions at the call of the Mayor, Mayor Pro Tem (when acting in place of the Mayor), or a majority of the City Council. The City Secretary is responsible for properly posting the agenda and attending the Executive Session to maintain the Certified Agenda. At such meeting, Council may consider those matters allowed under state law.

B. Joint Sessions

The City Council may meet with other boards and commissions in joint sessions at the call of the Mayor, Mayor Pro Tem (when acting in place of the Mayor), or a majority of the City Council at such times as the business of the City requires.

C. Recessed Meetings

Any meeting of the City Council may be recessed to a later time by a majority vote of the City Council, provided that no recess shall be for a longer period than twenty-four (24) hours. All recessed meetings must set a time to reconvene.

D. Work Session

The City Council may hold work sessions to receive briefings and background information from the staff and consultants. Work session meetings shall be at a time and place established by the Council. Work Sessions shall comply with all provisions of the Texas Open Meetings Act. No official action may be taken by the Council in a work session meeting, although the Council may give direction to the staff on issues under consideration.

II. PRESIDING OFFICER OF THE CITY COUNCIL AND DUTIES

A. Presiding Officer

The Mayor shall preside over the meetings of the City Council.

The Mayor Pro Tem shall be selected from among the members of the City Council at the first regular meeting following the general election at which all Council Places have been filled. The Mayor Pro Tem shall perform all duties of the Mayor in his absence.

In the absence of both the Mayor and Mayor Pro Tem, the City Secretary shall call the meeting to order and shall call upon the Council to select a member to act as presiding officer.

B. Preservation of Order

The presiding officer shall have the authority to maintain the order and decorum of a meeting.

Regular Session Agenda Item: 3

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to engage C&M Concrete for concrete repairs to Concorde Circle in an amount not to exceed One Hundred Four Thousand Five Hundred Twenty-Nine Dollars and No Cents (\$104,529.00); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed; and providing an effective date.

BACKGROUND OF ISSUE:

On April 21, 2014, City Council approved a Resolution to enter into a Master Interlocal Purchasing Agreement between the City of Seagoville and the City of Lancaster. The City of Lancaster acted as a purchasing agent for the purchase of various goods and services through the competitive bidding process. The City of Lancaster and C&M Concrete have previously entered into an agreement for C&M Concrete to provide repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement. The City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for repairs to Concorde Circle as reflected on the estimate submitted by C&M Concrete under the Cooperative Purchase Agreement in the amount of \$46,153.50 for the straight area leading to the circle and in the amount of \$58,375.50 for the circle only, for a combined total of \$104,529.00 for the repair of Concorde Circle. Funding for the repairs have been approved in the FY 2018-19 Street Maintenance Program budget.

This request is for repairs to be made to Concord Circle. Concorde Circle has deteriorated and rebar steel is showing on the driving surface. There is little to no concrete remaining on the driving surface. These conditions cause driving and safety hazards to the citizens that live in or around the surrounding area.

FINANCIAL IMPACT:

\$104,529.00

RECOMMENDATION:

City Staff recommends approval.

EXHIBITS:

Resolution (2 pages)

Master Interlocal Cooperative Purchasing Agreement with Lancaster (4 pages)

Standard Fixed Price Construction Agreement (24 pages)

C&M Agreement – Concorde Circle (2 pages)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS
RESOLUTION NO. __-R-2019**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING THE CITY MANAGER TO ENGAGE C&M CONCRETE FOR CONCRETE REPAIRS TO CONCORDE CIRCLE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FOUR THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND NO CENTS (\$104,529.00); AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OR ANY DOCUMENTS NECESSARY FOR THE WORK TO BE PERFORMED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Seagoville and the City of Lancaster entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on April 21, 2014, under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code, under which the City of Lancaster acted as purchasing agent for the purchase of various goods and services through the competitive bidding process, attached hereto and incorporated herein as Exhibit "A", and

WHEREAS, the City of Lancaster, Texas and C&M Concrete have previously entered into an agreement for C&M Concrete, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement; and

WHEREAS, the City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for concrete repairs to Concorde Circle as reflected on estimates submitted by C&M Concrete under the Cooperative Purchase Agreement, copies of which are attached hereto as Exhibits "C" and "D", in the amount of \$46,153.50 for the straight area leading to the circle and in the amount of \$ 58,375.50 for the circle only, for a combined total of \$104,529 for the repair of Concorde Circle; and

WHEREAS, funding for these repairs is approved in the FY 2018-19 Street Maintenance Program budget; and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the

estimates and has determined it to be in the best interest of the City to authorize the City Manager to execute any documents necessary to authorize C&M Concrete to provide concrete repairs on Concorde Circle;

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

SECTION 1. The City Manager is hereby authorized to engage C&M Concrete to provide the concrete repair of Concorde Circle in an amount not to exceed One Hundred Four Thousand Five Hundred Twenty Nine Dollars and no cents (\$104,529.00) as set forth in Exhibits "C" and "D"; and, the City Manager is authorized to execute any agreement or documents necessary for the work to be performed.

SECTION 2. This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

DULY ORDERED by the City Council of the City of Seagoville, Texas, this the 20th day of May, 2019.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney
(:cdb 05/08/2019 TM 108048)

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF SEAGOVILLE
AND CITY OF LANCASTER**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Seagoville and City of Lancaster desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs and services;

WHEREAS, The City of Seagoville and City of Lancaster represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. The City of Seagoville and City of Lancaster are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
2. The City of Seagoville and City of Lancaster agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Seagoville nor City of Lancaster warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

a dispute arise between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Seagoville or City of Lancaster, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Seagoville and City of Lancaster agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with

successful send confirmation, or by certified mail to the last business address as listed herein.

City of Seagoville: City of Seagoville
Attn: City Secretary
702 N. Highway 175
Seagoville, Texas 75159
Phone (972) 287-6819
dcrabtree@seagoville.us

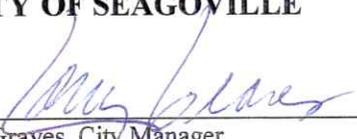
City of Lancaster: City of Lancaster
PO Box 940
Lancaster, TX 75146
972-218-1329
purchasing@lancaster-tx.com

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Dallas County, Texas, United States of America for City of Lancaster and shall be Dallas County, Texas, United States of America for the City of Seagoville.
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party

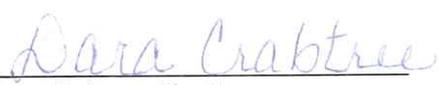
thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

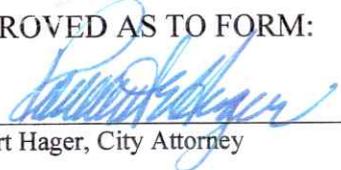
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

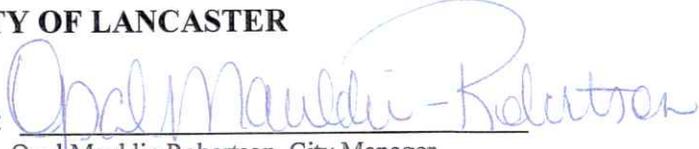
BY: 
Larry Graves, City Manager

DATE: 4-21-14

ATTEST: 
Dara Crabtree, City Secretary

APPROVED AS TO FORM:

Robert Hager, City Attorney

CITY OF LANCASTER

BY: 
Opal Mauldin Robertson, City Manager

DATE: 6/9/14

ATTEST: _____

Sorangel O. Arenas, City Secretary

City of Lancaster, Texas Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and C&M Concrete, (hereinafter referred to as the "Contractor") for Concrete Repairs (2018-10), (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Bid Response, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):
NONE

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance, maintenance, and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its

generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

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A purchase order will be issue for each work order issued. All work shall be completed within the agreed upon time for each work order.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a purchase order. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the

presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, at the unit prices attached hereto as Exhibit A: Contractor Response.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the unit Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Owner and upon Certificates for Payment subsequently issued to the Owner, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Owner in such form and manner, and with such supporting data and content, as the Owner may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by

the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Owner will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Owner shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Owner's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Owner less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Owner a list of items to be completed or corrected. When the Owner on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner

and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed and will issue a final Certificate for Payment certifying that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract

5.6.1.1 If the Contractor fails to achieve final completion in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage

will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Owner.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH

NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Owner during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Owner to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Lancaster and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice to the Owner and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 FIELD ORDERS

8.1.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Owner's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.2.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Owner in accomplishing the timely completion of the Project.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims,

demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes

related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Owner's request or to any provisions of this Contract, it shall, if required by the Owner, be uncovered for the Owner's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Owner, be uncovered for the Owner's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the

Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials,

equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated

portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Owner's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Lancaster until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation as set forth in the Worker's Compensation Act.	
Commercial General Liability	
	\$1,000,000 Each Accident/Occurrence. The policy shall have no coverage removed by exclusions.
Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.	
Automobile Liability	
	\$500,000 Combined single limit per occurrence.

13.2 INSTALLATION FLOATER

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverage's designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

13.3 Builders Risk

This insurance shall be written in completed value form

and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

13.4 ADDITIONAL INSURED / PROJECT INFORMATION

The Owner shall be named as an additional insured on the Commercial General Liability (Public), Policies furnished by the Contractor.

The project name and bid/contract number shall be listed on the certificate.

13.5 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Purchasing Agent, City of Lancaster, PO Box 940, Lancaster, Texas, 75146.

13.6 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.7 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City of Lancaster on a Standard Certificate of Insurance Form. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Lancaster, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

13.8 PRIMARY COVERAGE

The coverage's provided herein shall be primary and noncontributory with any other insurance maintained by

the City of Lancaster, Texas, for its benefit, including self insurance.

13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) 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;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity 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;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

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

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

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) 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;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by

sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds

furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

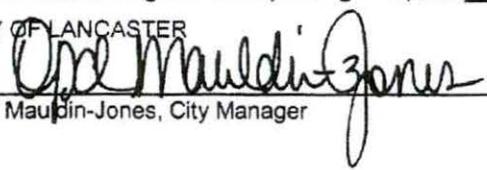
14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Owner at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED in single or multiple originals, this 21 day of June, 2018.

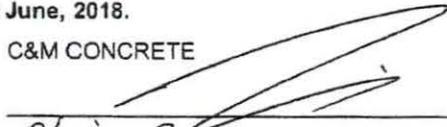
CITY OF LANCASTER


Opal Mauldin-Jones, City Manager

ATTEST:


Sorangel O. Arenas, City Secretary

C&M CONCRETE


Chris Bowen OWNER
Type/Print Name and Title

PO BOX 381910
Duncanville, TX 75138

City of Lancaster, Texas (Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Alton Dixon Purchasing Agent	Address	PO Box 940	Address
Email	adixon@lancaster-tx.com		Lancaster, TX 75146	
Phone	1 (972) 218-1329 x	Contact	Alton Dixon Purchasing Agent	Contact
Fax	1 (972) 218-3621 x		Purchasing	Department
Bid Number	2018-10 Addendum 1	Department		Building
Title	Concrete Repairs	Building		
Bid Type	ITB			Floor/Room
Issue Date	4/9/2018 06:40 PM (CT)	Floor/Room		Telephone
Close Date	5/8/2018 03:00:00 PM (CT)	Telephone	(972) 218-1329 x	Fax
		Fax	(972) 218-3621 x	Email
		Email	adixon@lancaster-tx.com	

Supplier Information

Company	C&M CONCRETE
Address	P.O BOX 381910
	DUNCANVILLE, TX 75138
Contact	CHRIS BOWEN
Department	
Building	
Floor/Room	
Telephone	(972) 965-4781
Fax	(972) 709-9173
Email	bowenchris1@aol.com
Submitted	5/8/2018 08:26:27 AM (CT)
Total	\$969.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Chris Bowen

Email Chris@concretepaving.net

Supplier Notes

Bid Notes

Miscellaneous repair work to streets and sidewalks.

Bid Activities

Date	Name	Description
3/26/2018 08:00:00 AM (CT)	Week 1	Week 1 Advertisement - Focus News
4/2/2018 08:00:00 AM (CT)	Week 2	Week 2 Advertisement - Focus News

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Addendum 2: Bonding	The projects included in this contract will generally not exceed \$50,000. Because the projects do not exceed the bond threshold identified in the statute, the bonding requirement has been removed. However, should one of the individual projects exceed \$50,000; bonds will be required in the amount of that project. The Due date and time have been extended by one week.	I Agree
2	Addendum 1	I have read and understand Addendum 1.	ACK
3	One Year - 4 Renewals	Length of this contract shall be for one (1) full year with the option to renew the contract for four additional one-year periods. Both parties must be in agreement.	Agree
4	Annual Contract	This agreement will contain a fixed pricing structure for the term of the agreement. Quantities shown are estimates and NOT a commitment to buy any specific quantity. Orders will be placed on a non-exclusive, "as needed", basis. Orders placed by the City of Lancaster will be done with a purchase order.	Agreed
5	Price Increases	Prices are firm for the first year. Any price increase after year one, must be justified and documentation submitted. Price increases may not exceed the current Consumer Price Index (U) for the D/FW Region.	Agree
6	Response Term	Responses shall be valid for ninety (90) calendar days after the opening date and shall constitute an irrevocable offer to the City of Lancaster for the 90 calendar day period. The 90 calendar day period may be extended by mutual agreement of the parties.	Agree
7	Terminology	Throughout this document, the terms Contractor, Bidder, Proposer, and/or Vendor may be used interchangeably. Reference to any of these terms throughout this document should be construed by the reader as meaning any bidder for the products/services being requested (e.g., Bidder, Proposer); or the bidder who has been awarded a bid/RFQ or contract (e.g., Contractor, Vendor).	Agree
8	Payment Bond	A payment bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood
9	Performance Bond	A performance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood

10 Maintenance Bond	A maintenance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor.	Understood
	A sample document is attached and must be used by issuing bonding agent.	
11 Contractor Registration	The awarded vendor will be required to register with the City as a contractor. The current fee is \$100. Application is available at www.lancaster-tx.com or at Building Inspection. 700 E. Main Street Lancaster, TX 75146 Hours of operation M-Th 7:00 AM - 5:30 PM.	Understood
12 Company Ownership	Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.	NO
13 Difficulties	What difficulties do you anticipate in serving the City? How do you plan to manage these and what assistance will you require from the City? Describe your firm's past performance on other contracts for the City (e.g. cost control, cost savings, schedule control).	<p>I do not anticipate any difficulties in being awarded this contract.</p> <p>I have spent my entire career working under City Contracts. I fully understand City procedures, budgets, and expectations. In my almost twenty year career as the Owner and Operator of C&M Concrete, I have been awarded multiple City Contracts.</p> <ul style="list-style-type: none"> - The City of DeSoto Awarded 7 times 1997 - current day - The City of Lancaster Awarded multiple times over the past 10+ years <p>Under these two contracts, I have opted in to agree to the Inter Local City Agreement, and have worked for 7 other cities in the past twenty years.</p> <p>In addition to holding these Annual Concrete Contracts, I have bid and been awarded separate contracts for multiple projects under the City of Lancaster, such as the Lancaster Regional Airport Improvements, and the Storm Water Improvements.</p> <p>In all of these successful years working as a partner with the Cities, I have had no difficulties in performance, no unresolved issues, and have never requested my Annual Concrete Contract prices to increase during the duration of the contracts.</p>
14 Electronic Payment	If you would like your payment sent electronically (EFT), please provide your accounts receivable contact information. Please provide name and email.	Chris Bowen chris@concretepaving.net

15	Financial Default	Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.	No
16	Litigation with City of Lancaster	Is your firm involved in any litigation (past or pending) with the city of Lancaster? If yes, please provide details.	No
17	NEPOTISM STATEMENT	The Bidder or Proposer or any officer, if the Bidder or Proposer is other than an individual, shall state whether Bidder or Proposer has a relationship, either by blood or marriage, with any official or employee of the City of Lancaster:	Not Related
18	Non-Performance	Identify if your firm has had any contracts terminated due to non-performance over the past five (5) years.	No
19	Open Records Act	All responses will be maintained confidential until award is finalized. At that time, all proposals are subject to the Open Records Act.	Agreed
20	PROPERTY TAXES	Please indicate whether you or your company, owe delinquent property taxes to the City whether an assumed name, partnership, corporation, or any other legal form.	Do Not
21	Website Address	Enter product website information	N/A
22	Cooperative Agreement	Should other Government Entities decide to participate in this contract, would you, the Vendor, agree that all terms, conditions, specifications, and pricing would apply? If you, the Vendor checked yes, the following will apply: Government entities utilizing Inter-Governmental Contracts with the City of Lancaster will be eligible, but not obligated, to purchase materials/services under this contract(s) awarded as a result of this bid. All purchases by Governmental Entities other than the City of Lancaster will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Lancaster will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their own material/service as needed.	Yes
23	T&C Acknowledgement	I have read and agree to the terms and conditions of this bid.	Agreed
24	Bid Acknowledgement	Bidder affirms that they have read and understand all requirements of this proposal. Additionally, the bidder affirms that they are duly authorized to execute this contract and that this company has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the bidder nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.	Agreed
25	Insurance	Vendor shall provide insurance as listed in the insurance requirements attached.	Understood
26	County	What county is your principal place of business located?	Dallas

27	Immigration	Employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the US) and aliens authorized to work in the US. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.	(No Response Required)
28	Contractor Responsibility	Keep project area in a safe and clean environment at all times during the contract period. Ensure all work is executed in accordance with OSHA (Occupational Safety and Health Administration) Requirements. Contractor must ensure that all Federal, State, and Local regulation are met.	(No Response Required)
29	Damage	Contractors are responsible for repairs caused by their negligence for any damage to public right of way and/or private property.. Repairs must be completed prior to final acceptance of job for payment.	(No Response Required)
30	Workmanship	All work and workmanship must be of good quality and adhere to all applicable laws and regulations. Contractor must possess all necessary licenses.	(No Response Required)
31	Questions	All questions shall be addressed to Alton Dixon, Purchasing Agent via email at purchasing@lancaster-tx.com.	Agree
32	Laws and ordenances	The Contractor shall at all times observe and comply with all Federal, State, and local laws, ordinances and regulations which in any manner affect the Contract or the work.	Understood
33	Work Hours	Working hours are not to begin prior to 7:00 AM or extend past 5:00 PM without prior written approval.	Understood
34	Payment Terms	The City of Lancaster's payment terms are Net 30.	Agreed
35	Road & Lane Closures	Road or lane closures must be approved in writing at least 48 hours prior to closing by the City Engineer.	Agreed
36	Change Orders	No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the city of Lancaster.	Agreed
37	Late Submission	Bids/RFQs are not accepted after the closing date and time. The City of Lancaster is not responsible computer, mail or carrier issues/problems. The server time located in the top right corner of this software is the official clock. It is the responsibility of the user to ensure you have chosen the correct time zone for your company.	Understood
38	MODIFICATION OF A SUBMITTED BID / PROPOSALS	A proposer may modify a response electronically by logging into the e-procurement system and retracting their bid. Changes can be made up to the closing date and time. It is the vendor's responsibility to save any changes and re-submit their response.	Understood

39	AWARD OF CONTRACT	The contractor shall not commence work under these terms and conditions of the contract until all applicable Certificates of Insurance, Performance and Payment Bonds and have been approved by the City of Lancaster and he/she has received notice to proceed in writing and an executed copy of the contract from the City of Lancaster.	Agreed
40	Deviation	<p>DEVIATIONS: In the event, you the Proposer, intends to deviate from the general terms, conditions, special conditions or specifications contrary to those listed in the "Terms and Conditions" and other information attached hereto, all such deviations must be detailed and uploaded in the RESPONSE ATTACHMENTS section of the e-pro system with the description DEVIATION.</p> <p>NO DEVIATIONS: In the absence of any deviation, Proposer assures the City of Proposer's compliance with the Terms, Conditions, Specifications, and information contained in this RFP.</p>	None
41	Award	Response to specifications, location of vendor, history/relationship, price and vendor's ability to perform the work are the primary factors in determining the lowest responsible bid.	(No Response Required)
42	Contractor Independence	Contractor will operate as an independent contractor and not an agent, representative, partner, or employee of the City of Lancaster, and shall control his operations at the work site, and be solely responsible for the acts or omissions of his employee(s). All wages, taxes, and worker's compensation of all contract employees shall be paid by the contractor.	(No Response Required)
43	MWBE 1	Is your company M/WBE or HUB certified?	yes
44	MWBE 2	If yes, what is your certification number?	NO
45	MWBE 3	If yes, what agency completed the certification?	
46	MWBE 4	If yes, what is the expiration date of your certification?	
47	BID PROTESTS	<p>All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Agent within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications.</p> <p>The limitation does not include protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary PRIOR to Council Award.</p>	Agreed
48	Reciprocal Information 1	The City of Lancaster, as a governmental agency of the State of Texas, may not award a contract for general construction, improvements, services or public works projects or purchases of supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located (Article 601g v.t.c.s.). Bidder shall answer all the following questions by encircling the	Texas

appropriate response or completing the blank provided.
**Where is your principal place of business?

- | | | | |
|----|--------------------------|---|-------|
| 49 | Reciprocal Information 2 | For Businesses not located in Texas, does your state favor resident bidders (bidders in your state) by some dollar increment or percentage? | N/A |
| 50 | Reciprocal Information 3 | If Yes, What is the dollar increment or percentage? | N/A |
| 51 | Notification | How did you here about this bid opportunity? | e-pro |
| 52 | Plan Room - Other | If yes for a plan room or other, please list which plan room or other means of notification. | |

Line Items

#	Qty	UOM	Description	Response
1	1	SF	Unit Price for repairs less than 500 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.50
Item Notes:				
Supplier Notes:				
2	1	SF	Unit Price for repairs 501 - 4,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.25
Item Notes:				
Supplier Notes:				
3	1	SF	Unit Price for repairs 4,001 - 10,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.00
Item Notes:				
Supplier Notes:				
4	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.95
Item Notes:				
Supplier Notes:				
5	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.55
Item Notes:				
Supplier Notes:				
6	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.50
Item Notes:				
Supplier Notes:				

7	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$8.00
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Item Notes:

Supplier Notes:

8	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.25
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Item Notes:

Supplier Notes:

9	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.00
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Item Notes:

Supplier Notes:

10	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$85.00
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Item Notes:

Supplier Notes:

11	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove & Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$82.00
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Item Notes:

Supplier Notes:

12	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
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Item Notes:

Supplier Notes:

13	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
14	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$86.00
Item Notes:				
Supplier Notes:				
15	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
16	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
17	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
18	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$22.00
Item Notes:				
Supplier Notes:				

19	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$20.00
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Item Notes:

Supplier Notes:

20	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$96.00
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Item Notes:

Supplier Notes:

21	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$94.00
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Item Notes:

Supplier Notes:

Response Total: \$969.00

EXHIBIT "C"



C&M Concrete
 362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: E1398
 Date: 3/2/2018

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Concord

PO Number	Terms	Customer #	Project
			Concord street P

Description	Quantity	Rate	Amount
210' x 26' strait area leading to circle	607.00	\$70.50	\$42,793.50
280 lf curb	280.00	\$12.00	\$3,360.00
#4 Rebar 18" o/c each way			

SubTotal	\$46,153.50
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
Total	\$46,153.50

EXHIBIT "D"



C&M Concrete

362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: E1397
 Date: 3/2/2018

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Concord

PO Number	Terms	Customer #	Project
			Concord Circle

Description	Quantity	Rate	Amount
Remove and Replace 85' Radius, Circle Only	803.00	\$70.50	\$56,611.50
147 lf curb	147.00	\$12.00	\$1,764.00
# 4 Rebar 18" o/c each way			

SubTotal	\$58,375.50
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
Total	\$58,375.50

Regular Session Agenda Item: 4

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Discuss and consider approval of a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to engage C&M Concrete for concrete repairs to Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane in an amount not to exceed One Hundred Thirty-Three Thousand Eight Hundred Twenty-Eight Dollars and Twenty-Two Cents (\$133,828.22); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed; and providing an effective date.

BACKGROUND OF ISSUE:

On April 21, 2014, City Council approved a Resolution to enter into a Master Interlocal Purchasing Agreement between the City of Seagoville and the City of Lancaster. The City of Lancaster acted as a purchasing agent for the purchase of various goods and services through the competitive bidding process. The City of Lancaster and C&M Concrete have previously entered into an agreement for C&M Concrete to provide repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement. The City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for concrete repairs to Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane, as reflected on estimates submitted by C&M Concrete under the Cooperative Purchase Agreement in the amount of \$133,828.22. Funding for the repairs have been approved through the FY 2018-19 Street Maintenance budget.

Repairs will be made to concrete streets, curbs, and sidewalks. The sidewalks will be repaired where failure has occurred near the water meters on Oakbrook Land, Hall Lane, Ross Lane, and Shadybrook Lane.

FINANCIAL IMPACT:

\$133,828.22

RECOMMENDATION:

City Staff recommends approval.

EXHIBITS:

Resolution (2 pages)

Master Interlocal Cooperative Purchasing Agreement with Lancaster (4 pages)

Standard Fixed Price Construction Agreement (24 pages)

C&M Agreement – Concorde Circle (6 pages)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS
RESOLUTION NO. __-R-2019**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING THE CITY MANAGER TO ENGAGE C&M CONCRETE FOR CONCRETE REPAIRS TO OAKBROOK LANE, HALL LANE, ROSS LANE, AND SHADYBROOK LANE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED TWENTY-EIGHT DOLLARS AND TWENTY-TWO CENTS (\$133,828.22); AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OR ANY DOCUMENTS NECESSARY FOR THE WORK TO BE PERFORMED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Seagoville and the City of Lancaster entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on April 21, 2014, under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code, under which the City of Lancaster acted as purchasing agent for the purchase of various goods and services through the competitive bidding process, attached hereto and incorporated herein as Exhibit "A", and

WHEREAS, the City of Lancaster, Texas and C&M Concrete have previously entered into an agreement for C&M Concrete, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement; and

WHEREAS, the City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for concrete repairs to Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane, as reflected on estimates submitted by C&M Concrete under the Cooperative Purchase Agreement, copies of which are attached hereto as Exhibits "C" through and "G", in the total amount of \$133,828.22; and

WHEREAS, funding is available in the FY 2018-19 Street Maintenance Program budget; and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the estimates and has determined it to be in the best interest of the City to authorize the City Manager to execute any documents necessary to authorize C&M Concrete to provide concrete repairs on Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane;

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

SECTION 1. The City Manager is hereby authorized to engage C&M Concrete to provide the concrete repair of Oakbrook Lane, Hall Lane, Ross Lane, and Shadybrook Lane in an amount not to exceed One Hundred Thirty-Three Thousand Eight Hundred Twenty-Eight Dollars and Twenty-Two Cents (\$133,828.22) as set forth in Exhibits "C" through "G"; and, the City Manager is authorized to execute any agreement or documents necessary for the work to be performed.

SECTION 2. This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

DULY ORDERED by the City Council of the City of Seagoville, Texas, this the 20th day of May, 2019.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney
(TM 108049)

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF SEAGOVILLE
AND CITY OF LANCASTER**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Seagoville and City of Lancaster desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs and services;

WHEREAS, The City of Seagoville and City of Lancaster represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. The City of Seagoville and City of Lancaster are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
2. The City of Seagoville and City of Lancaster agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Seagoville nor City of Lancaster warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

a dispute arise between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Seagoville or City of Lancaster, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Seagoville and City of Lancaster agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with

successful send confirmation, or by certified mail to the last business address as listed herein.

City of Seagoville: City of Seagoville
Attn: City Secretary
702 N. Highway 175
Seagoville, Texas 75159
Phone (972) 287-6819
dcrabtree@seagoville.us

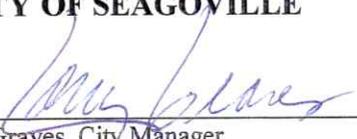
City of Lancaster: City of Lancaster
PO Box 940
Lancaster, TX 75146
972-218-1329
purchasing@lancaster-tx.com

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Dallas County, Texas, United States of America for City of Lancaster and shall be Dallas County, Texas, United States of America for the City of Seagoville.
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party

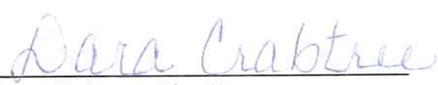
thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

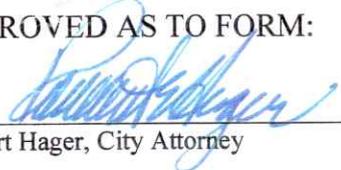
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

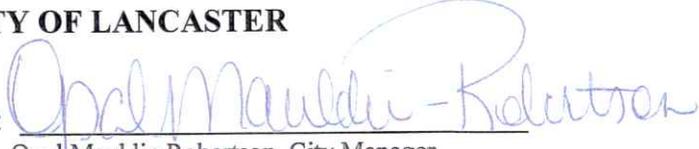
BY: 
Larry Graves, City Manager

DATE: 4-21-14

ATTEST: 
Dara Crabtree, City Secretary

APPROVED AS TO FORM:

Robert Hager, City Attorney

CITY OF LANCASTER

BY: 
Opal Mauldin Robertson, City Manager

DATE: 6/9/14

ATTEST: _____

Sorangel O. Arenas, City Secretary

City of Lancaster, Texas Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and C&M Concrete, (hereinafter referred to as the "Contractor") for Concrete Repairs (2018-10), (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Bid Response, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):
NONE

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance, maintenance, and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its

generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

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A purchase order will be issue for each work order issued. All work shall be completed within the agreed upon time for each work order.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a purchase order. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the

presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, at the unit prices attached hereto as Exhibit A: Contractor Response.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the unit Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Owner and upon Certificates for Payment subsequently issued to the Owner, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Owner in such form and manner, and with such supporting data and content, as the Owner may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by

the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Owner will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Owner shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Owner's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Owner less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Owner a list of items to be completed or corrected. When the Owner on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner

and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed and will issue a final Certificate for Payment certifying that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract

5.6.1.1 If the Contractor fails to achieve final completion in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage

will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Owner.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH

NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Owner during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Owner to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Lancaster and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice to the Owner and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 FIELD ORDERS

8.1.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Owner's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.2.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Owner in accomplishing the timely completion of the Project.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims,

demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes

related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Owner's request or to any provisions of this Contract, it shall, if required by the Owner, be uncovered for the Owner's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Owner, be uncovered for the Owner's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the

Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials,

equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated

portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Owner's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Lancaster until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
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Worker's Compensation as set forth in the Worker's Compensation Act.	
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Commercial General Liability	
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\$1,000,000 Each Accident/Occurrence. The policy shall have no coverage removed by exclusions.	
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Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.	
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Automobile Liability	
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\$500,000 Combined single limit per occurrence.	
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13.2 INSTALLATION FLOATER

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverage's designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

13.3 Builders Risk

This insurance shall be written in completed value form

and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

13.4 ADDITIONAL INSURED / PROJECT INFORMATION

The Owner shall be named as an additional insured on the Commercial General Liability (Public), Policies furnished by the Contractor.

The project name and bid/contract number shall be listed on the certificate.

13.5 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Purchasing Agent, City of Lancaster, PO Box 940, Lancaster, Texas, 75146.

13.6 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.7 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City of Lancaster on a Standard Certificate of Insurance Form. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Lancaster, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

13.8 PRIMARY COVERAGE

The coverage's provided herein shall be primary and noncontributory with any other insurance maintained by

the City of Lancaster, Texas, for its benefit, including self insurance.

13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) 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;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity 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;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

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

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

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) 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;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by

sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds

furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

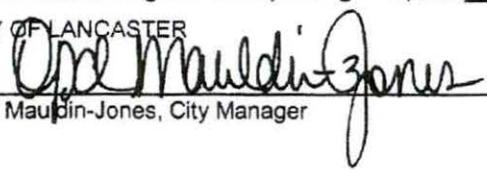
14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Owner at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED in single or multiple originals, this 21 day of June, 2018.

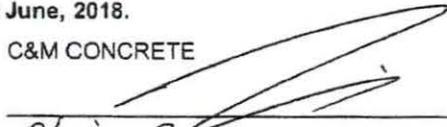
CITY OF LANCASTER


Opal Mauldin-Jones, City Manager

ATTEST:


Sorangel O. Arenas, City Secretary

C&M CONCRETE


Chris Bowen OWNER
Type/Print Name and Title

PO BOX 381910
Duncanville, TX 75138

City of Lancaster, Texas (Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Alton Dixon Purchasing Agent	Address	PO Box 940	Address
Email	adixon@lancaster-tx.com		Lancaster, TX 75146	
Phone	1 (972) 218-1329 x	Contact	Alton Dixon Purchasing Agent	Contact
Fax	1 (972) 218-3621 x		Purchasing	Department
Bid Number	2018-10 Addendum 1	Department		Building
Title	Concrete Repairs	Building		
Bid Type	ITB			Floor/Room
Issue Date	4/9/2018 06:40 PM (CT)	Floor/Room		Telephone
Close Date	5/8/2018 03:00:00 PM (CT)	Telephone	(972) 218-1329 x	Fax
		Fax	(972) 218-3621 x	Email
		Email	adixon@lancaster-tx.com	

Supplier Information

Company	C&M CONCRETE
Address	P.O BOX 381910
	DUNCANVILLE, TX 75138
Contact	CHRIS BOWEN
Department	
Building	
Floor/Room	
Telephone	(972) 965-4781
Fax	(972) 709-9173
Email	bowenchris1@aol.com
Submitted	5/8/2018 08:26:27 AM (CT)
Total	\$969.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Chris Bowen

Email Chris@concretepaving.net

Supplier Notes

Bid Notes

Miscellaneous repair work to streets and sidewalks.

Bid Activities

Date	Name	Description
3/26/2018 08:00:00 AM (CT)	Week 1	Week 1 Advertisement - Focus News
4/2/2018 08:00:00 AM (CT)	Week 2	Week 2 Advertisement - Focus News

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Addendum 2: Bonding	The projects included in this contract will generally not exceed \$50,000. Because the projects do not exceed the bond threshold identified in the statute, the bonding requirement has been removed. However, should one of the individual projects exceed \$50,000; bonds will be required in the amount of that project. The Due date and time have been extended by one week.	I Agree
2	Addendum 1	I have read and understand Addendum 1.	ACK
3	One Year - 4 Renewals	Length of this contract shall be for one (1) full year with the option to renew the contract for four additional one-year periods. Both parties must be in agreement.	Agree
4	Annual Contract	This agreement will contain a fixed pricing structure for the term of the agreement. Quantities shown are estimates and NOT a commitment to buy any specific quantity. Orders will be placed on a non-exclusive, "as needed", basis. Orders placed by the City of Lancaster will be done with a purchase order.	Agreed
5	Price Increases	Prices are firm for the first year. Any price increase after year one, must be justified and documentation submitted. Price increases may not exceed the current Consumer Price Index (U) for the D/FW Region.	Agree
6	Response Term	Responses shall be valid for ninety (90) calendar days after the opening date and shall constitute an irrevocable offer to the City of Lancaster for the 90 calendar day period. The 90 calendar day period may be extended by mutual agreement of the parties.	Agree
7	Terminology	Throughout this document, the terms Contractor, Bidder, Proposer, and/or Vendor may be used interchangeably. Reference to any of these terms throughout this document should be construed by the reader as meaning any bidder for the products/services being requested (e.g., Bidder, Proposer); or the bidder who has been awarded a bid/RFQ or contract (e.g., Contractor, Vendor).	Agree
8	Payment Bond	A payment bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood
9	Performance Bond	A performance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood

10 Maintenance Bond	A maintenance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor.	Understood
	A sample document is attached and must be used by issuing bonding agent.	
11 Contractor Registration	The awarded vendor will be required to register with the City as a contractor. The current fee is \$100. Application is available at www.lancaster-tx.com or at Building Inspection. 700 E. Main Street Lancaster, TX 75146 Hours of operation M-Th 7:00 AM - 5:30 PM.	Understood
12 Company Ownership	Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.	NO
13 Difficulties	What difficulties do you anticipate in serving the City? How do you plan to manage these and what assistance will you require from the City? Describe your firm's past performance on other contracts for the City (e.g. cost control, cost savings, schedule control).	<p>I do not anticipate any difficulties in being awarded this contract.</p> <p>I have spent my entire career working under City Contracts. I fully understand City procedures, budgets, and expectations. In my almost twenty year career as the Owner and Operator of C&M Concrete, I have been awarded multiple City Contracts.</p> <ul style="list-style-type: none"> - The City of DeSoto Awarded 7 times 1997 - current day - The City of Lancaster Awarded multiple times over the past 10+ years <p>Under these two contracts, I have opted in to agree to the Inter Local City Agreement, and have worked for 7 other cities in the past twenty years.</p> <p>In addition to holding these Annual Concrete Contracts, I have bid and been awarded separate contracts for multiple projects under the City of Lancaster, such as the Lancaster Regional Airport Improvements, and the Storm Water Improvements.</p> <p>In all of these successful years working as a partner with the Cities, I have had no difficulties in performance, no unresolved issues, and have never requested my Annual Concrete Contract prices to increase during the duration of the contracts.</p>
14 Electronic Payment	If you would like your payment sent electronically (EFT), please provide your accounts receivable contact information. Please provide name and email.	Chris Bowen chris@concretepaving.net

15	Financial Default	Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.	No
16	Litigation with City of Lancaster	Is your firm involved in any litigation (past or pending) with the city of Lancaster? If yes, please provide details.	No
17	NEPOTISM STATEMENT	The Bidder or Proposer or any officer, if the Bidder or Proposer is other than an individual, shall state whether Bidder or Proposer has a relationship, either by blood or marriage, with any official or employee of the City of Lancaster:	Not Related
18	Non-Performance	Identify if your firm has had any contracts terminated due to non-performance over the past five (5) years.	No
19	Open Records Act	All responses will be maintained confidential until award is finalized. At that time, all proposals are subject to the Open Records Act.	Agreed
20	PROPERTY TAXES	Please indicate whether you or your company, owe delinquent property taxes to the City whether an assumed name, partnership, corporation, or any other legal form.	Do Not
21	Website Address	Enter product website information	N/A
22	Cooperative Agreement	Should other Government Entities decide to participate in this contract, would you, the Vendor, agree that all terms, conditions, specifications, and pricing would apply? If you, the Vendor checked yes, the following will apply: Government entities utilizing Inter-Governmental Contracts with the City of Lancaster will be eligible, but not obligated, to purchase materials/services under this contract(s) awarded as a result of this bid. All purchases by Governmental Entities other than the City of Lancaster will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Lancaster will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their own material/service as needed.	Yes
23	T&C Acknowledgement	I have read and agree to the terms and conditions of this bid.	Agreed
24	Bid Acknowledgement	Bidder affirms that they have read and understand all requirements of this proposal. Additionally, the bidder affirms that they are duly authorized to execute this contract and that this company has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the bidder nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.	Agreed
25	Insurance	Vendor shall provide insurance as listed in the insurance requirements attached.	Understood
26	County	What county is your principal place of business located?	Dallas

27	Immigration	Employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the US) and aliens authorized to work in the US. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.	(No Response Required)
28	Contractor Responsibility	Keep project area in a safe and clean environment at all times during the contract period. Ensure all work is executed in accordance with OSHA (Occupational Safety and Health Administration) Requirements. Contractor must ensure that all Federal, State, and Local regulation are met.	(No Response Required)
29	Damage	Contractors are responsible for repairs caused by their negligence for any damage to public right of way and/or private property.. Repairs must be completed prior to final acceptance of job for payment.	(No Response Required)
30	Workmanship	All work and workmanship must be of good quality and adhere to all applicable laws and regulations. Contractor must possess all necessary licenses.	(No Response Required)
31	Questions	All questions shall be addressed to Alton Dixon, Purchasing Agent via email at purchasing@lancaster-tx.com.	Agree
32	Laws and ordenances	The Contractor shall at all times observe and comply with all Federal, State, and local laws, ordinances and regulations which in any manner affect the Contract or the work.	Understood
33	Work Hours	Working hours are not to begin prior to 7:00 AM or extend past 5:00 PM without prior written approval.	Understood
34	Payment Terms	The City of Lancaster's payment terms are Net 30.	Agreed
35	Road & Lane Closures	Road or lane closures must be approved in writing at least 48 hours prior to closing by the City Engineer.	Agreed
36	Change Orders	No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the city of Lancaster.	Agreed
37	Late Submission	Bids/RFQs are not accepted after the closing date and time. The City of Lancaster is not responsible computer, mail or carrier issues/problems. The server time located in the top right corner of this software is the official clock. It is the responsibility of the user to ensure you have chosen the correct time zone for your company.	Understood
38	MODIFICATION OF A SUBMITTED BID / PROPOSALS	A proposer may modify a response electronically by logging into the e-procurement system and retracting their bid. Changes can be made up to the closing date and time. It is the vendor's responsibility to save any changes and re-submit their response.	Understood

39	AWARD OF CONTRACT	The contractor shall not commence work under these terms and conditions of the contract until all applicable Certificates of Insurance, Performance and Payment Bonds and have been approved by the City of Lancaster and he/she has received notice to proceed in writing and an executed copy of the contract from the City of Lancaster.	Agreed
40	Deviation	<p>DEVIATIONS: In the event, you the Proposer, intends to deviate from the general terms, conditions, special conditions or specifications contrary to those listed in the "Terms and Conditions" and other information attached hereto, all such deviations must be detailed and uploaded in the RESPONSE ATTACHMENTS section of the e-pro system with the description DEVIATION.</p> <p>NO DEVIATIONS: In the absence of any deviation, Proposer assures the City of Proposer's compliance with the Terms, Conditions, Specifications, and information contained in this RFP.</p>	None
41	Award	Response to specifications, location of vendor, history/relationship, price and vendor's ability to perform the work are the primary factors in determining the lowest responsible bid.	(No Response Required)
42	Contractor Independence	Contractor will operate as an independent contractor and not an agent, representative, partner, or employee of the City of Lancaster, and shall control his operations at the work site, and be solely responsible for the acts or omissions of his employee(s). All wages, taxes, and worker's compensation of all contract employees shall be paid by the contractor.	(No Response Required)
43	MWBE 1	Is your company M/WBE or HUB certified?	yes
44	MWBE 2	If yes, what is your certification number?	NO
45	MWBE 3	If yes, what agency completed the certification?	
46	MWBE 4	If yes, what is the expiration date of your certification?	
47	BID PROTESTS	<p>All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Agent within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications.</p> <p>The limitation does not include protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary PRIOR to Council Award.</p>	Agreed
48	Reciprocal Information 1	The City of Lancaster, as a governmental agency of the State of Texas, may not award a contract for general construction, improvements, services or public works projects or purchases of supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located (Article 601g v.t.c.s.). Bidder shall answer all the following questions by encircling the	Texas

appropriate response or completing the blank provided.
**Where is your principal place of business?

- | | | | |
|----|--------------------------|---|-------|
| 49 | Reciprocal Information 2 | For Businesses not located in Texas, does your state favor resident bidders (bidders in your state) by some dollar increment or percentage? | N/A |
| 50 | Reciprocal Information 3 | If Yes, What is the dollar increment or percentage? | N/A |
| 51 | Notification | How did you here about this bid opportunity? | e-pro |
| 52 | Plan Room - Other | If yes for a plan room or other, please list which plan room or other means of notification. | |

Line Items

#	Qty	UOM	Description	Response
1	1	SF	Unit Price for repairs less than 500 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.50
Item Notes:				
Supplier Notes:				
2	1	SF	Unit Price for repairs 501 - 4,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.25
Item Notes:				
Supplier Notes:				
3	1	SF	Unit Price for repairs 4,001 - 10,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.00
Item Notes:				
Supplier Notes:				
4	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.95
Item Notes:				
Supplier Notes:				
5	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.55
Item Notes:				
Supplier Notes:				
6	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.50
Item Notes:				
Supplier Notes:				

7	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$8.00
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Item Notes:

Supplier Notes:

8	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.25
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Item Notes:

Supplier Notes:

9	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.00
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Item Notes:

Supplier Notes:

10	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$85.00
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Item Notes:

Supplier Notes:

11	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove & Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$82.00
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Item Notes:

Supplier Notes:

12	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
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Item Notes:

Supplier Notes:

13	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
14	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$86.00
Item Notes:				
Supplier Notes:				
15	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
16	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
17	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
18	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$22.00
Item Notes:				
Supplier Notes:				

19	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$20.00
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Item Notes:

Supplier Notes:

20	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$96.00
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Item Notes:

Supplier Notes:

21	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$94.00
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Item Notes:

Supplier Notes:

Response Total: \$969.00



C&M Concrete
 362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: ENH-4613

Date: 5/13/2019

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Oakbrook

PO Number	Terms	Customer #	Project
			street and sidewa

Description	Quantity	Rate	Amount
718 Oakbluff			
36' x 13' x 8" = 52 SQY	52.00	\$89.00	\$4,628.00
19' x 8' x 8" = 16.88 SQY	16.88	\$89.00	\$1,502.32
52 LF curb	52.00	\$12.00	\$624.00
ALLY entrance			
18' x 14' x 6" =	28.00	\$89.00	\$2,492.00
5' x 23' x 6" =	12.77	\$89.00	\$1,136.53
30 lf curb	30.00	\$12.00	\$360.00
HALL / Oakbrook Valve stack			
9' x 12' x 8" =	12.00	\$89.00	\$1,068.00
910 Oakbluff			
9' x 12' x 8" =	12.00	\$89.00	\$1,068.00
36' x 26' x 8" =	104.00	\$89.00	\$9,256.00



C&M Concrete

362 Linkview Drive
Duncanville, TX 75137
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chris@concretepaving.net

Number: ENH-4613

Date: 5/13/2019

Bill To:

Patrick Stalling
City Of Seagoville
702 N HWY 175
Seagoville, TX, 75159

Ship To:

Oakbrook

PO Number	Terms	Customer #	Project
			street and sidewa

Description	Quantity	Rate	Amount
70 lf curb	70.00	\$12.00	\$840.00

SubTotal	\$22,974.85
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
Total	\$22,974.85



C&M Concrete

362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: ENH-4614

Date: 5/13/2019

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Hall

PO Number	Terms	Customer #	Project
			sidewalks

Description	Quantity	Rate	Amount
1317 Hall			
63' x 4' x 4" =	252.00	\$7.95	\$2,003.40
1315 Hall			
58' x 4' x 4" =	232.00	\$7.95	\$1,844.40
12 lf curb	12.00	\$25.00	\$300.00
1309 Hall			
48' x 4' x 4"	192.00	\$7.95	\$1,526.40
1410 Hall			
85' x 4' x 4" =	340.00	\$7.95	\$2,703.00
4 lf curb	4.00	\$25.00	\$100.00

SubTotal	\$8,477.20
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00

Total \$8,477.20



C&M Concrete
 362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: ENH-4610

Date: 5/13/2019

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Ross

PO Number	Terms	Customer #	Project
			Street Repair

Description	Quantity	Rate	Amount
40' x 21' x 8" = 93.33 SQY	93.33	\$89.00	\$8,306.37
90 lf curb	90.00	\$15.00	\$1,350.00

SubTotal	\$9,656.37
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
Total	\$9,656.37



C&M Concrete

362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: ENH-4611

Date: 5/13/2019

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Shadybrook

PO Number	Terms	Customer #	Project
			Sidewalk

Description	Quantity	Rate	Amount
Remove and Replace sidewalks both side of street			
630' per side of 4' sidewalk X 2 =1260' x 4' x 4"=5,040 sq'	5040.00	\$7.95	\$40,068.00

SubTotal	\$40,068.00
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
Total	\$40,068.00



C&M Concrete
 362 Linkview Drive
 Duncanville, TX 75137
 (972) 965-4781
 chris@concretepaving.net

Number: ENH-4612

Date: 5/13/2019

Bill To:

Patrick Stalling
 City Of Seagoville
 702 N HWY 175
 Seagoville, TX, 75159

Ship To:

Shadybrook (4) Locations

PO Number	Terms	Customer #	Project
			street and sidewa

Description	Quantity	Rate	Amount
709 Shadybrook			
35' x 26' x 8" = 101 SQY	101.00	\$89.00	\$8,989.00
70 LF Curb	70.00	\$12.00	\$840.00
706 Shadybrook			
38' x 26' x 8" = 109. SQY	109.00	\$89.00	\$9,701.00
76 lf curb	76.00	\$12.00	\$912.00
45' x 26' x 8" =130 SQY	130.00	\$89.00	\$11,570.00
90 LF Curb	90.00	\$12.00	\$1,080.00
703 Shadybrook			
35' x 26' x 8" = 101 SQY	101.00	\$89.00	\$8,989.00
70 LF CURB	70.00	\$12.00	\$840.00
SIDEWALKS			
306' x 4' x 4" Total street Repair with sidewalks at Repair	1224.00	\$7.95	\$9,730.80

SubTotal	\$52,651.80
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00

Total \$52,651.80

Regular Session Agenda Item: 5

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Discuss and consider approval of an Ordinance of the City of Seagoville, Texas, amending Chapter 19 of the Code of Ordinances by repealing Article 19.07 in its entirety and replacing with a new Article 19.07, “Water Conservation Plan and Drought Contingency Plan”; providing for the adoption of a Water Conservation Plan; providing for a Drought Contingency Plan; providing a repealing clause; providing a severability clause; providing a savings clause; providing a savings clause; providing a penalty of fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense; providing for the disconnection of water service for noncompliance with the provisions of the Drought Contingency Plan; and providing an effective date.

BACKGROUND OF ISSUE:

The regulation of the Texas Water Code, the Texas Commission on Environmental Quality (TCEQ) and the City of Dallas as Seagoville’s wholesale supplier, requires the City of Seagoville to adopt a Drought Contingency Plan, which is codified in Chapter 19, Article 19.07 of the Code of Ordinances. The increasing population and economic development in Region C have led to growing demands for water. The additional supplies to meet higher demands will be expensive and difficult to develop, making it important to use existing supplies efficiently and make them last as long as possible. Upon review of Article 19.07 the City has determined that the provisions need to be updated during the process to implement the amendments necessary to comply with the TCEQ mandates.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval.

EXHIBITS:

Ordinance – Water Conservation and Drought Contingency Plan

AN ORDINANCE OF THE CITY OF SEAGOVILLE

ORDINANCE NO. ____-19

AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING CHAPTER 19 OF THE CODE OF ORDINANCES BY REPEALING ARTICLE 19.07 IN ITS ENTIRETY AND REPLACING IT WITH A NEW ARTICLE 19.07, "WATER CONSERVATION PLAN AND DROUGHT CONTINGENCY PLAN"; PROVIDING FOR THE ADOPTION OF A WATER CONSERVATION PLAN; PROVIDING FOR A DROUGHT CONTINGENCY PLAN; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; PROVIDING FOR THE DISCONNECTION OF WATER SERVICE FOR NONCOMPLIANCE WITH THE PROVISIONS OF THE DROUGHT CONTINGENCY PLAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, as required by the Texas Water Code, the regulations of the Texas Commission on Environmental Quality (the "TCEQ") and the City of Dallas as Seagoville's wholesale supplier, the City previously adopted a Drought Contingency Plan, which is codified in Chapter 19, Article 19.07 of the Code of Ordinances; and,

WHEREAS, as increasing population and economic development in Region C have led to growing demands for water, additional supplies to meet higher demands will be expensive and difficult to develop making it important to use existing supplies efficiently and make them last as long as possible; and,

WHEREAS, upon review of Article 19.07 the City has determined that the provisions need to be updated during the process implementing the amendments necessary to comply with the TCEQ mandates; and

WHEREAS, the City Council hereby finds it is in the best interest of the City to repeal Article 19.07 in its entirety and replace it with a new Article 19.07 to provide for the adoption of a water conservation and drought contingency plan within the City of Seagoville.

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

SECTION 1 That Article 19.07 of the Code of Ordinances of the City of Seagoville, Texas is hereby repealed in its entirety and replaced with a new Article 19.07 to provide for the adoption of a water conservation and drought contingency plan within the City, which shall read as follows:

"ARTICLE 19.07 WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN

Division 1. Water Conservation Plan

Sec. 19.07.001 Introduction and objectives

The City of Seagoville (City) is located southeast of Dallas, Texas in Dallas and Kaufman Counties. The United States Highway 175 West corridor runs east to west through the City.

Water supply has always been a key issue in the development of Texas. In recent years, the increasing population and economic development in Region C have led to growing demands for water. Additional supplies to meet higher demands will be expensive and difficult to develop. Therefore, it is important that we make efficient use of existing supplies and make them last as long as possible. This will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development.

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of water conservation and drought contingency plans for public water suppliers. The City of Seagoville has adopted this water conservation and drought contingency plan pursuant to TCEQ guidelines and requirements.

(1) The objectives of the water conservation plan are:

- To reduce water consumption.
- To reduce the loss and waste of water.
- To improve efficiency in the use of water.
- To extend the life of current water supplies by reducing the rate of growth in demand.

(2) The objectives of the drought contingency plan are:

- To conserve the available water supply in times of drought and emergency.
- To maintain supplies for domestic water use, sanitation, and fire protection.
- To protect and preserve public health, welfare, and safety.
- To minimize the adverse impacts of water supply shortages.
- To minimize the adverse impacts of emergency water supply conditions.

Sec. 19.07.002 Historic and Measurement Practices

- (a) Seagoville's 2017 Water Utility Profile is located in Appendix A of this report.
- (b) Seagoville's current record management system classifies water sales into three categories:
- (1) Residential (R)

- (2) Commercial (C)
- (3) Sprinkler (SP)

For each annual report, Seagoville has a system to divide the accounts into the following categories for the annual report:

- (1) Residential
 - (A) Single Family
 - (B) Multi-Family
 - (2) Commercial
 - (3) Institutional
 - (4) Industrial
 - (5) Agricultural
- (c) Table 1 shows historical averages and usage patterns.

Table 1: Seagoville's Historic Water Usage

Description	Historical 5 Year Average
Total GPCD	112
Residential GPCD	60
Water Loss (GPCD)	12
Water Loss (Percentage)	11%

The residential GPCD water use category includes both single family and multi-family residential categories.

- (d) Accurate metering of treated water deliveries. All treated water is metered through two (2) City of Dallas' Rate of Flow Controller meters: one at Seagoville Road and Stark Road and the other at Lasater Road and Wynngate Drive. Seagoville's wholesale water supply contract covers meter accuracy and periodic testing.
- (e) Metering of customer and public uses and meter testing, repair, and replacement. Water usage for all customers of the City of Seagoville, excluding public and governmental users, is metered.
- (f) Water Conservation Goals: Best Management Practices (BMP's) provide methods for the city to improve upon their water conservation efforts. Seagoville will continue implementation of existing BMP's and will implement additional BMP's outlined in Table 2. The City's proposed BMP's to reach its conservation goals include the following:

Table 2: Best Management Practice Implementation Schedule

BMP Description	Activity	Currently Implemented	Implemented Within 5-Years
Water Conservation Pricing	Nonpromotional water rate structure	X	
System Water Audit and Water Loss	Annual water audit	X	
Public Information	Inserts with water conservation tips sent to the public twice in the next five years		X
	Water conservation tips available via the City's website	X	
Metering of All New Connections and Retrofit of Existing Connections	Replacement of all existing water meters		X
Athletic Field Conservation	Watered only on an as needed basis	X	
Park Conservation	Watered only on an as needed basis	X	
Prohibition on Wasting Water	Drought contingency plan	X	

Seagoville’s five- and ten-year water conservation goals are outlined in Table 3. These goals are based on current water use per capita.

Table 3: Seagoville's Five- and Ten-Year Water Conservation Goals

Description	5-yr Goal for 2022	10-yr Goal for 2027
Total GPCD	105	100
Residential GPCD	60	55
Water Loss (GPCD)	10	8
Water Loss (Percentage)	9%	7%

(g) Determination and control of unaccounted water. Unaccounted water is the difference between treated water obtained from Dallas and metered sales to Seagoville customers. Unaccounted water can include several categories:

- (1) inaccuracies in customer meters (customer meters tend to run more slowly as they age and under-report actual use);
- (2) losses due to water main breaks and leaks in the water distribution system;
- (3) losses due to flushing of lines;
- (4) losses due to illegal connections;
- (5) losses due to firefighting efforts; and
- (6) other.

Apparent water losses include water that was actually used but not accounted for, such as customer meter errors or theft. Accounting for apparent losses increases the city's utility revenue but does not reduce water usage. Real losses include leakage and overflows at the

water facilities.

Identifying and preventing real losses decreases a utility's costs and decreases water usage.

Seagoville will implement the following strategies to address apparent water loss:

- (1) Implement a meter replacement program to replace every meter in the City with new automatic meters with a guaranteed accuracy rate of 99.8% for the next 20 years.
- (2) Quantify and record all flushing of water lines:
- (3) Monitor construction activity to ensure meters are used, especially when new lines are being flushed prior to being placed in service and record water used annually during construction activities; and
- (4) Work closely with the Fire Department to estimate and record water used in firefighting activities.

Seagoville will implement the following strategies to address real water loss:

- (1) Respond to all identified water leaks within two hours and make repairs within 24 hours after utility locates, and estimate and record total unaccounted for water for tracking purposes;
- (h) Continuing public education and information campaign. The continuing public education and information campaign on water conservation for the City of Seagoville includes the following elements:
- (1) Include inserts on water conservation with water bills at least twice within five years. Inserts will include material developed by City of Seagoville staff and material obtained from the TWDB, the TCEQ, and other sources.
 - (2) Make information on water conservation available online at www.seagoville.us and include links to the TexasSmartScape web site and to information on water conservation on the TWDB and TCEQ web sites.
- (i) Non-promotional water rate structure. With the intent of encouraging water conservation and discouraging waste and excessive use of water, the City of Seagoville has adopted an increasing block rate water structure where the unit price of water increases with increasing water use. Current water rates at the time of adoption of this plan are shown in Tables 4 and 5.

Table 4: Monthly Meter Base Rate (includes first 2000 gallons):

Meter Size (in)	Total Charge
3/4" or less	\$ 25.37
1"	\$ 38.06
1.5"	\$ 63.43
2"	\$ 63.43
3"	\$ 164.93
4"	\$ 241.05
6"	\$ 844.95
8" or larger	\$ 1,268.70

Table 5: Volume Unit Charges

Usage	Rate
2,001 - 5,000	\$ 2.68
5,001 - 10,000	\$ 3.35
10,001 - 15,000	\$ 5.16
15,001 - 20,000	\$ 5.83
20,001 - 25,000	\$ 6.48
Over 25,000	\$ 7.17

- (j) Reservoir system operation plan. The City does not own or maintain a reservoir.
- (k) Implementation and enforcement of the water conservation plan. This plan is part of an ordinance approved by City of Seagoville City Council. The ordinance designates responsible officials to implement and enforce Water Conservation and Drought Contingency Plan.
- (l) Coordination with Regional Water Planning Group. The City of Seagoville will provide a copy of this Water Conservation Plan to the Region C Water Planning Group and the City of Dallas.
- (m) Schedule for Implementing the Plan to Achieve Applicant’s Targets and Goals. This water conservation plan will be updated based on new and updated information every five years. Seagoville is currently updating its water distribution master plan. The most recent water master plan will be completed in 2018.
- (n) Tracking the Effectiveness of the Plan. Seagoville will collect and record the following information and data:
 - (1) Monthly operating reports
 - (2) Annual water consumption by meter account categorized into residential, commercial, and sprinkler categories
 - (3) Annual water conservation reports are submitted to the TWBD which contain trends pertaining to total and residential GPCD
 - (4) Water audit reports are filled out, reviewed, and submitted to the TWDB annually.
 - (5) Logs will be kept for all meter calibrations, meter testing, meter failure, and meter replacement programs
 - (6) Documentation will be kept for all flushing events
- (o) Leak detection and repair; pressure control. Measures to control unaccounted water are part of the routine operations of the City of Seagoville. Meter readers watch for and report signs of illegal connections so they can be addressed quickly. Crews and personnel look for and report evidence of leaks in the water distribution system. Maintenance crews respond quickly to repair leaks reported by the public and city personnel. Areas of the water distribution system in which numerous leaks and line breaks occur are targeted for replacement as funds are available.

To reduce real water losses, the City of Seagoville will maintain a proactive water loss program. As part of this program, the City will implement the following actions:

- (1) Make every effort to respond to leaks within two hours and repair within 24 hours after utility locates;
- (2) Control pressure/flows to above the minimum standard-of-service level including fire requirements.

(p) Requirement for water conservation plans by wholesale customers. After adoption of this plan, any existing or contract for the wholesale sale of water by the City of Seagoville will include a requirement that the wholesale customer develop and implement a water conservation plan meeting the requirements of Title 30, Part I, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code. This requirement will also extend to each successive wholesale customer in the resale of the water.

Secs. 19.07.003 - 19.07.010 Reserved

Division 2. Drought Contingency Plan

Sec. 19.07.011 Definitions

For the purposes of this Plan, the following definitions shall apply:

City shall mean the City of Seagoville, Texas.

School shall mean the Dallas Independent School District.

Homeowners Association or Commercial Property Owners Association (HOA's/POA's) shall mean a formal nonprofit organization operating under recorded land agreements through which:

- (1) each lot and/or homeowner in a specific area is automatically a member;
- (2) each lot or property interest is automatically subject to a charge for a proportionate share of the expense for the organization's activities, such as the maintenance of common property; and
- (3) the charge if unpaid, becomes a lien against the nonpaying member's property.

Common Property is real property including but not limited to: parks, lakes, open space; trails and/or floodplain management areas. Common property is either owned in fee, controlled as an easement or is property leased by a Homeowners Association or Commercial Property Owners Association for the common use, enjoyment and benefit of the members of the Homeowners Association or Commercial Property Owners Association. All common property shall be maintained by the members of the Homeowners Association or Commercial Property Owners Association, not the City.

Hand watering shall mean watering or applying water to a lawn, garden, or landscaping while holding the discharge end of a water hose.

Non-spray irrigation system shall mean use of soaker hoses, drip or bubble irrigation systems, or other means of applying water to an area without spraying the water into the air.

Irrigation shall mean watering or applying water to a lawn, garden, or landscaping through the use of underground systems with pop-up heads, sprinklers attached to water hoses, unattended water hoses or any other means of applying water to a lawn, garden, or landscaping which does not

fit the definition of a non-spray irrigation system.

City Manager shall mean the chief executive officer of the City of Seagoville under the Home Rule Charter or his designee.

Residential shall include the following districts: R-1 through R-5, D, A, TH, MH, PD Residential, and the Downtown Form Based Zoning District (residential)

Non-residential shall include all districts not defined as residential districts by the Comprehensive Zoning Ordinance and all common property maintained by a Homeowners Association or Commercial Property Owners Association.

Watering shall mean watering or applying water on the lawn, trees, landscaping, flower beds, fields, playground areas, gardens, common property, City maintained property. School maintained property or other non-permeable surfaces in any zoning district by hand watering, non-spray irrigation systems, irrigation systems or any other means.

Sec. 19.07.012 Drought response stages

(a) The City Manager or his/her designee shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the Plan. Depending on the availability of water and the City's ability to supply essential water demands and fire protection. The City Manager, upon notification to the City Council, is authorized to move from Stage to Stage within the Plan when requirements for initiation or rescinding are met. The City Manager may also make minor changes to the Plan that are not detrimental to the effectiveness of the overall Plan.

(b) The following procedures are required to initiate or rescind each stage of the Plan:

- (1) Notification must be made by public announcement.
- (2) The order becomes effective immediately upon public announcement.
- (3) Notification will be provided for publication in the City's official newspaper after public announcement. The newspaper is published on Thursday of each week. Additional notification will be provided by information posted on the City's web page.

The initiation conditions described herein for each response stage are based on historical analysis and recognized vulnerability of the water supply source and water distribution system during high water use demands and drought conditions.

(A) Stage 1-Water Awareness Stage

- i. Initiation Conditions: Stage 1 of the Plan shall be implemented when one or more of the following conditions occur:
 - a. Annually, beginning on May 15 through September 15.
 - b. Short-term deficiencies in the City's distribution system limit supply capabilities.

ii. Goals:

- a. Achieve a voluntary reduction in water use.

iii. Demand Management Measures:

- a. No outside watering between the hours of 10 a.m. and 6 p.m., with the exception of the use of non-automatic spray irrigation systems and hand watering which will be allowed all days, at all times. The use of non-spray irrigation systems and hand watering will be allowed at all times in Stage I.
- b. City will encourage water conservation by increasing awareness of Water Conservation techniques through the use of various available means including but not limited to: web page, direct mail-outs, water bill inserts, press releases or other means available to advise the public of the requirements of this ordinance.

iv. Rescinding Conditions:

Stage I of the Plan shall be automatically rescinded on September 15 of each year, unless there is still a short-term deficiency in the City's distribution system or unless a different stage has been enacted and is still in force.

(B) Stage 2 - Water Watch Stage

(i) Initiation Conditions: Stage 2 of the Plan shall be implemented when one or more of the following conditions occur:

- a. Notification is received from DWU requiring implementation of procedures in accordance with contract obligations for wholesale customers.
- b. Water demands exceed ninety percent (90%) of the current maximum flow rate contracted with DWU for five (5) consecutive days.
- c. Ground Storage Reservoir levels do not recover for two (2) consecutive days.
- d. Short-term deficiencies affect the City's distribution system limit supply capabilities.

(ii) Goals: Reduce the average daily water demand below 90% of the current maximum flow rate contracted from DWU.

(iii) Demand Management Measures:

- a. Odd numbered water customers must conduct all watering on Monday's, Wednesday's and Friday's.

- b. Even numbered water customers must conduct all watering on Tuesday's, Thursday's and Saturday's.
 - c. No watering will be allowed on Sunday's.
 - d. The City must conduct all watering of center medians of streets, street rights-of-way, parks, city facilities and other areas maintained by the City on Monday's, Wednesday's and Friday's.
 - e. Homeowners Associations or Commercial Property Owners Associations must conduct all watering of common property on Mondays, Wednesdays, and Fridays.
 - f. Nursery (garden and landscape) businesses are not restricted when watering business inventory; however, they must comply with watering requirements for the landscaping associated with the building.
 - g. No outside watering will be allowed between the hours of 10:00 a.m. and 6:00 p.m. with the exception of the use of non-automatic spray Irrigation systems and hand watering which will be allowed all days, at all times. Use of non-spray irrigation systems and hand watering will be allowed all days.
- (iv) Rescinding Conditions: Stage 2 of the Plan shall be rescinded when all of the initiating conditions have ceased to exist for a period of five (5) consecutive days or determined by the City Manager. Upon termination of Stage 2, Stage I - Water Awareness Stage becomes operative unless also rescinded.

(C) Stage 3 - Water Warning Stage

- (i) Initiation Conditions: Stage 3 of the Plan shall be implemented when one or more of the following conditions occur:
- a. Notification is received from DWU requiring implementation of procedures in accordance with contract obligations for wholesale customers.
 - b. Water demands exceed ninety-five percent (95%) of the current maximum flow rate contracted with DWU for five (5) consecutive days.
 - c. Short-term deficiencies in the City's distribution system, such as system outage due to the failure or damage of major water system components, limit supply capabilities.
 - d. Ground Storage Reservoir levels do not recover for three (3) consecutive days.

- (ii) Goals: Reduce the average daily water demand below 95% of the current maximum flow rate contracted from DWU.
- (iii) Demand Management Measures:
 - a. Odd numbered water customers must conduct all watering on Monday's and Friday's.
 - b. Even numbered water customers must conduct all watering on Tuesday's and Saturday's.
 - c. No watering will be allowed on Wednesday's, Thursday's and Sunday's.
 - d. The City must conduct all watering of center medians of streets, street rights-of-way, parks. City facilities and other areas maintained by the City on Mondays and Fridays.
 - e. Home Owners Associations or Commercial Property Owners Associations must conduct all watering of common property on Mondays and Fridays.
 - f. Nursery (garden and landscape) businesses are not restricted when watering business inventory; however, they must comply with watering requirements for the landscaping associated with the building.
 - g. In a Stage 3 Water Warning Stage, persons should contact the City Public Works Office prior to installing new landscaping to determine if a variance will be considered. As a general rule, no variance will be allowed during a Stage 3 Water Warning State. The Public Works Director or designee, in a Stage 3 Water Warning State may revoke approved variances, if deemed necessary to preserve the City's ability to supply essential water demands and fire protection.
 - h. No outside watering will be allowed between the hours of 10:00 a.m. and 6:00 p.m. with the exception of the use of non-automatic spray irrigation systems which will be allowed all days, at all times. Hand watering will be restricted to the above allowed days.
- (iv) Rescinding Conditions: Stage 3 of the Plan shall be rescinded when all of the initiation conditions have ceased to exist for a period of five (5) consecutive days. Upon termination of Stage 3, Stage 2 - Water Watch Stage becomes operative unless also rescinded.

(D) Stage 4 - Water Emergency Stage

- (i) Initiation Conditions: Stage 4 of the Plan shall be implemented when one or more of the following conditions occur:
 - a. Notification is received from DWU requiring implementation of procedures in accordance with contract obligations for wholesale customers.
 - b. Water demands exceed 100 percent (100%) of the current maximum flow rate contracted with DWU for two (2) consecutive days.
 - c. Short term deficiencies in the City's distribution system, such as system outage due to the failure or damage of major water system components, limit supply capabilities.
 - d. Ground storage reservoir levels do not recover for four (4) consecutive days.
- (ii) Goals: Reduce the average daily water demand below 95% of the current maximum flow rate contracted from DWU).
- (iii) Demand Management Measures:
 - a. Odd numbered water customers must conduct all watering on Monday's only.
 - b. Even numbered water customers must conduct all watering on Tuesday's only.
 - c. No watering will be allowed from Wednesday through Sunday.
 - d. The City must conduct all watering of center medians of streets, street rights-of-way, parks, City facilities and other areas maintained by the City on Monday's.
 - e. Homeowners Associations or Commercial Property Owners Associations must conduct all watering of common property on Tuesday's.
 - f. No outside watering will be allowed between the hours of 10:00 a.m. and 6:00 p.m. with the exception of the use of non-automatic spray irrigation systems which will be allowed all days, at all times. Hand watering is restricted to the one allowed day.
 - g. Nursery (garden and landscape) businesses are not restricted when watering business inventory; however, they must comply with watering requirements for the landscaping associated with the building.
 - h. In a Stage 4 Water Emergency Stage, persons should refrain

from installing new landscaping: No variance for watering more than one day per week will be allowed during a Stage 4 Water Emergency State. The Public Works Director or designee, in a Stage 4 Water Emergency State will revoke any variances approved during the Stage 3 Water Warning Stage.

- (iv) Rescinding Conditions: Stage 4 of the Plan shall be rescinded when all of the initiation conditions have ceased to exist for a period of five (5) consecutive days. Upon termination of Stage 4, Stage 3 - Water Warning Stage becomes operative unless also rescinded.
- (E) Stage 5 - Emergency Water Shortage Stage
 - (i) Initiation Conditions: Stage 5 of the Plan shall be implemented when the City Manager determines that a water supply emergency exists based on one or more of the following conditions:
 - a. Any major water system component failure that causes the unprecedented loss of capability to provide water service.
 - b. Natural or man-made contamination of the water supply source(s).
 - (ii) Goals: Restrict all watering to allow the water system to recover from the emergency condition.
 - (iii) Demand Management Measures:
 - a. No outdoor watering will be allowed.
 - b. Door hangers and/or street signs will be placed in the affected area providing information about the situation.
 - (iv) Rescinding Conditions: Stage 5 of the Plan shall be rescinded when all of the initiation conditions have ceased to exist. The City Manager will then determine what stage of the Plan should be implemented and the specific water use restrictions required to preserve the City's ability to meet essential water demand and fire protection.

Sec. 19.07.013 Variances

(a) The City Manager, or his/her designee, may, in writing, grant variances for water uses to establish new lawns or landscaping otherwise prohibited under this Plan under Stage I or 2, as provided herein.

Persons requesting a variance from the provisions of this Plan shall file a request with the City of Seagoville to be reviewed by the City Manager, or his/her designee, and shall include the following:

- (1) Name and address of the petitioner(s).
- (2) Purpose of water use (only consideration will be for new lawns or landscaping).

- (3) Detailed statement as to how the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
 - (4) Period of time which the variance is sought.
 - (5) Other pertinent information.
- (b) Variance may be granted to persons under conditions criteria established herein while on vacation in the event that power failures or other acts beyond their control cause irrigation systems to malfunction and water on the wrong day. A vacation variance shall meet the following:
- (1) A maximum two week period.
 - (2) Request considered only during Stage 1, 2 or 3.
- (c) Variances granted by the City of Seagoville shall be subject to the following conditions, unless waived or modified by the City Manager or his/her designee:
- (1) Variances granted shall include a timetable for compliance.
 - (2) Variances will only be considered if the City is in Stage 1 or 2 (or Stage 3 for a vacation variance).
 - (3) All variance forms shall be prominently displayed near the front door of the requestor.
 - (4) Any variance may be revoked if conditions worsen.
 - (5) Variances shall expire when the Plan is no longer in effect.
 - (6) No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

Sec. 19.07.014 Enforcement

(a) No person shall knowingly or intentionally allow the use of water from the City of Seagoville for residential, commercial, industrial, agricultural, governmental, or any other purposes in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the Director, or his/her designee, in accordance with provisions of this Plan.

(b) Fines and Fees

- (1) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$50 and not more than \$200.
- (2) Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense.
- (3) If a person is convicted of two or more distinct violations of this Plan, upon due notice to the customer, The City may:
 - (A) install a flow restrictor in the line to limit the amount of water that will pass through the meter in a 24-hour period; or
 - (B) discontinue water served to the premises.
- (4) Services discontinued under such circumstances shall be restored only upon payment

of a re-connection charge, hereby established at an amount not to exceed \$135.00), and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given that the same action will not be repeated while the Plan is in effect. Compliance with this Plan may also be sought through injunctive relief in the district court.

(c) Violators

- (1) Any person, including a person classified as a water customer of the City, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation.
- (2) Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

(d) Enforcement Officers

- (1) The City Manager, or his/her designee, or police officer, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance.
- (2) The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for which the date shall not be less than 3 days nor more than 15 days from the date the citation was issued.
- (3) The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence.
- (4) The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued.
- (5) A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

Sec. 19.07.015 Public Education

The City will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of, but not limited to, an appropriate combination of the following items:

- (1) Public service announcements on cable access, radio and television

- (2) Newspaper and magazine articles and announcements
- (3) Interviews on radio and television programs
- (4) Press releases, media alerts and social media
- (5) Billboards
- (6) Water Conservation/Drought Contingency hotline
- (7) Water Conservation/Drought Contingency Website
- (8) Email and telephone notifications to customers
- (9) Mailed water bill inserts
- (10) Distribution of fact sheets, brochures, and pamphlets
- (11) Mass mailings of notification letters
- (12) City customer service representatives
- (13) Public meetings and hearings
- (14) Public education seminars
- (15) Stakeholder Advisory Committee meetings
- (16) Commercial, industrial and institutional employee education seminars”

SECTION 2. If any section, article paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 3. That all provisions of the Ordinances of the City of Seagoville, Texas, in conflict with the provisions of this ordinance be, and the same are hereby amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. This Ordinance shall become effective from and after its date of passage in accordance with law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS THIS 20th day of May 2019.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney
(:cdb 05/09/2019 TM 108050)

Regular Session Agenda Item: 6

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Update concerning Storm Water Ph. II MS4 General Permit.

BACKGROUND OF ISSUE:

The requirement to prepare a Stormwater Management Plan (SWMP) derive from the Environmental Protection Agencies Clean Water Act and National Pollutant Discharge Elimination System (NPEDES). The State of Texas assumed the authority to administer the NPEDES from the EPA through the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The new Stormwater Management Plan is required as a result of a court case that required a change in federal regulations and therefore the current permit.

Polluted stormwater runoff can be transported through a city's stormwater system and discharged untreated into local water bodies. In an effort to reduce the pollution load to these waterbodies Municipal Sperate Storm Sewer Systems (MS4's) are required to prepare a management plan including Minimum Control Measures (MCM's) that include: Public Education, Outreach, and Involvement; Illicit Discharge Detection and Elimination; Construction Site Stormwater Runoff Control; Post Construction Stormwater Management in New Development and Re-development; and Pollution Prevention and Good Housekeeping. The Stormwater Management Plan must address these minimum control measures through the use of Best Management Practices (BMP's). The Stormwater Management Plan for the City of Seagoville describes which practices will be used, the methods used, and the criteria for judging the effectiveness of the individual measures.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Regular Session Agenda Item: 7

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Discuss possible catch and release Ordinance for fish at Bruce Central Park.

BACKGROUND OF ISSUE:

Mayor Pro-Tem Epps requested this item.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Regular Session Agenda Item: 8

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Receive Councilmember Reports/ Items of Community Interest

BACKGROUND OF ISSUE:

Section 551.0415 of the Texas Government Code authorizes a quorum of the governing body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken. Section 551.0415 defines an “item of community interest” to include:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutory recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person’s public office or public employment is not an honorary or salutory recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Regular Session Agenda Item: 9

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Future Agenda Items

BACKGROUND OF ISSUE:

Council provides direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Executive Session Agenda Item: 10

Meeting Date: **May 20, 2019**

ITEM DESCRIPTION:

Executive Session

Council will recess into Executive Session in compliance with Texas Government Code:

(A) Section § 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: City Manager.

BACKGROUND OF ISSUE:

N/A

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Executive Session Agenda Item: 11

Meeting Date: May 20, 2019

ITEM DESCRIPTION:

Reconvene into Regular Session

Council will reconvene into open session, and take action, if any, on matters discussed in Executive Session.

(A) Section § 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: City Manager.

BACKGROUND OF ISSUE:

N/A

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A