



# City of Seagoville

## Meeting Agenda

### City Council

City Hall  
702 N. Hwy 175  
Seagoville, Texas 75159

**Monday, September 18, 2023**

**6:30 PM**

**Council Chambers**

**LACKEY STEPPER SEBASTIAN**  
MAYOR

**RICK HOWARD**  
PLACE 1

**ALLEN GRIMES**  
PLACE 4

**PATRICK STALLINGS**  
CITY MANAGER

**JOSE HERNANDEZ**  
PLACE 2

**JON EPPS**  
PLACE 5

**HAROLD MAGILL**  
PLACE 3 - MAYOR PRO TEM

Notice is hereby given that the City Council of the City of Seagoville, Texas will meet in a Regular Called Meeting at 6:30 p.m. for Work Session, and Regular Session will begin at 7:00 p.m., to be held at City Hall, 702 N. Hwy 175 Seagoville, Texas 75159.

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 reserves the right to reconvene, recess or realign the Work Session or called Executive Session or order of business at any time prior to adjournment. The purpose of the meeting is to consider the following items:

#### **WORK SESSION – 6:30 PM**

- 1. Call to Order**
- 2. Discuss Regular Session items.**
- 3. Review and discuss future City Council meeting dates.**
- 4. Adjourn**

#### **REGULAR SESSION – 7:00 PM**

- 5. Call to Order**
- 6. Invocation**
- 7. Pledge of Allegiance**
- 8. Proclamation**  
**Present a Proclamation designating September 18, 2023, as “Educator’s Day”.**
- 9. Mayor’s Report**
- 10. Citizen’s Comments**

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**

- 11. Consider approving the following City Council meeting minutes: September 11, 2023.**

### **Public Hearing**

- 12. Conduct a public hearing and consider adoption of an Ordinance amending the Code of Ordinances, as amended, by amending Title II: "Buildings; Development; Zoning", Chapter 25 "Zoning", article 25.02 "Zoning Ordinance", at Division 12 "A Apartment Dwelling District Regulations", by repealing and replacing section 25.02.252 "Height Regulations".**
- 13. Conduct a public hearing and consider approving an Ordinance amending the Code of Ordinances, as amended, by amending Title II: "Buildings; Development; Zoning", Chapter 25 "Zoning", article 25.02 "Zoning Ordinance", at Division 22 "PD Planned Development District Regulations", Section 25.02.533 "Planned Development requirements".**
- 14. Conduct a public hearing and consider adoption of an Ordinance amending the Comprehensive Zoning Ordinance and map, as previously amended, by changing the zoning from Planned Development-21-05("PD-21-05")to Planned Development 21-05 with a special use permit for temporary concrete batch plant ("PD-21-05-SUP), to allow for temporary placement and operation of a concrete batch plant on an approximately 1.06 acre tract of land contained within Planned Development 21-05 and being further described as situated in the John D. Merchant Survey, Abstract No. 310, Kaufman County Texas, being part of a called 333.291 acre tract of land described in deed to Seagoville Laguna Azure, LLC, recorded in instrument No. 2021-0000692 and instrument No. 2021-0004741, official public records of Kaufman County, Texas and being more particularly described and depicted in Exhibit "A"; providing for special conditions.**

### **Regular Agenda**

- 15. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Bluff Road for compensation in an amount not to exceed Three Hundred Ninety Thousand Fifty Dollars and Zero Cents (\$390,050.00) as set forth in Exhibit C; and authorizing the City Manager to sign all necessary documents.**
- 16. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Hall Road for compensation in an amount not to exceed Eight**

**Hundred Ninety-Seven Thousand Four Hundred Fifty Dollars and Zero Cents (\$897,450.00) as set forth in Exhibit C; and authorizing the City Manager to sign all necessary documents.**

**17. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Petty White Park Parking Lot for compensation in an amount not to exceed Two Hundred Six Thousand Six Hundred Fifty Dollars and Zero Cents (\$206,650.00) as set forth in Exhibit C; and authorizing the City Manager to sign all necessary documents.**

**18. Discuss and consider approving a Resolution of the City of Seagoville, Texas, ratifying the City Managers action to repair a partially collapsed sewer trench and parking lot at 1206 north U.S. Hwy 175; and authorizing the City Manager to make payment to Anderson Asphalt & Concrete Paving in an amount not to exceed \$33,100.00; as set forth in Exhibit C.**

**19. Discussion regarding a potential civic center.**

**20. Items of community interest.**

Pursuant to Section 551.0415 of the Texas Government Code, the City Council or City Administration may report information on the following items: 1) expression of thanks, congratulations, or condolences, 2) information about holiday schedules, 3) recognition of individuals, 4) reminders about upcoming City events, 5) information about community events, and 6) announcements involving an imminent threat to public health and safety.

**21. Discuss future agenda items.**

### **EXECUTIVE SESSION**

**22. City Council may convene into closed Executive Session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the City Attorney regarding the proposed mass gathering ordinance.**

### **REGULAR SESSION**

**23. Take any necessary action as a result of the closed Executive Session.**

**24. Discuss and consider adopting an Ordinance of the City of Seagoville, Texas, amending the Code or Ordinances of the City of Seagoville, by adding a new Article 7.11 "Mass Gatherings" to Chapter 7 "Business Regulations"; providing for a penalty of fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense; providing a repealing clause; providing a severability clause; and providing for an effective date.**

**25. Adjourn**

**CERTIFICATE**

I certify that the above Notice of Meeting was posted on the bulletin board at the City Hall of the City of Seagoville, Texas on this 15<sup>th</sup> day of September 2023, by 5 p.m.

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Sara Egan, City Secretary

The City of Seagoville does not discriminate based on 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)

**UPCOMING DATES:**

- o Monday, October 2, 2023, Regular City Council Meeting  
(*New Operating Hours: Monday – Thursday 7:30 a.m. – 5:30 p.m.*)
- o Monday, October 9, 2023, Holiday
- o Monday, October 16, 2023, Regular City Council Meeting



## ***Work Session Agenda Item: 3***

**Meeting Date:     September 18, 2023**

### **ITEM DESCRIPTION:**

Review and discuss future City Council meeting dates.

### **BACKGROUND OF ISSUE:**

This is a review of future City Council meeting dates. City holiday dates have been included to provide additional context. Except for January, all other months have two regularly scheduled meetings. The special meeting dates are the anticipated dates for the Budget Workshop. This item will be brought back to City Council to approve under consent at the next regular meeting date.

Home Rule Charter, Article 3, Section 3.10 Meetings of the City Council:

Regular Meetings: The City Council shall hold at least one (1) regular meeting each month and as many additional meetings as it deems necessary to transact the business of the City.

### **FINANCIAL IMPACT:**

N/A

### **RECOMMENDATION:**

Seeking direction regarding future meeting dates.

### **EXHIBITS:**

2023 Calendar

2024 Calendar

## 2023 City Council Meeting Dates

Meetings are typically held 1st & 3rd Monday of the month. Changes may occur due to holidays or conflicts.

### October 2023

| Su | M  | Tu | W  | Th | F  | Sa |
|----|----|----|----|----|----|----|
| 1  | 2  | 3  | 4  | 5  | 6  | 7  |
| 8  | 9  | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 |    |    |    |    |

### October

|                |                         |
|----------------|-------------------------|
| 10/02/23 (Mon) | Regular Meeting         |
| 10/09/23 (Mon) | Columbus Day<br>Holiday |
| 10/16/23 (Mon) | Regular Meeting         |

### November 2023

| Su | M  | Tu | W  | Th | F  | Sa |
|----|----|----|----|----|----|----|
|    |    |    | 1  | 2  | 3  | 4  |
| 5  | 6  | 7  | 8  | 9  | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 |    |    |

### November

|                |                             |
|----------------|-----------------------------|
| 11/06/23 (Mon) | Regular Meeting             |
| 11/10/23 (Fri) | Veterans Day<br>Holiday     |
| 11/20/23 (Mon) | Regular Meeting             |
| 11/22/23 (Wed) | Thanksgiving Day<br>Holiday |
| 11/23/23 (Thu) | Thanksgiving Day<br>Holiday |

### December 2023

| Su | M  | Tu | W  | Th | F  | Sa |
|----|----|----|----|----|----|----|
|    |    |    |    |    | 1  | 2  |
| 3  | 4  | 5  | 6  | 7  | 8  | 9  |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 |    |    |    |    |    |    |

### December

|                |                          |
|----------------|--------------------------|
| 12/04/23 (Mon) | Regular Meeting          |
| 12/18/23 (Mon) | Regular Meeting          |
| 12/25/23 (Mon) | Christmas Day<br>Holiday |

This is an annual forecast. Meeting dates are subject to change.

## 2024 City Council Meeting Dates

Meetings are typically held 1st & 3rd Monday of the month. Changes may occur due to holidays or conflicts.

| January 2024 |    |    |    |    |    |    |
|--------------|----|----|----|----|----|----|
| Su           | M  | Tu | W  | Th | F  | Sa |
|              | 1  | 2  | 3  | 4  | 5  | 6  |
| 7            | 8  | 9  | 10 | 11 | 12 | 13 |
| 14           | 15 | 16 | 17 | 18 | 19 | 20 |
| 21           | 22 | 23 | 24 | 25 | 26 | 27 |
| 28           | 29 | 30 | 27 | 28 | 29 | 30 |
| 31           |    |    |    |    |    |    |

| January        | Description             | Event Type      |
|----------------|-------------------------|-----------------|
| 01/01/24 (Mon) | New Year's Day          | Holiday         |
| 01/15/24 (Mon) | Martin Luther King, Jr. | Holiday         |
| 01/22/24 (Mon) |                         | Regular Meeting |

| February 2024 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| Su            | M  | Tu | W  | Th | F  | Sa |
|               |    |    |    | 1  | 2  | 3  |
| 4             | 5  | 6  | 7  | 8  | 9  | 10 |
| 11            | 12 | 13 | 14 | 15 | 16 | 17 |
| 18            | 19 | 20 | 21 | 22 | 23 | 24 |
| 25            | 26 | 27 | 28 | 29 |    |    |
|               |    |    |    |    |    |    |

| February       |                |                 |
|----------------|----------------|-----------------|
| 02/05/24 (Mon) |                | Regular Meeting |
| 02/19/24 (Mon) | Presidents Day | Holiday         |
| 02/26/24 (Mon) |                | Regular Meeting |

| March 2024 |    |    |    |    |    |    |
|------------|----|----|----|----|----|----|
| Su         | M  | Tu | W  | Th | F  | Sa |
|            |    |    |    |    | 1  | 2  |
| 3          | 4  | 5  | 6  | 7  | 8  | 9  |
| 10         | 11 | 12 | 13 | 14 | 15 | 16 |
| 17         | 18 | 19 | 20 | 21 | 22 | 23 |
| 24         | 25 | 26 | 27 | 28 | 29 | 30 |
| 31         |    |    |    |    |    |    |

| March          |  |                 |
|----------------|--|-----------------|
| 03/04/24 (Mon) |  | Regular Meeting |
| 03/18/24 (Mon) |  | Regular Meeting |

| April 2024 |    |    |    |    |    |    |
|------------|----|----|----|----|----|----|
| Su         | M  | Tu | W  | Th | F  | Sa |
|            | 1  | 2  | 3  | 4  | 5  | 6  |
| 7          | 8  | 9  | 10 | 11 | 12 | 13 |
| 14         | 15 | 16 | 17 | 18 | 19 | 20 |
| 21         | 22 | 23 | 24 | 25 | 26 | 27 |
| 28         | 29 | 30 |    |    |    |    |
|            |    |    |    |    |    |    |

| April          |  |                 |
|----------------|--|-----------------|
| 04/01/24 (Mon) |  | Regular Meeting |
| 04/15/24 (Mon) |  | Regular Meeting |

| May 2024 |    |    |    |    |    |    |
|----------|----|----|----|----|----|----|
| Su       | M  | Tu | W  | Th | F  | Sa |
|          |    |    | 1  | 2  | 3  | 4  |
| 5        | 6  | 7  | 8  | 9  | 10 | 11 |
| 12       | 13 | 14 | 15 | 16 | 17 | 18 |
| 19       | 20 | 21 | 22 | 23 | 24 | 25 |
| 26       | 27 | 28 | 29 | 30 | 31 |    |
|          |    |    |    |    |    |    |

| May            |                             |                 |
|----------------|-----------------------------|-----------------|
| 05/06/24 (Mon) |                             | Regular Meeting |
| 05/20/24 (Mon) | Mid Year Budget Projections | Regular Meeting |
| 05/27/24 (Mon) | Memorial Day                | Holiday         |

| June 2024 |    |    |    |    |    |    |
|-----------|----|----|----|----|----|----|
| Su        | M  | Tu | W  | Th | F  | Sa |
|           |    |    |    |    |    | 1  |
| 2         | 3  | 4  | 5  | 6  | 7  | 8  |
| 9         | 10 | 11 | 12 | 13 | 14 | 15 |
| 16        | 17 | 18 | 19 | 20 | 21 | 22 |
| 23        | 24 | 25 | 26 | 27 | 28 | 29 |
| 30        |    |    |    |    |    |    |

| June           |                                      |                 |
|----------------|--------------------------------------|-----------------|
| 06/03/24 (Mon) |                                      | Regular Meeting |
| 06/19/24 (Wed) | Juneteenth National Independence Day | Holiday         |
| 06/17/24 (Mon) |                                      | Regular Meeting |

## 2024 City Council Meeting Dates

Meetings are typically held 1st & 3rd Monday of the month. Changes may occur due to holidays or conflicts.

| July 2024 |    |    |    |    |    |    |
|-----------|----|----|----|----|----|----|
| Su        | M  | Tu | W  | Th | F  | Sa |
|           | 1  | 2  | 3  | 4  | 5  | 6  |
| 7         | 8  | 9  | 10 | 11 | 12 | 13 |
| 14        | 15 | 16 | 17 | 18 | 19 | 20 |
| 21        | 22 | 23 | 24 | 25 | 26 | 27 |
| 28        | 29 | 30 | 31 |    |    |    |

| July           |                                |                          |
|----------------|--------------------------------|--------------------------|
| 07/01/24 (Mon) |                                | Regular Meeting          |
| 07/04/24 (Thu) | Independence Day               | Holiday                  |
| 07/15/24 (Mon) |                                | Regular Meeting          |
| 07/22/24 (Mon) | General and Water & Sewer Fund | Special Meeting (Budget) |

| August 2024 |    |    |    |    |    |    |
|-------------|----|----|----|----|----|----|
| Su          | M  | Tu | W  | Th | F  | Sa |
|             |    |    |    | 1  | 2  | 3  |
| 4           | 5  | 6  | 7  | 8  | 9  | 10 |
| 11          | 12 | 13 | 14 | 15 | 16 | 17 |
| 18          | 19 | 20 | 21 | 22 | 23 | 24 |
| 25          | 26 | 27 | 28 | 29 | 30 | 31 |

| August         |                             |                          |
|----------------|-----------------------------|--------------------------|
| 08/05/24 (Mon) |                             | Regular Meeting          |
| 08/12/24 (Mon) | Budget Overview             | Special Meeting (Budget) |
| 08/19/24 (Mon) |                             | Regular Meeting          |
| 08/26/24 (Mon) | PH: Proposed Budget and HOT | Special Meeting (Budget) |

| September 2024 |    |    |    |    |    |    |
|----------------|----|----|----|----|----|----|
| Su             | M  | Tu | W  | Th | F  | Sa |
| 1              | 2  | 3  | 4  | 5  | 6  | 7  |
| 8              | 9  | 10 | 11 | 12 | 13 | 14 |
| 15             | 16 | 17 | 18 | 19 | 20 | 21 |
| 22             | 23 | 24 | 25 | 26 | 27 | 28 |
| 29             | 30 |    |    |    |    |    |

| September      |                     |                          |
|----------------|---------------------|--------------------------|
| 09/02/24 (Mon) | Labor Day           | Holiday                  |
| 09/09/24 (Mon) | PH: Tax Rate        | Special Meeting (Budget) |
| 09/16/24 (Mon) |                     | Regular Meeting          |
| 09/11/24 (Wed) | Firefighter Holiday | Holiday                  |
| 09/23/24 (Mon) | Firefighter Holiday | Regular Meeting          |

| October 2024 |    |    |    |    |    |    |
|--------------|----|----|----|----|----|----|
| Su           | M  | Tu | W  | Th | F  | Sa |
|              |    | 1  | 2  | 3  | 4  | 5  |
| 6            | 7  | 8  | 9  | 10 | 11 | 12 |
| 13           | 14 | 15 | 16 | 17 | 18 | 19 |
| 20           | 21 | 22 | 23 | 24 | 25 | 26 |
| 27           | 28 | 29 | 30 | 31 |    |    |

| October        |              |                 |
|----------------|--------------|-----------------|
| 10/07/24 (Mon) |              | Regular Meeting |
| 10/14/24 (Mon) | Columbus Day | Holiday         |
| 10/21/24 (Mon) |              | Regular Meeting |

| November 2024 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| Su            | M  | Tu | W  | Th | F  | Sa |
|               |    |    |    |    | 1  | 2  |
| 3             | 4  | 5  | 6  | 7  | 8  | 9  |
| 10            | 11 | 12 | 13 | 14 | 15 | 16 |
| 17            | 18 | 19 | 20 | 21 | 22 | 23 |
| 24            | 25 | 26 | 27 | 28 | 29 | 30 |

| November       |                  |                 |
|----------------|------------------|-----------------|
| 11/04/24 (Mon) |                  | Regular Meeting |
| 11/11/24 (Mon) | Veterans Day     | Holiday         |
| 11/18/24 (Mon) |                  | Regular Meeting |
| 11/27/24 (Wed) | Thanksgiving Day | Holiday         |
| 11/28/24 (Thu) | Thanksgiving Day | Holiday         |

| December 2024 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| Su            | M  | Tu | W  | Th | F  | Sa |
| 1             | 2  | 3  | 4  | 5  | 6  | 7  |
| 8             | 9  | 10 | 11 | 12 | 13 | 14 |
| 15            | 16 | 17 | 18 | 19 | 20 | 21 |
| 22            | 23 | 24 | 25 | 26 | 27 | 28 |
| 29            | 30 | 31 |    |    |    |    |

| December       |                            |                  |
|----------------|----------------------------|------------------|
| 12/02/24 (Mon) |                            | Regular Meeting  |
| 12/16/24 (Mon) |                            | Regular Meeting  |
| 12/25/24 (Wed) | Christmas Day              | Holiday          |
| 12/26/24 (Thu) | Designated by City Manager | Floating Holiday |

This is an annual forecast. Meeting dates are subject to change.

## ***Work Session Agenda Item: 8***

**Meeting Date:     September 18, 2023**

**ITEM DESCRIPTION:**

Present a Proclamation designating September 18, 2023, as “Educator’s Day”

**BACKGROUND OF ISSUE:**

Requested by Councilmember Grimes.

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

N/A

**EXHIBITS:**

Proclamation



## *Mayoral Proclamation*

**WHEREAS**, American Historian, Henry Adams, wrote, "A teacher affects eternity; he can never tell where his influence stops," with this quote he illustrated the depth of great educators; and

**WHEREAS**, Educators help students learn the basics of reading, writing, and math; only a select few are exemplary and impart comprehension for an independent mind; motivation that surpasses challenges and obstacles; discipline that is unwavering;

**WHEREAS**, Educators help students understand themselves and the world around them; they help students envision their future; and

**WHEREAS**, Today we acknowledge Great Educators serving Seagoville High School Principal Janie Carballo and her administrative team as well as Head Coach Stephen Jackson and his administrative team; and

**NOW, THEREFORE**, I, Lackey Stepper Sebastian, Mayor of the City of Seagoville, do hereby proclaim September 18, 2023 as:

### *"Educator's Day"*

in the City of Seagoville and urge all citizens to support the efforts of educators serving the local students of this community.

**PROCLAIMED** this 18<sup>th</sup> day of September 2023.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Seagoville to be affixed this 18<sup>th</sup> day of September 2023.

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Lackey Stepper Sebastian, Mayor

## ***Regular Session Agenda Item: 11***

**Meeting Date:     September 11, 2023**

**ITEM DESCRIPTION:**

Consider approving the following City Council meeting minutes: September 11, 2023.

**BACKGROUND OF ISSUE:**

Approve City Council Meeting Minutes.

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

N/A

**EXHIBITS:**

September 11, 2023, Regular Called Meeting



# City of Seagoville

## Meeting Agenda

### City Council

City Hall  
702 N. Hwy 175  
Seagoville, Texas 75159

**Monday, September 11, 2023**

**6:30 PM**

**Council Chambers**

Present: Mayor Lackey Sebastian, Mayor Pro Tem Harold Magill, Councilmember Rick Howard, Councilmember Allen Grimes, and Councilmember Jon Epps

Absent: Councilmember Jose Hernandez

Also present were City Manager Patrick Stallings, City Attorney Victoria Thomas, and City Secretary Sara Egan.

The City Council of the City of Seagoville met in a Regular Called Meeting on Monday, September 11, 2023, at 6:30 p.m. in the City Council Chambers of City Hall, 702 N. Hwy 175, Seagoville, Texas.

#### **WORK SESSION – 6:30 PM**

**1. Call to Order**

Mayor Sebastian called the Work Session to order at 6:30 p.m.

**2. Discuss Regular Session items.**

Council did not have any questions.

**3. Receive a presentation of City of Seagoville's 3rd Quarter Financial Report for Fiscal Year 2023.**

Director of Finance Gail French provided a presentation and answered questions.

**4. Receive a presentation regarding a prospective planned development concept and necessary zoning text amendment updates.**

Director of Community Development Bill Medina provided a presentation and answered questions. A representative from Palmer Development Partners provided additional information.

**5. Adjourn**

Mayor Sebastian adjourned from Work Session at 6:49 p.m.

#### **REGULAR SESSION – 7:00 PM**

**6. Call to Order**

Mayor Sebastian called the Regular Session to order at 7:00 p.m.

**7. Invocation**

Mayor Pro Tem Magill led the invocation.

**8. Pledge of Allegiance**

The City Council led the pledge of allegiance.

**9. Mayor's Report**

Mayor Sebastian provided a report regarding ongoing developments and city projects.

**10. Citizen's Comments**

No one signed up to speak.



**Consent Agenda**

Mayor Pro Tem Magill made a motion to approve Consent Agenda Items 11 through 13, seconded by Councilmember Howard. The motion passed by a unanimous vote (4/0).

- 11. Consider approving the following City Council meeting minutes: August 21, 2023 and August 28, 2023.**

- 12. Consider approving a Resolution approving the terms and conditions of an Interlocal Agreement between the City of Seagoville and Dallas County on behalf of Dallas County Health and Human Services for Food Establishment Inspections and Environmental Health Services for Fiscal Year 2023-2024; and authorizing the Mayor to sign.**

Resolution No. 64-R-2023

- 13. Consider approving a Resolution approving the Household Hazardous Waste Interlocal Agreement Amendment between the City of Seagoville and Dallas County for Fiscal Year 2023-2024; and authorizing the Mayor to sign.**

Resolution No. 65-R-2023

**Public Hearing**

- 14. Conduct a public hearing to receive citizen input on the proposed tax rate of \$0.728004 per \$100 valuation, which is greater than the no new revenue tax rate calculated by the Dallas County Tax Assessor/Collector of \$0.668984 per 100 and not greater than the voter-approval tax rate of .728005 per \$100. This rate will raise more revenue from property taxes than last year's budget by an amount of \$1,006,159.**

Mayor Sebastian opened the public hearing at 7:04 p.m.

No one spoke for or against.

Mayor Sebastian closed the public hearing at 7:05 p.m.

**Regular Agenda**

- 15. Discuss and consider adoption of an Ordinance adopting and levying ad valorem taxes for the Fiscal Year 2023 - 2024 at a rate of \$0.728004 per one hundred dollars (\$100) assessed valuation on all taxable property within the corporate limits of the City of Seagoville as of January 1, 2023, to provide revenue for the payment of current expenses; providing for an interest and sinking fund for all outstanding debt; and authorizing the Mayor to sign.**

Mayor Pro Tem made a motion for the property tax rate to be increased by the adoption of a tax rate of 0.728004, which is effectively an 8.82 percent increase in the tax rate, seconded by Councilmember Howard. The motion passed by a unanimous vote (4/0).

Ordinance No. 25-2023

- 16. FIRST READING:**

**Discuss and consider approval of a Resolution of the City Council of the City of Seagoville approving the Economic Development Project between the Seagoville Economic Development Corporation and P.T. ATLAS Manufacturing, L.L.C., a Texas Limited Liability Company, as reflected in the terms and conditions of an Economic Development Incentive Agreement, in the amount of three-hundred and seventy-five thousand dollars and zero cents (\$375,000.00); and providing for an effective date.**

City Attorney Victoria Thomas briefed City Council on the agenda item.

**17. Discuss and consider a Resolution revising the signatory authority of American National Bank.**

Director of Finance Gail French briefed City Council on the agenda item.

Councilmember Epps made a motion to approve Agenda Item 17, seconded by Councilmember Howard. The motion passed by a unanimous vote (4/0).

Resolution No. 66-R-2023

**18. Discuss and consider approval of a Resolution approving and ratifying the Seagoville Economic Development Corporation project for consulting services associated with the planning and design services for a restaurant and parking addition at 102 and 103 N. Kaufman Street with Studio HMA, LLC, for compensation in an amount not to exceed forty-seven thousand two hundred fifty-one dollars and zero cents (\$47,251.00); and authorizing the Mayor to sign.**

Director of Community Development Bill Medina briefed the City Council on the project.

Mayor Pro Tem Magill made a motion to approve Agenda Item 18, seconded by Councilmember Grimes. The motion passed by a unanimous vote (4/0).

Resolution No. 67-R-2023

**19. Discuss and consider approving a Resolution nominating a candidate to be a member of the Board of Directors of the Dallas Central Appraisal District; and authorize the Mayor to sign.**

City Secretary Sara Egan briefed the City Council on the nomination options.

Councilmember Epps made a motion to nominate Micheal Hurtt, seconded by Councilmember Grimes. The motion passed by the following vote (3/1):

Aye: Mayor Pro Tem Harold Magill, Councilmember Allen Grimes, and Councilmember Jon Epps  
Nay: Councilmember Rick Howard

Resolution No. 68-R-2023

**20. SECOND READING:**

**Discuss and consider approval of a Resolution of the City Council of the City of Seagoville approving the Economic Development Project between the Seagoville Economic Development Corporation and P.T. ATLAS Manufacturing, L.L.C., a Texas Limited Liability Company, as reflected in the terms and conditions of an Economic Development Incentive Agreement, which is attached hereto as Exhibit "A", in the amount of three-hundred and seventy-five thousand dollars and zero cents (\$375,000.00); and providing for an effective date.**

Mayor Pro Tem Magill made a motion to approve Agenda Item 20, seconded by Councilmember Howard. The motion passed by a unanimous vote (4/0).

Resolution No. 69-R-2023

**21. Discuss and consider hours of operation for all non-essential personnel for the City of Seagoville.**

Mayor Pro Tem Magill made a motion to approve a four-day work week for non-essential personnel to be in effect October 2, 2023; and as discussed to include an hour lunch, and a report at 6 months of implementation. The motion was seconded by Councilmember Howard. The motion passed by a unanimous vote (4/0).

**22. Items of community interest and councilmember reports.**

Mayor Pro Tem Magill recognized Code Enforcement for the response to a complaint.

Councilmember Epps recognized all staff for their contributions to the City's development and growth.

**23. Discuss future agenda items.**

No requests for future agenda items.

**24. Adjourn**

There being no further business before the City Council, the meeting was adjourned at 7:51 p.m.

APPROVED:

ATTEST:

\_\_\_\_\_  
Lackey Stepper Sebastian, Mayor

\_\_\_\_\_  
Sara Egan, City Secretary

## ***Regular Session Agenda Item: 12***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Conduct a public hearing and consider adoption of an ordinance amending the Seagoville Code of Ordinances, as amended, by amending Title II: “Buildings; Development; Zoning”, Chapter 25 “Zoning”, article 25.02 “Zoning Ordinance”, at Division 12 “A Apartment Dwelling District Regulations”, by repealing and replacing section 25.02.252 “Height Regulations”; providing a conflicts resolution clause; providing a severability clause; providing for a savings clause; providing for penalty of fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense; and providing for an effective date.

### **BACKGROUND OF ISSUE:**

Per a request by the City Council, staff has brought forth a proposed amendment to allow for three story apartment developments. In review of the current zoning ordinance, Staff has identified a component of the Apartment Zoning District which limits the development of multifamily housing units. The current regulation sets a maximum building height of two stories. To promote the growth and development of higher density multifamily dwelling units, Staff is recommending an allowance of three-story apartment complexes within the Apartment Zoning District.

The proposed amendment is as follows:

- Apartment Zoning District – Allow for a maximum height of three-stories (forty-five feet).  
The current regulation only allows for two standard stories.

### **FINANCIAL IMPACT:**

NA

### **RECOMMENDATION:**

The Planning and Zoning Commission recommended approval of the proposed text amendments.

### **EXHIBITS:**

Ordinance  
Division 12 Section 25.02

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING THE SEAGOVILLE CODE OF ORDINANCES, AS AMENDED, BY AMENDING TITLE II: “BUILDINGS; DEVELOPMENT; ZONING”, CHAPTER 25 “ZONING”, ARTICLE 25.02 “ZONING ORDINANCE”, AT DIVISION 12 “A APARTMENT DWELLING DISTRICT REGULATIONS”, BY REPEALING AND REPLACING SECTION 25.02.252 “HEIGHT REGULATIONS”; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Seagoville, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Seagoville, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Code of Ordinances of the City of Seagoville, Texas, as previously amended, should be further amended as set forth below.

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

**SECTION 1.** The City of Seagoville Code of Ordinances, as amended, is amended by amending Title II: “Buildings; Development; Zoning”, Chapter 25 “Zoning”, Article 25.02 “Zoning Ordinance”, Division 12 “A Apartment Dwelling District Regulations” by repealing and replacing Section 25.02.252 to read in its entirety as follows:

**“§ 25.02.252 Height regulations.**

No building shall exceed three standard stories for living purposes. Where basement areas are used for off-street parking or other service facilities, the maximum height of the building above grade shall not exceed 45 feet.”

**SECTION 2.** In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Seagoville and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Seagoville Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Seagoville Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Seagoville Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication in accordance with its provisions of the Charter of the City of Seagoville, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, ON THIS THE \_\_\_\_\_ DAY OF SEPTEMBER 2023.**

**APPROVED:**

\_\_\_\_\_  
**LACKEY STEPPER SEBASTIAN, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Victoria W. Thomas, City Attorney**  
4884-5477-8494, v. 2

\_\_\_\_\_  
**Sara Egan, City Secretary**

*The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.*

## Division 12

### A Apartment Dwelling District Regulations

#### § 25.02.251 Use regulations.

Land and buildings in the “A” District may be used for any of the following listed uses but no land shall hereafter be used and no building or structure shall hereafter be erected, altered, relocated, reconstructed, or converted which is arranged or designed or used for other than the following uses:

- (1) Any use permitted in the “D” District.
- (2) Multiple-family dwellings (apartments).
- (3) Community, social or hobby buildings for tenants as part of a multiple-family dwelling or housing project.
- (4) Accessory buildings including a private laundry, utility or storage building and carports as part of a multiple-family dwelling or housing project.
- (5) A single nameplate or sign for an apartment building or housing project when such sign is affixed flat against the building and does not exceed any [an] area of 40 square feet and when the sign is not of a flashing, intermittently lighted, revolving or similarly lighted type.

**(Ordinance 483, sec. 2, adopted 2/20/79; Ordinance 05-06, sec. 1, adopted 5/4/06)**

#### § 25.02.252 Height regulations.

No building shall exceed three standard stories for living purposes. Where basement areas are used for off-street parking or other service facilities, the maximum height of the building above grade shall not exceed 45 feet.

**(Ordinance 483, sec. 2, adopted 2/20/79; Ordinance 05-06, sec. 1, adopted 5/4/06)**

#### § 25.02.253 Area regulations.

- (a) Front yard. There shall be a front yard having a minimum depth of 25 feet except where circular or similar entrance drives across the lot in front of the main building are used, in which event the minimum front yard depth shall be 35 feet and no parking space or vehicle storage area shall be located closer to the front property line than 25 feet.
- (b) Side yards. There shall be a side yard on each side of the lot having minimum dimensions as follows:
  - (1) For single-family and two-family dwellings the required side yard shall be the same as in the “D” Duplex Dwelling District.
  - (2) Where multiple-family dwellings or housing projects are arranged on a lot where the long dimension of any building is parallel to the side lot line, or where the long dimension of such building is parallel to another building in a project, a side yard of 15 feet shall be provided on each side of each building so that the walls of buildings arranged as parallel structures shall be a minimum of 30 feet apart and no balcony or canopy shall extend into such side yard or space for a distance greater than five feet.
  - (3) For multiple-family dwellings which are arranged with the long dimension of the building parallel to the front lot line and where the building end adjacent and parallel to the side lot line does not exceed 35 feet in width, a minimum side yard of ten feet shall be provided.

- (4) Where the end of a multiple-family dwelling or building does not exceed 35 feet in width and is located opposite another building end or building side or exposed wall face and where such building ends or wall faces do not contain openings for light, air or access in the areas which are opposite, such building ends or wall faces may be placed a minimum distance of ten feet apart. Where openings for light, air or access exist in building end or wall faces arranged as described above, the minimum distance between such ends or wall faces shall be 20 feet.
- (5) A side yard on a corner lot adjacent to a street shall not be less than 15 feet and no balcony or porch or any portion of the building may extend into such required side yard except that a roof may overhang such side yard not to exceed five feet.
- (c) Rear yard required. No main building may be constructed nearer than 15 feet to the rear property line. The main building and all accessory buildings shall not cover more than 50 percent of that portion of the lot lying to the rear of a line erected joining the midpoint of the opposite side lot line. Carports or other detached accessory buildings shall be located within the rear portion of the lot as heretofore described and shall not exceed one story in height nor shall such structures be located closer than 15 feet to the main building nor closer than three feet to any side lot line, nor closer than 15 feet to any side street.
- (d) Courts. When an apartment building or buildings are erected so as to create inner courts or outer courts as defined in division 37, Definitions, the faces of all opposite walls in such courts shall be a minimum distance of 30 feet apart and no balcony or canopy shall extend into such court area for a distance greater than five feet.
- (e) Area of lot. All buildings hereafter erected, enlarged, relocated, reconstructed or converted shall be located on lots containing the following areas:
  - (1) A lot on which is erected or placed a single-family dwelling shall contain a minimum of 7,000 square feet.
  - (2) A lot on which there is erected or converted a two-family dwelling shall contain a minimum of 7,000 square feet.
  - (3) A lot on which there is erected or converted a multiple-family dwelling shall contain a minimum of 7,000 square feet, and there shall be not less than 1,200 square feet of lot area for each family unit.
  - (4) Where a lot has less area than herein required and was of record prior to passage of the ordinance codified in this article, that lot may be used for single-family dwelling purposes only.
- (f) Width of lot. The minimum lot width for single-family, two-family and multiple-family use shall be 60 feet.
- (g) Lot coverage. Not more than 50 percent of the total area of the lot may be covered by the main and accessory buildings.
- (h) Parking regulations.
  - (1) The parking regulations for single-family and duplex uses are the same as those in the "D" Duplex Dwelling District.
  - (2) Multiple-family dwellings shall provide paved off-street parking at a ratio of 1-1/2 spaces per dwelling unit, and no such off-street parking space shall be located within the required 25-foot front yard nor within four feet of any building when such off-street parking is located in the side yard. Whenever off-street parking spaces are located in the side yard, a curb or equivalent barrier shall be placed so as to prevent any vehicle from parking within a minimum distance of four feet from the building.



- (i) Area of dwelling. Each dwelling unit shall provide for a minimum of 850 square feet of living area for a one-bedroom apartment, 1,000 square feet of living area for a two-bedroom apartment and 1,100 square feet of living area for a three-bedroom apartment.
- (j) Building materials. All main buildings shall be of exterior fire-resistant construction having exterior walls constructed of masonry materials as described in division 32, Regulations Applicable to all Districts, section **25.02.712**, and in accordance with the city building code, as amended, and fire code, as amended.

**(Ordinance 483, sec. 2, adopted 2/20/79; Ordinance 05-06, sec. 1, adopted 5/4/06; Ordinance 35-16, sec. 8, adopted 12/19/16)**

**§ 25.02.254 through § 25.02.270. (Reserved)**

## ***Regular Session Agenda Item: 13***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Conduct a public hearing and consider approving an ordinance of the City of Seagoville, Texas, amending the Seagoville code of ordinances, as amended, by amending Title II: “Buildings; Development; Zoning”, Chapter 25 “Zoning”, article 25.02 “Zoning Ordinance”, at Division 22 “PD Planned Development District Regulations”, Section 25.02.533 “Planned Development requirements”; providing a conflicts clause; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense; and providing for an effective date.

### **BACKGROUND OF ISSUE:**

In review of the current zoning ordinance, Staff has identified a component of the Planned Development (PD) Zoning District which limits the expansion of creative land use development. The current regulation sets the minimum PD area requirements to the following:

- Residential development (R-1 through 5, D or TH): 20 contiguous acres.
- Multifamily development (A or MHP): Ten (10) contiguous acres.
- Nonresidential development (O, LR, C, LM, HM, H/O): Ten (10) contiguous acres.
- Mixed Use (residential and nonresidential): 30 contiguous acres.

Due to the consumption of developable land within Seagoville City limits, staff has been approached by prospective developers, both residential and nonresidential, to develop on smaller parcels of land. While some proposed land uses may be appropriate based on existing nearby land uses, and/or compliance with the adopted Comprehensive Plan, the PD area restrictions may prevent positive Seagoville growth.

Staff is recommending that all types of PD Districts maintain a minimum of 1 acre in size. Setting a minimum of one acre in size will limit the chances of spot zoning, while allowing for flexibility of land development. The P&Z Commission must make a recommendation on all requested PDs, and the City Council must approve each PD via City ordinance. This legislative mechanism ensures that all PDs are carefully reviewed by Staff and City Council.

### **FINANCIAL IMPACT:**

NA

### **RECOMMENDATION:**

The Planning and Zoning Commission recommended approval of the proposed text amendments.

### **EXHIBITS:**

Ordinance

Division 22 Section 25.02

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING THE SEAGOVILLE CODE OF ORDINANCES, AS AMENDED, BY AMENDING TITLE II: "BUILDINGS; DEVELOPMENT; ZONING", CHAPTER 25 "ZONING", ARTICLE 25.02 "ZONING ORDINANCE", AT DIVISION 22 "PD PLANNED DEVELOPMENT DISTRICT REGULATIONS", SECTION 25.02.533 "PLANNED DEVELOPMENT REQUIREMENTS"; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Seagoville, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Seagoville, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Code of Ordinances of the City of Seagoville, Texas, as previously amended, should be further amended as set forth below.

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

**SECTION 1.** The City of Seagoville Code of Ordinances, as previously amended, is hereby amended by amending Title II: "Buildings; Development; Zoning," Chapter 25 "Zoning," Article 25.02 "Zoning Ordinance", Division 22 "PD Planned Development District Regulations" by amending Section 25.02.533(d) and (e) to read as follows:

**"§ 25.02.533 Planned development requirements**

...

(d) The minimum acreage for a planned development request shall be as follows:

- (1) Residential development (R-1 through 5, D or TH): One (1) contiguous acres.
- (2) Multifamily development (A or MHP): One (1) contiguous acres.
- (3) Nonresidential development (O, LR, C, LM, HM, H/O): One contiguous acres.
- (4) Mixed Use (residential and nonresidential): One (1) contiguous acres.

(e) The minimum acreages for a planned development request cited in subsection d above may be reduced, or waived altogether, by city council approval and adoption of the PD ordinance (with such acreage reduction or waiver specifically cited in the PD ordinance) if the city council makes a finding that at least one of the following special circumstances exists for a specific land parcel:

- (1) The property is located along U.S. 175, and has at least 200 feet of frontage along U.S. 175; or
- (2) The property is surrounded on at least 75 percent of its perimeter by property that has already been developed (i.e., has been final platted and has significant development improvements, such as

roads, utilities, storm drainage structures, fire lanes and hydrants, and other similar development improvements, either under active construction or already completed on it).”

**SECTION 2.** In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Seagoville and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Seagoville Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Seagoville Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Seagoville Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication in accordance with its provisions of the Charter of the City of Seagoville, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, ON THIS THE \_\_\_\_\_ DAY OF SEPTEMBER 2023.**

**APPROVED:**

\_\_\_\_\_  
**LACKEY STEPPER SEBASTIAN, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Victoria W. Thomas, City Attorney**  
4862-1941-0814, v. 1

\_\_\_\_\_  
**Sara Egan, City Secretary**

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## Division 22

### PD Planned Development District Regulations

#### § 25.02.531 **General purpose and description.**

- (a) The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may authorize the creation of a Planned Development (PD) overlay district.
- (b) The Planned Development (PD) District is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multifamily, duplex, etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this article, to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community by meeting one or more of the following purposes:
  - (1) To provide for a superior design on [of] lots or buildings;
  - (2) To provide for increased recreation and open space opportunities for public use and enjoyment;
  - (3) To provide amenities or features that would be of special benefit to the property users or to the overall community;
  - (4) To protect or preserve natural amenities and environmental assets such as trees, creeks, ponds, floodplains, slopes, viewscales, or wildlife habitats;
  - (5) To protect or preserve existing historical buildings, structures, features or places;
  - (6) To provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and
  - (7) To meet or exceed the standards of this article.
- (c) While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, procedures are established herein to ensure against misuse of increased flexibility.

#### **(Ordinance 27-05, sec. 1, 12/15/05)**

#### § 25.02.532 **Permitted uses.**

- (a) An application for a PD district shall specify the base zoning district(s) upon which the PD is based, and the use or the combination of uses proposed (particularly if any of the proposed uses are not allowed by right in the base zoning district). PD designations shall not be attached to SUP requirements. Specific use permits allowed in a base zoning district(s) are allowed in a PD only if specifically identified as allowable by SUP at the time of PD approval, and if specifically cited as an “additional use” (i.e., to those allowed by right in the PD) in the ordinance establishing the PD. Any use that is not specifically cited as permitted (by right or by SUP) in the applicable base zoning district(s) or the PD ordinance shall be prohibited unless the PD ordinance is amended using the procedures set forth in this article and in division 36 of the zoning ordinance.

- (b) In the case of residential PD districts, the proposed lot sizes shall be no smaller than the lot sizes allowed in the base zoning district for each type of housing (e.g., single-family, duplex, etc.) except for minor changes in a small percentage of the lots in order to provide improved design, or to provide flexibility in the layout of the subdivision or diversity in lot size choices.

**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.533 Planned development requirements.**

- (a) Any development requirements for a particular PD district that deviate from those of the base zoning district(s) shall be set forth in the amending ordinance granting the PD district. These shall include, but may not be limited to: allowed or additional (i.e., SUP) uses, density, lot area, lot width, lot depth, yard depths and widths, building height and size, building exterior construction, lot coverage, floor area ratio, parking, access, screening, landscaping, accessory buildings, signs, lighting, project phasing or scheduling, property management associations, and other requirements as the city council and planning and zoning commission may deem appropriate.
- (b) In the PD district, uses and development standards shall conform to the standards and regulations of the base zoning district(s) unless specifically stated otherwise in the PD ordinance. The base zoning district(s) shall be stated in the PD granting ordinance. All applications to the city shall list all requested deviations from the standard requirements for the base zoning district(s) as set forth throughout the zoning ordinance as applicable to each base zoning district (applications without this list will be considered incomplete). The PD district shall conform to all other regulations of the applicable base zoning district(s), as well as all other applicable regulations of the zoning ordinance, unless specifically changed or excluded in the ordinance establishing the PD. A PD that is based upon more than one base zoning district shall also include a legal (i.e., metes and bounds) description and graphic exhibit describing/showing the proposed boundaries of each respective area and its base zoning district (e.g., shown as “Proposed PD-R-2”, “Proposed PD-LR”, etc.).
- (c) The ordinance granting a PD district shall include a statement as to the purpose and intent of the PD district granted therein, as well as a general statement citing the reason for the PD request.
- (d) The minimum acreage for a planned development request shall be as follows:
  - (1) Residential development (R-1 through 5, D or TH): One (1) contiguous acre.
  - (2) Multifamily development (A or MHP): One (1) contiguous acre.
  - (3) Nonresidential development (O, LR, C, LM, HM, H/O): One (1) contiguous acre.
  - (4) Mixed Use (residential and nonresidential): One (1) contiguous acre.
- (e) The minimum acreages for a planned development request cited in subsection D above may be reduced, or waived altogether, by city council upon approval and adoption of the PD ordinance (with such acreage reduction or waiver specifically cited in the PD ordinance) if the city council makes a finding that at least one of the following special circumstances exist for a specific land parcel:
  - (1) The property is located along U.S. 175, and has at least 200 feet of frontage along U.S. 175; or
  - (2) The property is surrounded on at least 75 percent of its perimeter by property that has already been developed (i.e., has been final platted and has significant development improvements, such as roads, utilities, storm drainage structures, fire lanes and hydrants, and other similar development improvements, either under active construction or already completed on it).

**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.534 Concept plan and site plan requirements for a PD.**

In establishing a planned development district in accordance with this article, the city council shall approve and file as part of the amending ordinance appropriate plans and standards for each PD district. To facilitate understanding of the request during the review and public hearing process, the concurrent submission of a concept plan shall be required along with the PD zoning application. A preliminary/construction plat may be submitted in lieu of the concept plan for a single- or two-family PD (see the Subdivision Ordinance for submission and other requirements) if the applicant prefers to do so, and if the applicant wishes to expend the resources and funds necessary to prepare a complete preliminary/construction plat submission.

- (1) Concept plan. This plan shall be submitted by the applicant at the time of the planned development request. The plan shall show the applicant's intent for the use of the land within the proposed PD district in a graphic manner and, as may be required, supported by written documentation of proposals and standards for development. The city may prepare application form(s) that further describe and explain the following requirements:
  - (A) Residential PD concept plan. A concept plan shall be submitted with any residential PD zoning request for a development comprised of single-family or two-family (duplex) dwellings on individually platted lots, and shall show general uses, phasing of the development, access, thoroughfares, alleys (if proposed), preliminary lot arrangements, proposed densities, proposed screening, landscaped or private amenity areas, project scheduling, and other pertinent development data. (See the Subdivision Ordinance for additional information on concept plan submission as it relates to the platting of land.)
  - (i) For a single- or two-family PD (or portion of a PD) - A preliminary/construction plat (see the Subdivision Ordinance) shall be submitted for approval within one year from the approval date of the concept plan for all or some portion of the PD covered by the overall PD concept plan. If a preliminary/construction plat is not submitted within one year, then the PD concept plan shall expire in which case the property owner must submit a new zoning application for approval of a new PD concept plan (along with a zoning application to amend the PD ordinance and its accompanying concept plan) must be submitted for review and approval, in accordance with the procedures set forth in this article, prior to preliminary/construction plat review/approval (and any subsequent issuance of a building permit) for any portion of the PD district.
  - (B) Nonresidential or multifamily PD concept plan. A concept plan shall be submitted with any nonresidential, multifamily, single-family attached, or manufactured (mobile) home PD zoning request, and shall clearly show all pertinent aspects of the type and nature of the proposed development. The concept plan shall show the types of use(s) proposed; access, topography and boundaries of the PD area; existing physical features of the site; existing and proposed streets, alleys, easements and lot lines; location of existing or proposed public facilities; building heights and locations; parking areas and ratios; fire lanes; screening and landscaped areas; project phasing and scheduling; and other pertinent development data to adequately describe the proposed development (see division 23 of the zoning ordinance for concept plan requirements and procedures).
  - (i) For a nonresidential, multifamily, single-family attached, or manufactured (mobile) home PD (or portion of a PD) - A detailed site plan shall be submitted for approval (in accordance with subsection (2) below, and with division 23 of the zoning ordinance) within one (1) year from the approval date of the concept plan for all or some portion of the PD covered by the overall PD concept plan. If a detailed site plan is not submitted within one (1) year, then the PD concept plan shall expire in which case the property owner must submit a new zoning application for approval of a new PD concept plan (along with a zoning application to amend the PD ordinance and its accompanying concept plan) must be submitted for review and approval, in accordance with the procedures set forth in this article, prior to detailed site plan review/approval (and any subsequent issuance of a building permit) for any nonresidential, multifamily, single-family attached, or manufactured (mobile) home portion of the PD district.

- (2) PD site plan (detailed). Submission and approval of the detailed PD site plan shall be in accordance with division 23 of the zoning ordinance, and shall accompany an application for a nonresidential, multifamily, single-family attached, or manufactured (mobile) home planned development zoning if the applicant prefers to submit the detailed site plan in lieu of the required PD concept plan. The detailed PD site plan will establish the final plans for development of the planned development district (or any portion thereof), and it shall substantially conform to the site layout and development data approved on the PD concept plan (adopted along with the PD ordinance). If a PD concept plan was previously approved for the overall PD district, then a detailed PD site plan (along with the required engineering/architectural site construction plans and preliminary/construction plat) may be submitted for only the sections or lots that are proposed for immediate development rather than for the entire PD. If no concept plan was approved with the ordinance establishing the PD, then a concept plan for the entire PD must be submitted and approved prior to approval of a detailed site plan (along with the required engineering/architectural site construction plans and preliminary/construction plat) for only the portion(s) of the PD that are proposed for immediate development.

For any single- or two-family residential district (A, R-1 through 5 or Duplex), a preliminary/construction plat shall qualify as the site plan.

- (3) Lapse, extension or reinstatement of PD concept plan or PD site plan shall be in accordance with the provisions above and the provisions in division 23 of the zoning ordinance.

**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.535 Approval process and procedures.**

- (a) The procedure for establishing a planned development zoning district shall follow the procedures for zoning amendments as set forth in division 36 of the zoning ordinance. This procedure shall be expanded to include concurrent consideration and approval (or denial) of the concept plan that is submitted along with the PD zoning request application. The public hearings conducted for, and the subsequent actions taken upon, the PD zoning request shall also include the accompanying concept plan, and if the PD is approved then the concept plan shall become a part of the ordinance establishing the PD district.
- (b) The ordinance establishing the planned development zoning district shall not be approved (or adopted) until the accompanying concept plan is approved by the city council, and until all other procedural requirements set forth in division 36 and division 23 of the zoning ordinance are satisfied.
- (c) When a zoning request for a planned development district is being considered, a written report from the city manager (or his/her designee) discussing the project's impact upon planning, engineering, water utilities, electric, sanitation, building inspection, tax, police, fire and traffic, as well as written comments from applicable public agencies (such as the applicable school district and/or utility companies), may be submitted to the planning and zoning commission prior to the commission making any recommendations to the city council. In the event written comments and advisement are not forthcoming in a reasonable amount of time, the commission may, at its discretion, make a recommendation to the city council without said comments or advisement.

**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.536 Designation of PDs on the zoning map.**

All planned development zoning districts approved in accordance with the provisions of this article, as may be amended, shall be prefixed by a "PD" designation and assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so on), and shall also be referenced on the zoning district map. A list of such planned development districts, showing the uses permitted and any other special stipulations of each PD district, shall be maintained as part of this article.



**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.537 Prior planned development ordinances remaining in effect.**

Prior to adoption of the ordinance codified in this article, the city council previously established certain planned development districts, some of which are to be continued in full force and effect. The ordinances or parts of ordinances approved prior to the ordinance codified in this article, specified in Appendix A-1, shall be carried forth in full force and effect and are the conditions, restrictions, regulations and requirements which apply to the respective planned development districts shown on the zoning district map as of the effective date of the ordinance codified in this article. Each prior PD ordinance is hereby assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so on) as shown in Appendix A-1, and subsequent PD ordinances adopted after the effective date of the ordinance codified in this article shall be similarly numbered for identification purposes.

Editor's note—Appendix A-1 to Ord. 27-05, referred to in section 7 above, is not printed herein.

**(Ordinance 27-05, sec. 1, 12/15/05)**

**§ 25.02.538 through § 25.02.550. (Reserved)**

## ***Regular Session Agenda Item: 14***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Conduct a public hearing and consider adoption of an Ordinance of the City of Seagoville, Texas, amending the comprehensive zoning ordinance and map, as previously amended, by changing the zoning from Planned Development-21-05("PD-21-05")to Planned Development 21-05 with a special use permit for temporary concrete batch plant ("PD-21-05-SUP), to allow for temporary placement and operation of a concrete batch plant on an approximately 1.06 acre tract of land contained within Planned Development 21-05 and being further described as situated in the John D. Merchant Survey, Abstract No. 310, Kaufman County Texas, being part of a called 333.291 acre tract of land described in deed to Seagoville Laguna Azure, LLC, recorded in instrument No. 2021-0000692 and instrument No. 2021-0004741, official public records of Kaufman County, Texas and being more particularly described and depicted in Exhibit "A" hereto; providing for special conditions; providing for the repeal of all ordinances in conflict; providing a severability clause; providing for a penalty of fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and providing an effective date.

### **BACKGROUND OF ISSUE:**

The applicant has submitted a zoning application to request a temporary concrete batch plant to be located at the subject property. The concrete batch plat will be utilized to produce the required concrete to build out additional onsite infrastructure. The proposed concrete batch plant will be located on Lots 1, 2, 3, 4 , 15, 16, 17, 18, Block 16, of the approved Santorini Phase 1B.

### **FINANCIAL IMPACT:**

NA

### **RECOMMENDATION:**

The Planning and Zoning Commission recommended approval of the requested temporary concrete batch plant with the condition that construction vehicles must access the site from U.S. 175 only and for a period of 90 days, with one additional 30 day extension to allow for adequate time during construction.

### **EXHIBITS:**

Ordinance  
Exhibit A  
Ariel Map  
Batch Plant Location  
Application



**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, AS PREVIOUSLY AMENDED, BY CHANGING THE ZONING FROM PLANNED DEVELOPMENT-21-05 (“PD-21-05”) TO PLANNED DEVELOPMENT 21-05 WITH A SPECIAL USE PERMIT FOR TEMPORARY CONCRETE BATCH PLANT (“PD-21-05-SUP), TO ALLOW FOR TEMPORARY PLACEMENT AND OPERATION OF A CONCRETE BATCH PLANT ON AN APPROXIMATELY 1.06 ACRE TRACT OF LAND CONTAINED WITHIN PLANNED DEVELOPMENT 21-05 AND BEING FURTHER DESCRIBED AS SITUATED IN THE JOHN D. MERCHANT SURVEY, ABSTRACT NO. 310, KAUFMAN COUNTY TEXAS, BEING PART OF A CALLED 333.291 ACRE TRACT OF LAND DESCRIBED IN DEED TO SEAGOVILLE LAGUNA AZURE, LLC, RECORDED IN INSTRUMENT NO. 2021-0000692 AND INSTRUMENT NO. 2021-0004741, OFFICIAL PUBLIC RECORDS OF KAUFMAN COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT “A” HERETO; PROVIDING FOR SPECIAL CONDITIONS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission of the City of Seagoville and the City Council of the City of Seagoville, in compliance with the laws of the State of Texas with reference to the granting of zoning classifications and changes, have given the requisite notices by publication and otherwise, and have held due hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and the City Council of the City of Seagoville is of the opinion and finds that a zoning change should be granted and that the Comprehensive Zoning Ordinance and Map should be amended; Now, Therefore,

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

**SECTION 1.** That the Comprehensive Zoning Ordinance and Map of the City of Seagoville, Texas, as previously amended, be, and the same are amended by changing the zoning from Planned Development – 21-05 (“PD-21-05”) to Planned Development – 21-05

with a Special Use Permit for temporary placement and operation of a concrete batch plant (“PD-21-05-SUP”), subject to the conditions stated in Section 2 of this Ordinance, on an approximately 1.06 acre tract of land contained within Planned Development 21-05 and being further described and depicted in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”).

**SECTION 2.** The Property shall be developed and used in accordance with the development standards under the Seagoville Zoning Ordinance, ordinances of the City of Seagoville, applicable approved development standards and regulations, and the following special conditions with regard to the special use permit granted by this Ordinance:

- (A) the specific use permit for the temporary concrete batch plan shall be effective on the date of passage of this Ordinance and shall expire ninety (90) days thereafter;
- (B) the hours of operation for the concrete batch plant shall be from 7:00 am. to 6:00 p.m., Monday through Friday, and from 7:00 a.m. to 5:00 p.m. on Saturday;
- (C) the temporary concrete batch plant shall be placed on the 1.06 acres described and depicted in Exhibit “A”, which is attached hereto and incorporated herein by this reference (the “Property”);
- (D) construction vehicles must access the Property and/or the temporary batch plant from U.S. Highway 175 only;
- (E) the temporary concrete batch plant shall be dismantled and removed from the Property within seven (7) business days of the expiration of the special use permit granted herein.
- (F) the specific use permit may be extended by the City Manager for an additional one extension period, not to exceed thirty (30) days.

**SECTION 3.** The Property shall be used only in the manner and for the purpose provided for by the Comprehensive Zoning Ordinance of the City of Seagoville, as heretofore amended, and as amended herein, and the development of the Property herein shall be in accordance with building regulations, zoning ordinances, and any applicable ordinances except as may be specially altered or

amended herein.

**SECTION 4.** All provisions of City of Seagoville Ordinance 35-2021 not amended herein remain in full force and effect.

**SECTION 5.** 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, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 6.** Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

**SECTION 7.** Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**DULY PASSED** by the City Council of the City of Seagoville, Texas, on the \_\_\_\_ day of September 2023.

**APPROVED:**

\_\_\_\_\_  
**LACKEY STEPPER SEBASTIAN MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Sara Egan, City Secretary**

**APPROVED AS TO FORM:**

---

**Victoria W. Thomas, City Attorney**

## **EXHIBIT A**

4869-0603-1742, v. 1



**FIELD NOTES**  
**SANTORINI BATCH PLANT**

**BEING** a 1.06 acre tract of land situated in the John D. Merchant Survey, Abstract No. 310, Kaufman County Texas, being part of a called 333.291 acre tract of land described in deed to Seagoville Laguna Azure, LLC., recorded in Instrument No. 2021-0000692 and Instrument No. 2021-0004741, Official Public Records of Kaufman County, Texas (O.P.R.K.C.T.) and being more particularly described as follows:

**BEGINNING** at the southeast corner of subject 1.06 acre tract, from which a 3/8" iron rod found bears North 71 Degrees 42 Minutes 11 Seconds East, a distance of 1351.03 feet to the most easterly northeast corner of said 333.291 acre tract and the westerly Right-of-Way line of F.M. Road No. 1389, from same Point of Beginning a 1/2" capped iron rod found (RPLS 5244) bears South 23 Degrees 56 Minutes 40 Seconds East, a distance of 1515.26 feet to a point in the east line of said 333.291 acre tract;

**THENCE** South 75 Degrees 49 Minutes 01 Seconds West, a distance of 250.00 feet to a point;

**THENCE** North 14 Degrees 09 Minutes 54 Seconds West, a distance of 185.07 feet to a point;

**THENCE** North 75 Degrees 50 Minutes 06 Seconds East, a distance of 250.00 feet to a point;

**THENCE** South 14 Degrees 09 Minutes 54 Seconds East, a distance of 184.99 feet to the **POINT OF BEGINNING** and containing 46,258 square feet or 1.06 acres of land more or less.

Bearings are based on the Texas State Plane Coordinate System, NAD 83, North Central Zone 4202.

 7/20/2023

Eduardo Martinez

Registered Professional Land Surveyor No. 5274



**QUIDDITY**

Telephone 972-488-3880 Ext. 7177

Texas Board of Professional Engineers and Land Surveyors

Engineer Registration No. F-23290

Survey Registration No. 10046100

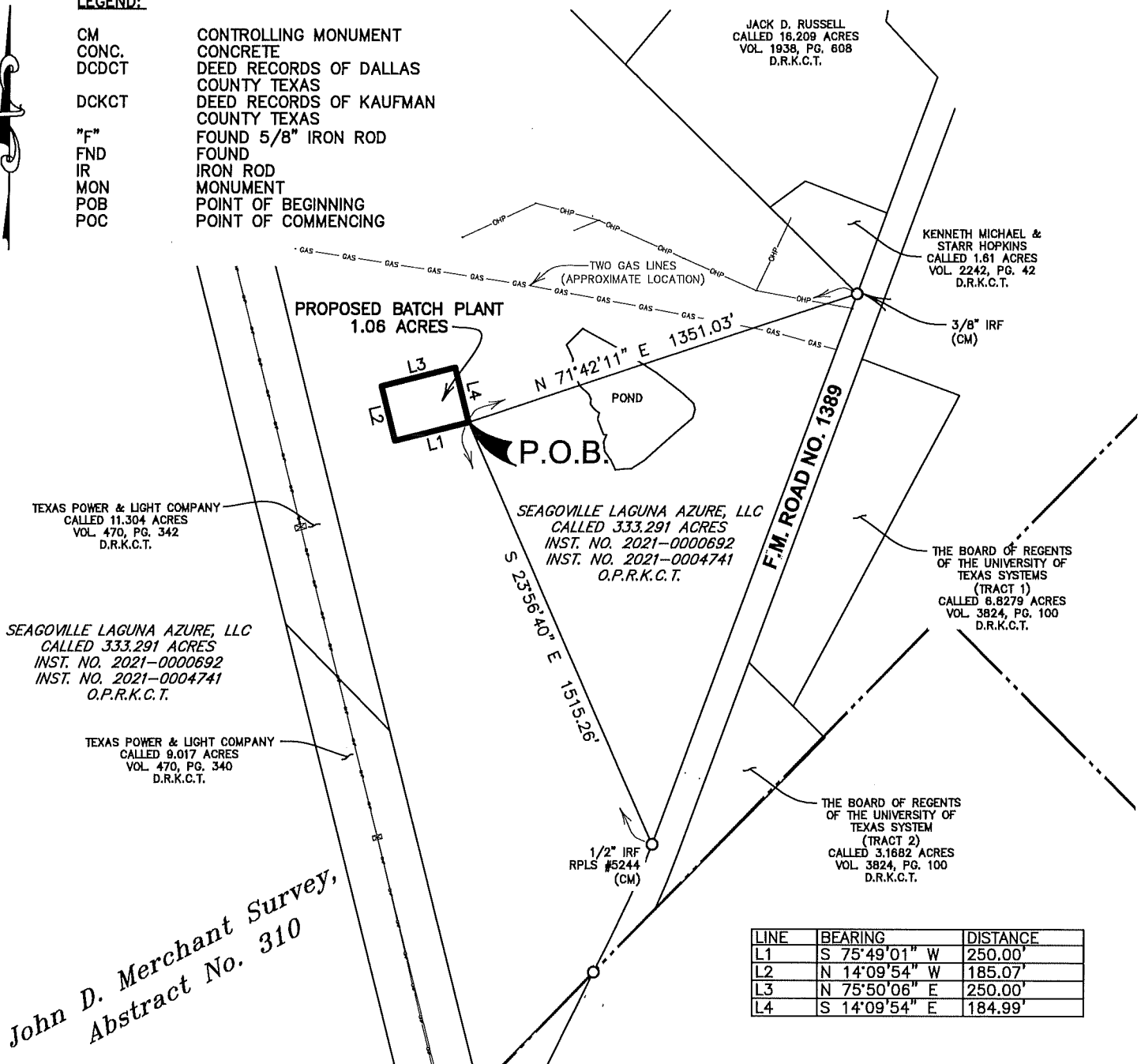


# EXHIBIT "A"

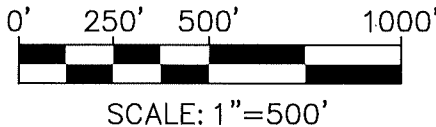
## LEGEND:

CM  
CONC.  
DCDCT  
DCKCT  
"F"  
FND  
IR  
MON  
POB  
POC

CONTROLLING MONUMENT  
CONCRETE  
DEED RECORDS OF DALLAS  
COUNTY TEXAS  
DEED RECORDS OF KAUFMAN  
COUNTY TEXAS  
FOUND 5/8" IRON ROD  
FOUND  
IRON ROD  
MONUMENT  
POINT OF BEGINNING  
POINT OF COMMENCING



John D. Merchant Survey,  
Abstract No. 310



Bearings are based on the Texas State Plane Coordinate System, NAD83, North Central Zone 4202.



## QUIDDITY

Texas Board of Professional Engineers and Land Surveyors  
Registration Nos. F-23290 & 10046100  
2805 Dallas Parkway, Suite 600 Plano, TX 75093 972-488-3880

## SANTORINI BATCH PLANT

BEING 1.06 ACRES

OUT OF THE  
J.D. MERCHANT SURVEY, ABSTRACT NO. 310  
IN THE CITY OF SEAGOVILLE  
KAUFMAN COUNTY, TEXAS  
JULY 2023



**ZONING  
APPLICATION**  
City of Seagoville, Texas



ANTICIPATED MEETING DATES: P&Z: 7/25/23 City Council: 8/07/23

DATE OF PRE-APPLICATION CONFERENCE WITH CITY REPS & PLANNER (required): \_\_\_\_\_

**Application Type:**

- ☐ Initial Zoning (newly annexed or Agricultural property)  
☐ Rezoning (property currently zoned)  
☐ Planned Development (PD) – see Zoning Ordinance for special requirements and procedures  
☒ Specific Use Permit (SUP) – see Zoning Ordinance for special requirements and procedures

Name of Subdivision or Project: Santorini

Physical Location of Property: Southwest corner of US 175 and FM 1389

[General Location – approximate distance to nearest existing street corner]

Brief Legal Description of Property (must also attach accurate Surveyor's metes and bounds description): \_\_\_\_\_

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Acreage: 1.06 Existing Zoning: PD Requested Zoning: SUP

[Attach a detailed description of requested zoning & development standards, if a PD]

Applicant / Owner's Name: \_\_\_\_\_ Applicant or Owner (circle one)

Contact Person: Zach Ipour

Title: Owner

Company Name: Megatel Homes, LLC.

Street/Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Engineer / Representative's Name: \_\_\_\_\_

Contact Person: Kirby Taylor

Title: Project Manager

Company Name: Quiddity Engineering, LLC.

Street/Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**SUBMITTAL DEADLINE: 30 DAYS PRIOR TO P&Z PUBLIC HEARING DATE.** (All zoning applications must be advertised in the newspaper, and notices must be mailed to all property owners within 200 feet of the subject property. Please contact City staff in advance for submittal deadlines.)

**All applications must be COMPLETE before they will be scheduled for P&Z agenda.** It is the applicant's responsibility to be familiar with, and to comply with, all City submittal requirements (in the Zoning & Subdivision Ordinances, and any separate submittal policies, requirements and/or checklists that may be obtained from City staff), including the number of plans to be submitted, application fees, etc. Please contact City staff in advance for submittal requirements.

**All application materials (one copy) must be delivered to the City's Planner.** The name, address, phone number, etc. of the City's Planner can be obtained from City staff. Failure to submit all materials to the City's Planner may result in delays scheduling the zoning application for a P&Z agenda.

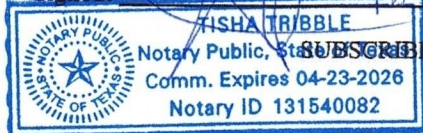
**Notice of Public Records.** The submission of plans/drawings with this application makes such items public record, and the applicant understands that these items may be viewed by the general public. Unless the applicant expressly states otherwise in writing, submission of this application (with associated plans/drawings) will be considered consent by the applicant that the general public may view and/or reproduce (i.e., copy) such documents.

I hereby certify that I am the Owner, or the duly authorized agent of the Owner (proof of authorization attached), for the purposes of this application, and that all information submitted herein is complete, true and correct to the best of my knowledge. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

Signed: \_\_\_\_\_

Title: Owner

Date: 7/27/23



[seal]

Notary Public, State of Texas  
Comm. Expires 04-23-2026  
Notary ID 131540082

Notary Public in and for the State of Texas: \_\_\_\_\_

My Commission Expires On: 4-23-26

Office Use Only: Date Rec'd: 7/24/23 Fees Paid: \$ 303.00 Check #: 1206 Receipt #: 787999  
Zoning Case #: \_\_\_\_\_ Accepted By: CP Official Submittal Date: 7/24/23



| LINE TABLE |               |         |
|------------|---------------|---------|
| LINE       | BEARING       | LENGTH  |
| L1         | N 23°13'22" W | 14.01'  |
| L2         | N 33°36'11" W | 100.18' |
| L3         | N 13°32'29" E | 14.30'  |
| L4         | N 29°47'58" W | 54.64'  |
| L5         | N 75°50'06" E | 60.00'  |
| L6         | N 30°50'06" E | 14.14'  |
| L7         | N 75°50'06" E | 0.50'   |
| L8         | N 14°09'54" W | 90.00'  |
| L9         | S 75°50'06" W | 0.50'   |
| L10        | N 59°09'54" W | 14.14'  |
| L11        | N 30°49'34" E | 14.14'  |
| L12        | N 75°49'01" E | 0.49'   |
| L13        | N 14°08'31" W | 50.00'  |
| L14        | S 75°52'15" W | 0.51'   |
| L15        | N 59°10'26" W | 14.14'  |
| L16        | N 14°09'54" W | 17.13'  |
| L17        | N 59°46'40" E | 15.21'  |
| L18        | N 67°05'59" E | 76.67'  |
| L19        | S 24°18'23" E | 14.25'  |
| L20        | S 24°45'08" E | 10.00'  |
| L21        | S 42°21'45" W | 10.00'  |
| L22        | S 30°49'34" E | 14.14'  |
| L23        | N 59°10'26" W | 14.14'  |
| L24        | N 59°10'26" W | 14.14'  |
| L25        | N 30°49'34" E | 14.14'  |
| L26        | N 18°04'15" E | 10.00'  |
| L27        | N 30°50'06" E | 14.14'  |
| L28        | N 59°09'54" W | 14.14'  |
| L29        | S 59°09'54" E | 14.14'  |
| L30        | S 30°50'06" W | 14.14'  |
| L31        | S 30°50'06" W | 14.14'  |
| L32        | N 59°09'54" W | 14.14'  |
| L33        | N 24°44'22" E | 14.14'  |
| L34        | N 65°15'38" E | 14.14'  |
| L35        | N 65°15'38" E | 14.14'  |
| L36        | S 24°44'22" E | 14.14'  |
| L37        | S 24°44'22" E | 14.14'  |
| L38        | S 65°15'38" W | 14.14'  |
| L39        | S 49°16'54" W | 14.42'  |
| L40        | S 38°33'16" E | 14.42'  |
| L41        | S 41°35'10" E | 13.68'  |
| L42        | N 52°18'48" E | 13.68'  |
| L43        | N 73°08'24" W | 14.57'  |
| L44        | S 47°59'24" W | 14.77'  |
| L45        | N 37°15'54" W | 14.77'  |
| L46        | S 14°09'54" E | 30.38'  |
| L47        | S 69°44'22" E | 56.84'  |
| L48        | S 65°44'17" W | 14.03'  |

| CURVE TABLE |          |            |              |               |             |
|-------------|----------|------------|--------------|---------------|-------------|
| CURVE #     | RADIUS   | ARC LENGTH | CHORD LENGTH | CHORD BEARING | DELTA ANGLE |
| C1          | 2814.61' | 95.91'     | 95.91'       | S 21°27'38" W | 1°57'09"    |
| C2          | 500.00'  | 478.38'    | 460.34'      | S 83°48'22" W | 54°49'06"   |
| C3          | 530.00'  | 144.62'    | 144.17'      | N 21°58'56" W | 15°38'04"   |
| C4          | 470.00'  | 269.29'    | 265.62'      | N 02°14'56" E | 32°49'41"   |
| C5          | 400.00'  | 10.66'     | 10.66'       | S 80°41'12" E | 1°31'37"    |
| C6          | 500.00'  | 274.46'    | 271.02'      | N 82°49'29" E | 31°27'01"   |
| C7          | 450.00'  | 505.08'    | 478.98'      | S 80°44'47" E | 64°18'29"   |
| C8          | 550.00'  | 257.04'    | 254.70'      | S 61°58'50" E | 26°46'35"   |
| C9          | 950.00'  | 107.70'    | 107.64'      | S 72°07'15" E | 6°29'43"    |
| C10         | 50.00'   | 229.35'    | 75.00'       | N 72°22'32" W | 26°24'09"   |
| C11         | 50.00'   | 36.14'     | 35.36'       | S 03°04'49" E | 41°24'35"   |
| C12         | 50.00'   | 36.14'     | 35.36'       | N 38°19'46" E | 41°24'35"   |
| C13         | 150.00'  | 83.22'     | 82.16'       | S 01°43'47" W | 31°47'23"   |
| C14         | 50.00'   | 27.74'     | 27.39'       | S 59°55'22" W | 31°47'18"   |
| C15         | 50.00'   | 134.04'    | 97.36'       | N 59°10'26" W | 15°33'41"   |
| C16         | 50.00'   | 27.74'     | 27.39'       | N 01°43'45" E | 31°47'18"   |
| C17         | 50.00'   | 78.56'     | 70.72'       | S 59°10'26" E | 90°01'05"   |
| C18         | 50.00'   | 27.74'     | 27.39'       | N 30°03'33" W | 31°47'18"   |
| C19         | 50.00'   | 85.52'     | 75.47'       | N 03°02'52" E | 98°00'08"   |
| C20         | 50.00'   | 30.04'     | 29.59'       | S 03°02'52" W | 34°25'32"   |
| C21         | 50.00'   | 27.74'     | 27.39'       | N 36°09'17" E | 31°47'18"   |
| C22         | 150.00'  | 145.49'    | 139.86'      | S 41°57'08" E | 55°34'28"   |
| C23         | 200.00'  | 120.17'    | 118.37'      | S 03°02'52" W | 34°25'32"   |
| C24         | 50.00'   | 70.99'     | 65.17'       | S 54°50'15" E | 81°20'42"   |
| C25         | 50.00'   | 27.74'     | 27.39'       | S 01°43'45" W | 31°47'18"   |
| C26         | 50.00'   | 126.47'    | 95.35'       | S 54°50'15" E | 144°55'18"  |
| C27         | 50.00'   | 27.74'     | 27.39'       | N 68°35'44" E | 31°47'18"   |
| C28         | 765.00'  | 282.08'    | 280.49'      | S 84°56'48" E | 21°07'38"   |
| C29         | 200.00'  | 52.00'     | 51.85'       | S 12°48'44" W | 14°53'50"   |
| C30         | 50.00'   | 27.74'     | 27.39'       | N 85°38'01" W | 31°47'18"   |
| C31         | 50.00'   | 134.02'    | 97.35'       | N 24°44'22" W | 15°33'46"   |
| C32         | 50.00'   | 27.74'     | 27.39'       | N 36°09'17" E | 31°47'18"   |
| C33         | 50.00'   | 78.54'     | 70.71'       | N 24°44'22" W | 90°00'00"   |
| C34         | 50.00'   | 27.74'     | 27.39'       | N 04°21'59" E | 31°47'18"   |
| C35         | 50.00'   | 129.97'    | 96.35'       | N 62°56'20" E | 148°55'59"  |
| C36         | 50.00'   | 27.74'     | 27.39'       | S 58°29'20" E | 31°47'18"   |
| C37         | 50.00'   | 74.49'     | 67.79'       | N 62°56'20" E | 85°21'23"   |
| C38         | 500.00'  | 136.44'    | 136.01'      | N 21°58'56" W | 15°38'04"   |
| C39         | 550.00'  | 526.22'    | 506.38'      | S 83°48'22" W | 54°49'06"   |
| C40         | 2814.61' | 198.97'    | 198.93'      | S 24°27'42" W | 4°03'01"    |

\\KVS32\KVS32-2013-08 Santorini\_Santorini2\_Design\_Phase\CA001.dwg Date: 02/01/2024 File: CA001.dwg Project: 18 - Final Plat.dwg

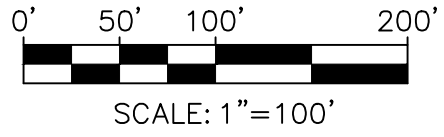
MEGATEL HOMES III, LLC  
CALLED 333.291 ACRES  
VOL. 6772, PG. 220  
D.R.D.C.T.

John D. Merchant Survey,  
Abstract No. 310

MEGATEL HOMES III, LLC  
CALLED 333.291 ACRES  
VOL. 6772, PG. 220  
D.R.D.C.T.

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEMS  
(TRACT 1)  
CALLED 6.8279 ACRES  
VOL. 3824, PG. 100  
D.R.R.C.T.

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM  
(TRACT 2)  
CALLED 3.1682 ACRES  
VOL. 3824, PG. 100  
D.R.R.C.T.



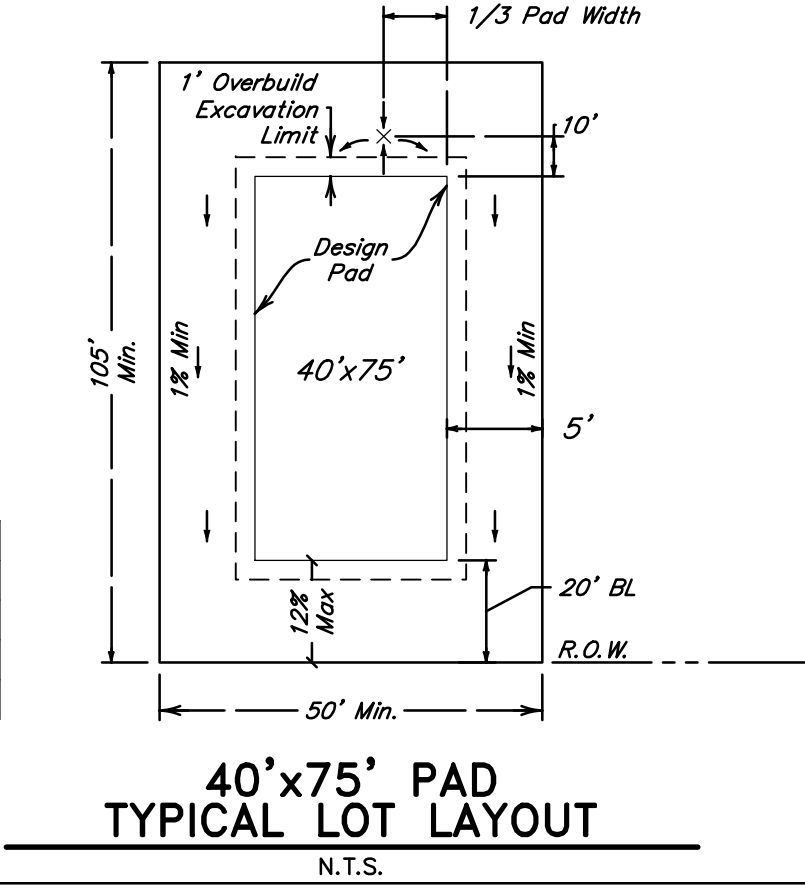
LEGEND

|              |                                                  |
|--------------|--------------------------------------------------|
| POB          | POINT OF BEGINNING                               |
| CM           | CONTROL MONUMENT                                 |
| R.O.W.       | RIGHT OF WAY                                     |
| VOL.         | VOLUME                                           |
| PG.          | PAGE                                             |
| ESMT         | EASEMENT                                         |
| IRF          | IRON ROD FOUND                                   |
| CIRF         | CAPPED IRON ROD FOUND                            |
| CIRS         | 5/8" IRON ROD WITH CAP                           |
|              | STAMPED "JONES CARTER" SET                       |
| BL           | BUILDING LINE                                    |
| UE           | UTILITY EASEMENT                                 |
| SSE          | SANITARY SEWER EASEMENT                          |
| DE           | DRAINAGE EASEMENT                                |
| WLE          | WATERLINE EASEMENT                               |
| NR           | NON-RADIAL LOT LINE                              |
| D.R.D.C.T    | DEED RECORDS, DALLAS COUNTY, TEXAS               |
| D.R.K.C.T.   | DEED RECORDS, KAUFMAN COUNTY, TEXAS              |
| O.P.R.D.C.T. | OFFICIAL PROPERTY RECORDS, DALLAS COUNTY, TEXAS  |
| O.P.R.K.C.T  | OFFICIAL PROPERTY RECORDS, KAUFMAN COUNTY, TEXAS |
| FME          | FENCE MAINTENANCE EASEMENT                       |

|    |                               |
|----|-------------------------------|
| ①  | DENOTES CHANGE IN STREET NAME |
| 1X | BLOCK NUMBER                  |

RESIDENTIAL LOTS  
50' LOTS = 129  
TOTAL = 129

| LAND USE       | ACREAGE | LOTS |
|----------------|---------|------|
| RESIDENTIAL    | 21.650  | 129  |
| HOA/OPEN SPACE | 26.792  | 6    |
| STREET - ROW   | 9.291   | -    |
| TOTAL          | 57.732  | 135  |



CONSTRUCTION PLAT  
OF  
SANTORINI PHASE 1B

LOTS 1X-4X, 1-50, BLOCK 14; LOTS 5X, 1-8, BLOCK 15; LOTS  
1-18, BLOCK 16; LOTS 6X, 1-18, BLOCK 17; LOT 1-12, BLOCK  
18; LOTS 1-13, BLOCK 19; LOTS 1-10, BLOCK 20;  
BEING 57.732 ACRES  
SITUATED IN THE  
J.D. MERCHANT SURVEY, ABSTRACT NO. 310  
IN THE  
CITY OF SEAGOVILLE, KAUFMAN COUNTY, TEXAS  
134 LOTS BY USE  
(129 RESIDENTIAL, AND 6 NON-RESIDENTIAL  
/OPEN SPACE LOTS)  
FEBRUARY 2022

DEVELOPER / OWNER:  
MEGATEL HOMES III, LLC  
2102 CEDAR SPRING ROAD, SUITE 700,  
DALLAS, TEXAS 75201  
PHONE: (214) 303-1000

ENGINEER / SURVEYOR:  
**JC JONES CARTER**  
Texas Board of Professional Engineers and Land Surveyors  
Engineer Registration No. F-23290, Survey Registration No. 10046100  
2805 Dallas Parkway, Suite 600 • Plano, Texas 75093  
972.488.3880



## ***Regular Session Agenda Item: 15***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Bluff Road for compensation in an amount not to exceed Three Hundred Ninety Thousand Fifty Dollars and Zero Cents (\$390,050.00) as set forth in Exhibit C, attached hereto and incorporated herein; authorizing the City Manager to execute any and all necessary documents; and providing an effective date.

### **BACKGROUND OF ISSUE:**

On or about May 15, 2023 the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement. the City of Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for , Anderson Asphalt & Concrete Paving, 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. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$390,050.00 for provision of asphalt road work on Bluff Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C.

### **FINANCIAL IMPACT:**

\$390,050.00 Capital Projects Fund FY2024

### **RECOMMENDATION:**

City Staff recommends approval.

### **EXHIBITS:**

Resolution  
Master Interlocal Purchasing Agreement (Exhibit A)  
Anderson Asphalt & Concrete Paving (Exhibit B)  
Estimate from Anderson Asphalt (Exhibit C)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING ANDERSON ASPHALT & CONCRETE PAVING TO PROVIDE ASPHALT ROAD WORK ON BLUFF ROAD FOR COMPENSATION IN AN AMOUNT NOT TO THREE HUNDRED NINETY THOUSAND FIFTY DOLLARS AND ZERO CENTS (\$390,050.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, 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 Forney 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 Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs, 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**, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$390,050.00 for provision of asphalt road work on Bluff Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

**WHEREAS**, the City Council for the City of Seagoville, Texas has reviewed the estimate 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 Anderson Asphalt & Concrete Paving to provide asphalt road work on Bluff Road as set forth in Exhibit C;

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

**SECTION 1.** The City Council hereby authorizes Anderson Asphalt & Concrete Paving to provide asphalt road work on Bluff Road, to include provision of all necessary labor, equipment,

and materials, for compensation in an amount not to exceed Three Hundred Ninety Thousand Fifty Dollars and Zero cents (\$390,050.00), as set forth in Exhibit C, attached hereto and incorporated herein; and, the City Manager is authorized to execute any 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 18<sup>th</sup> day of September, 2023.

**APPROVED:**

---

Lackey Stepper Sebastian, Mayor

**ATTEST:**

---

Sara Egan, City Secretary

**APPROVED AS TO FORM:**

---

Victoria Thomas, City Attorney

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS**

**RESOLUTION NO. 38-R-2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF FORNEY AND CITY OF SEAGOVILLE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council for the City of Seagoville, Texas desires to enter into an Interlocal Agreement with the City of Forney ("Agreement"); and

**WHEREAS**, the City Council for the City of Seagoville, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Seagoville to enter into said Agreement with the City of Forney.

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

**SECTION 1.** The City Council hereby approves the terms and conditions of the Interlocal Agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A", with the City of Forney, Texas and the City of Seagoville, Texas and the City Manager is hereby authorized, on behalf of the City of Seagoville, Texas to sign said Agreement.

**SECTION 2.** All resolutions of the City of Seagoville heretofore adopted which are in conflict with the provisions of this resolution, and the same are hereby repealed, and all resolutions of the City of Seagoville not in conflict with the provisions hereof shall remain in full force and effect.

**SECTION 3.** If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

**SECTION 4.** This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

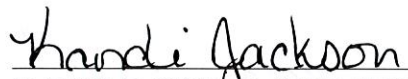
**DULY RESOLVED** by the City Council of the City of Seagoville, Texas, this the 15<sup>th</sup> day May, 2023.



APPROVED:

  
DENNIS K CHILDRESS, MAYOR  
Lackey Stepper Sebastian

ATTEST:

  
KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:

  
VICTORIA THOMAS, CITY ATTORNEY



CITY OF FORNEY, TEXAS  
RESOLUTION NO. 23-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS APPROVING AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF FORNEY, TEXAS AND THE CITY OF SEAGOVILLE, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

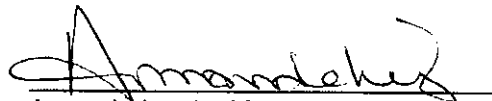
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

**SECTION 1.** The proposed Interlocal Agreement by and between the City of Forney, Texas and the City of Seagoville, Texas is hereby approved and the City Manager is authorized to execute all necessary documents to comply with this Resolution.

**SECTION 2.** A substantial copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein for reference.

**SECTION 3.** This Resolution shall take effect immediately from and after its passage.

PRESENTED AND PASSED by the City Council of the City of Forney, Texas, this the 2<sup>nd</sup> day of May, 2023.

  
Amanda Lewis, Mayor

ATTEST:

  
Rosa Rios, Interim City Secretary



APPROVED AS TO FORM:

  
Jennifer Smith, City Attorney

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

**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 Forney 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 Forney 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 Forney 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.
1. The City of Seagoville and City of Forney 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 Forney warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

a dispute arises 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 Forney, 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 Forney 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  
[kjackson@seagoville.us](mailto:kjackson@seagoville.us)

City of Forney:                              City of Forney  
101 E. Main Street  
Forney, TX 75126  
972-552-6620  
[jsmith@forneytx.gov](mailto:jsmith@forneytx.gov)

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes 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 Kaufman County, Texas, United States of America for City of Forney 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 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.

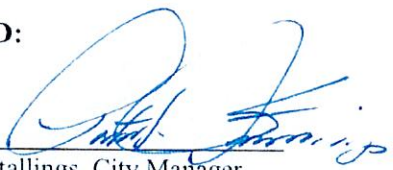
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original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

CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

BY:

  
Patrick Stallings, City Manager

APPROVED:

BY:

  
Charles Daniels, City Manager

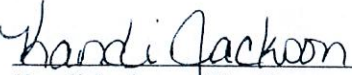
DATE:

May 13, 2023

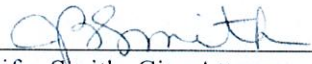
DATE:

May 8, 2023

ATTEST:

  
Kandi Jackson, City Secretary

ATTEST:

  
Jennifer Smith, City Attorney

APPROVED AS TO FORM:

  
Victoria Thomas, City Attorney



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.

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CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

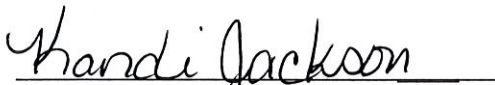
BY:

  
Patrick Stallings, City Manager

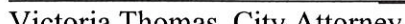
DATE:

May 16, 2023

ATTEST:

  
Kandi Jackson, City Secretary

APPROVED AS TO FORM:

  
Victoria Thomas, City Attorney

APPROVED:

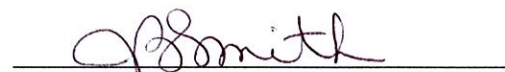
BY:

  
Charles Daniels, City Manager

DATE:

May 8, 2023

ATTEST:

  
Jennifer Smith, City Attorney





# CITY OF FORNEY, TX REQUEST FOR PROPOSALS

Proposal Reference Number: 2021-004

**Bid Documents, Proposal, and Contract Documents for**

**ANNUAL PRICE AGREEMENT CONTRACT  
for ASPHALT MAINTENANCE and MATERIALS  
(VARIOUS LOCATIONS)**

ENGINEERING DEPARTMENT

MARCH 2021

Time Critical Competitive Sealed Bid Deliveries: The City of Forney, Texas cannot guarantee, due to internal procedures that any documents sent Priority Mail will be picked up and delivered by the closing date and time. Bidders are encouraged to choose the best delivery method for their situation.



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## SECTION I: SOLICITATION



### **CITY OF FORNEY REQUEST FOR PROPOSAL (RFP 2021-004)**

#### **The City of Forney is accepting Bids for an Annual Price Agreement Contract for Asphalt Street Maintenance & Materials**

Sealed proposals addressed to the City of Forney will be received by the Finance Department, located on the first floor of City Hall at 101 E. Main Street, Forney Texas 75126, until 2:00 p.m. April 12, 2021. Proposals may be mailed to the City of Forney, P.O. Box 826, Forney TX 75126 or hand-delivered to the first floor of City Hall at 101 E. Main, Forney, Texas 75126. Sealed Bids will be opened at 2:00 p.m. on April 12, 2021, however, there will be no public opening due to COVID 19.

Bidders must submit with their bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of the bid payable without recourse to the Owner or a proposal bond in the same amount. The contract award is contingent upon City Council approval at the May 04, 2021, City Council meeting.

#### **Proposal envelope must state: RFP 2021-004**

#### **ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS**

##### **Scope of Work:**

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification.

Bidders are required to provide all materials, equipment, and labor required for the construction of the project along with a two (2) year Performance and Maintenance Bond in the amount of Contract. The effective date of the maintenance period will commence upon the date of project acceptance by the City of Forney City Council. The successful Bidder will be required to furnish not only a performance bond in the amount of the contract but also a payment bond for the protection of all claimants supplying labor and materials.

The bid package is available on the City of Forney Website [www.forneytx.gov](http://www.forneytx.gov) or CivCast [www.civcast.com](http://www.civcast.com). Paper copies can be obtained by contacting Forney Engineering Department at 972-564-7375. All questions **are required** to be asked and answered from the CivCast website.

## **SECTION II: NOTICE TO BIDDERS RFP 2021-004**

### **ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS (VARIOUS LOCATIONS)**

#### **DEFINITIONS:**

- The terms “City” or “Owner” as used throughout these documents will mean the City of Forney, Texas.
- The terms “Contractor” or “Bidder” is used throughout these documents will mean the Contractor submitting a bid.

#### **TERM:**

The City intends to award Price Agreements to qualified bidders, and establish an annual agreement with renewals. The agreement will contain a fixed pricing structure with an initial one (1) year term. The City retains the right and option to extend the term of the agreement for four (4) additional, one (1) year periods upon the same terms and conditions. The City also retains the right and option to terminate the agreement upon thirty (30) days written notice.

WORK ORDER TIME – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions.

#### **INVITATION: - COMPETITIVE SEALED BIDS WILL BE ACCEPTED FOR THE FOLLOWING:**

Project Title: **RFP 2021-004 ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**

Project Address: Various locations within the City of Forney, Texas

#### **DESCRIPTION:**

- The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

Annual Agreements - Issued by the City of Forney to create an annual agreement between the City and a vendor for specific items and/or services to be provided at a certain price, on an as-needed basis. Annual agreements do not encumber funds until a release against the blanket order is issued. Annual agreements are normally issued following a bid award by the City Council where the annual expenditure is expected to exceed \$50,000. Annual agreements may be for the exclusive use of an individual operating department or split between operating departments or may be established for citywide use.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

- City’s Estimated Annual Asphalt Budget: **\$500,000** (\*may vary from fiscal year to fiscal year and is subject to annual budgetary approval by Council)
- Consideration for Award: The City may consider the following minimum criteria, and may make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with the bid specifications:

- Price
- Bidder’s experience and reputation
- Quality of the bidder’s goods and/or services
- Bidder’s safety record
- Bidder’s proposed personnel
- Bidder’s financial capabilities

**PROJECT COMPLETION SCHEDULES:**

The completion schedule for each project will be mutually agreed upon in writing by both parties per Sample Form 1 – Asphalt Repair Work Order Form.

**PRE-BID MEETING: No Meeting will be Held Unless Questions Warrant It**

**QUESTIONS DEADLINE: Wednesday, April 07, 2021, @ 12:00 CST**

**QUESTION WILL NOT BE ANSWERED VIA TELEPHONE OR FAX**

**All questions are required to be asked and answered from the CivCast Website**  
<https://www.civcastusa.com/>

Responses will be published in the form of an addendum and/or on CivCast Website. Verbal inquiries will not be accepted, and respondents should refrain from seeking additional information, clarification or other communications from any outside agency or City employee other than the City of Forney Engineering Department.

**ADDENDUMS:**

All interpretations, answers to questions, corrections and/or changes to a bid solicitation, or extensions to the opening date will be made by addendum. Addendums will be published in writing and will be made available via the City of Forney Engineering Department and on CivCast web site at <https://www.civcastusa.com/>

The bidder is required to acknowledge receipt of addendums on **Exhibit B**.

**It is the responsibility of all bidders to check the CivCast for all addendums.**

**BIDS DUE:** One (1) original sealed bid submitted **prior to Monday, April 12, 2021 @ 2:00 pm CT**

All costs associated with the preparation/delivery of the bid, and or any subsequent presentations or request for other documentation, are the sole responsibility of the bidder. Note: Bids will be registered by received stamp. The City of Forney Finance Department clock stamp is the official clock, and no other time sources will be accepted.

1. **Bid Receiving Location:**

|                                   |                                                             |
|-----------------------------------|-------------------------------------------------------------|
| <b>Via U.S. Mail:</b>             | <b>Via Delivery Services / Personal Delivery:</b>           |
| City of Forney Finance Department | City of Forney Finance Department                           |
| P.O. Box 826                      | 101 E Main Street                                           |
| Forney, TX 75126                  | Forney, TX 75126                                            |
|                                   | <b>Note: US Mail does not deliver to the street address</b> |

2. **Sealed:** All bids must be sealed and the face of the envelope must contain the following information:

Bid No.: **RFP 2021-004**  
Name of Project: **ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**  
Name of Bidder: Contractor's Name

3. Bids are valid only if deposited at a designated receiving location prior to receiving time.  
4. Bids deposited after receiving time by the bidder, a delivery service, or any other delivery method will be returned unopened.

**TIME SCHEDULE:**

|                                    |                                                            |
|------------------------------------|------------------------------------------------------------|
| <b>City Council Approval:</b>      | <b>January 19, 2021</b>                                    |
| <b>Advertising (paper notice):</b> | <b>March 25, 2021, and April 01, 2021</b>                  |
| <b>Pre-Bid Meeting:</b>            | <b>No Meeting will be Held Unless Questions Warrant It</b> |
| <b>Questions Deadline:</b>         | <b>Wed, April 7, 2021, prior to 12:00 (noon) CT</b>        |
| <b>Bids Due:</b>                   | <b>Mon, April 12, 2021, prior to 2:00 pm CT</b>            |
| <b>Council Award:</b>              | <b>Tentative: May 04, 2021, City Council Meeting</b>       |

Note: All times are subject to change at the City's discretion.

**BID FORM/PRICING:**

Bidders are requested to submit bids utilizing **Exhibit "B" Bid Form and Vendor Acknowledgment.**

**BONDS:**

- Bid Bond (5%)
- Performance and Payment Bonds (100%) - In accordance with Government Code 2253 and Local Government Code 252, successful bidder shall submit Owner's Performance bond in the amount of one hundred percent (100%) of each Asphalt Work Order of \$100,000.00 or greater and power of attorney; and a Material and Labor Payment Bond and power of attorney in the amount of one hundred percent (100%) of each Asphalt Work Order of \$50,000 or greater. Bonds must be from an

approved surety company holding a permit from the State of Texas to act as surety, or other sureties acceptable to the OWNER, on the forms provided in the specifications.

**CLIENT WORK HISTORY:**

Contractor to provide a five (5) year work history (**Client Work History Form - Exhibit D**), including client's names, addresses, telephone numbers, points of contact, and length of continuous service. The City reserves the right to request additional reasonable information from which the vendor's condition of responsibility can be determined as designated by State law. A Client Information Work History Worksheet is attached, and bids received without this worksheet may be deemed as non-responsive.

**INDEPENDENT CONTRACTOR:**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**INSURANCE:**

Within ten (10) working days of being notified of potential award of this contract by the City of Forney, vendors will be required to furnish a valid insurance certificate to the City that meet all of the requirements as stated in the **City of Forney Insurance Requirements Exhibit "A"**. If this time requirement is not met, the City has the right to declare a vendor non-responsive.

**NOTE:** Vendor to provide services by company employees only; subcontractors are not acceptable.

**RESERVATION OF RIGHTS:**

The City of Forney reserves the right to reject any or all bids and to waive informalities. In case of ambiguity or lack of clearness in stating prices in the bids, the City of Forney reserves the right to request clarification thereof, to reject the bid, or allow the bidder to withdraw the bid when applicable. Unreasonable (or "unbalanced") unit prices may deem the bidder's offer as non-responsible and may authorize the City of Forney to reject any bid.

**INTENT TO AWARD**

The City shall give notice of intent to award within sixty (60) calendar days following the opening of bids. Contractors must qualify within ten (10) working days after receipt of written request, by submitting such additional evidence as may be required by the City including evidence of insurance that meets the City requirements as stated in the bid specifications.

Should the Contractor fail to produce evidence satisfactory to the City on any of the foregoing points, the bidder may be deemed non-responsive and the work awarded to the next responsible bidder so qualifying. The Contractor agrees to commence work within then (10) days after the date of written notice to do so.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where

directed by the City. Upon written notification of award of the contract, the unit prices shall be valid through the period ending January \_\_\_, 2021. The contract will serve as an "annual" contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

#### **CHANGE ORDERS/CONTRACT MODIFICATIONS**

No oral statement of any person shall modify or otherwise change, or affect the term, conditions, or specifications stated in the resulting contract. All change orders and/or modifications to the contract will be made in writing by the Purchasing Agent.

#### **OTHER DEADLINES**

- **Corporate Resolution:** Upon request by the City, bidder shall submit, within seven (7) business days after notice of award of contract, a corporate resolution, certificate of partnership agreement or joint venture agreement which identifies the person(s) authorized to execute a contract on behalf of the corporation, partnership, or joint venture.
- **Insurance:** Upon request by the City, bidder shall furnish certificates of insurance and endorsement pages that meet the City requirements within ten (10) business days. Failure of the bidder to produce the required documents may deem the bidder as non-responsive.
- **Miscellaneous Documents:** Upon request by the OWNER, bidder must submit, within five (5) business days such documentation as the City requests to evaluate the qualifications of the bidder to perform the work. Failure of the bidder to produce documentation of qualifications in a timely manner may deem the bidder as non-responsive.

#### **DISCLOSURE OF CERTAIN RELATIONSHIPS**

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE REQUIRES THAT ANY VENDOR OR PERSON CONSIDERING DOING BUSINESS WITH A LOCAL GOVERNMENT ENTITY DISCLOSE IN THE QUESTIONNAIRE FORM CIQ, THE VENDOR OR PERSON'S AFFILIATION OR BUSINESS RELATIONSHIP THAT MIGHT CAUSE A CONFLICT OF INTEREST WITH A LOCAL GOVERNMENT ENTITY. BY LAW, THIS QUESTIONNAIRE MUST BE FILED WITH THE RECORDS ADMINISTRATOR OF THE CITY OF FORNEY NO LATER THAN THE 7TH BUSINESS DAY AFTER THE DATE THE PERSON BECOMES AWARE OF FACTS THAT REQUIRE THE STATEMENT TO BE FILED. SEE SECTION 176.006, LOCAL GOVERNMENT CODE. A PERSON COMMITS AN OFFENSE IF THE PERSON VIOLATES SECTION 176.006, LOCAL GOVERNMENT CODE. AN OFFENSE UNDER THIS SECTION IS A CLASS C MISDEMEANOR. BY SUBMITTING A RESPONSE TO THIS REQUEST, THE VENDOR REPRESENTS THAT IT IS IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE.

FORM IS ATTACHED TO THE BID SPECIFICATIONS; **EXHIBIT "I"**

#### **PREVAILING WAGE RATES:**

The following information from Chapter 2258 Texas Government Code Title 10 requires state agencies, cities, counties, independent school districts, and all other political subdivisions that engage in construction projects (highways, road, excavation, repair work or other project development or improvement) using public funds to include prevailing wage rate in the project bid documents and the construction contract.



By submitting an offer, bidders certify that they are in compliance with all application federal, state, and local laws.

**2258.021. Duty of Governmental Entity to Pay Prevailing Wage Rates**

- (a) The state or any political subdivision of the state shall pay a worker employed by it or on behalf of it:
  - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
  - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

**DEBARMENT:**

Bidder certifies that at the time of submission of its bid, Bidder was not on the federal government's list of suspended, ineligible, or debarred contractors and that Bidder has not been placed on this list between the time of its bid submission and the time of execution of the Contract. If Bidder is placed on this list during the term of the Contract, Bidder shall notify the City of Forney Purchasing Agent. False certification or failure to notify may result in termination of the Contract for default.

**CONFIDENTIAL OR PROPRIETARY INFORMATION:**

If a bidder believes that parts of an offer are confidential, then the bidder must so specify. The bidder must stamp in bold letters the term CONFIDENTIAL on that part of the offer which the bidder believes to be confidential. The bidder must submit in writing specific detailed reasons, including any relevant legal authority, stating why the bidder believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Forney will be the sole judge as to whether a claim is general and/or vague in nature. All offers and parts of offers, which are not marked as confidential, will be automatically considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

**CONTRACT ADMINISTRATION:**

The City of Forney Engineering and Public Works Department together with the Finance Department shall be responsible for administration of the contract for compliance with the interpretation of scope, schedule, billings, requirements, and budget.

**INSTRUCTIONS FOR BIDDING**

**CITY OF FORNEY GENERAL TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE CITY.**

1. **BID NOTIFICATION:** City of Forney utilizes the following procedures for notification of bid opportunities: the Forney Messenger: [www.Forneymessengers.com](http://www.Forneymessengers.com). City of Forney shall not be responsible for receipt of notification and information from any source other than that listed. It shall

be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

2. **REQUIRED INFORMATION:** City of Forney (City) bid/proposal packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the bidder may be found non-responsive. Vendors may be required to complete and supply all information contained in the "supplemental information" portion of the packet at a date after bid opening. Failure to complete "supplemental information" requirements in a timely manner, prior to council award, may be used by the City in determining a vendor's responsibility.
3. **MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** a prospective bidder must affirmatively demonstrate their responsibility. The City of Forney may request representation and other information sufficient to determine bidder's ability to meet these minimum standards including but not limited to:
  - A. Have adequate financial resources, or the ability to obtain such resources as required;
  - B. Be able to comply with the required or proposed delivery schedule;
  - C. Have satisfactory record of performance;
  - D. Have a satisfactory record of integrity and ethics;
  - E. Otherwise qualified and eligible to receive an award.
4. **CORRESPONDENCE:** the number of this bid packet must appear on all correspondence, or inquiries, pertaining to this quotation.
5. **PREPARATION COST:** The City will not be liable for any costs associated with the preparation, transmittal, or presentation of any bids or materials submitted in response to any bid, quotation, or proposal.
6. **NOTICE OF PUBLIC DOCUMENTS:** any and all materials initially or subsequently submitted as part of the bid process shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.
7. **ADDENDA:** any interpretations, corrections, or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Forney purchasing division. Addenda will be made available to all who are known to have received a copy of this bid packet, if the addenda contain changes to the "specification" or "bid form", bidders shall acknowledge receipt of all addenda or they may be declared non-responsive.
8. **NON-RESIDENT BIDDERS:** Texas government code, chapter 2252: non-resident bidders. Texas law prohibits City and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid in the non-resident bidder's state.
9. **INSURANCE:** The City requires vendor(s) to carry the minimum insurance as required by state laws, and insurance requirements as outlined in the bid/proposal documents. Vendors must submit endorsement pages as well as insurance certificates.

10. **NO PROHIBITED INTEREST:** Bidder acknowledges and represents that they are aware of the laws, City Charter regarding conflicts of interest. The City Charter states that “no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service....”.
11. **SILENCE OF SPECIFICATION:** the apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
12. **SAMPLES:** any catalog, brand names, or manufacturer’s reference in this bid packet is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Please quote as listed or give equal. If item offered is other than as indicated, bidder must state make, model, and part number of product quoted. Equality will be determined by the City, per the specifications. Samples, if required, shall be furnished free of expense to the City. **Samples should not be enclosed with bid unless requested.**
13. **PRICING:** bid price(s) quoted, must be held firm for ninety (90) days to allow for evaluation unless otherwise stated in this document.
14. **ERROR-QUANTITY:** bid price must be submitted on units of quantity specified, extended, and total shown, in the event of discrepancies in extensions, the unit price shall govern.
15. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By submittal of this bid, in addition to the guarantees and warranties provided by law, vendor expressly guarantees and warrants as follows:
  - A. That the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the vendor will bear the cost of inspecting and/or testing articles rejected.
  - B. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the vendor will, at vendor’s own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities, and suits arising there from.
  - C. That the articles to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
  - D. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
16. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
17. **SHIPMENT/TITLE/RISK OF LOSS:** quotations shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The title and risk of loss of goods shall not pass to the City until the City actually receives and takes possession of the goods at the point(s) of delivery. The City of Forney assumes no liability for goods delivered in damaged or unacceptable condition. The

successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

18. **DELIVERY PROMISE – PENALTIES:** quotations must show the number of calendar days required to place the materials in the possession of the City (do not quote shipping dates) and deliveries will be acceptable only during normal working hours at the designated location. When delivery delay can be foreseen, the bidder shall give prior notice to the purchasing division, who shall have the right to extend the delivery date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting bidder.
19. **PRESENTATION OF BIDS:** complete bid packets must be presented to the Finance Department in a sealed envelope unless otherwise indicated.
20. **ALTERING BIDS:** bid prices cannot be altered or amended after submission deadline. Any inter-lineation alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.
21. **LATE BIDS:** bid packets received in the purchasing department after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Forney is not responsible for the lateness of mail carrier, weather conditions, etc.
22. **WITHDRAWAL OF BIDS:** Bids filed with the City may be withdrawn, modified and/or resubmitted prior to the time set in the bid specifications. Bidder agrees that once opened, a bid price may not be withdrawn or canceled by the bidder for a period of ninety (90) days following the date designated for the receipt of bids without written approval of the City.
23. **BID OPENINGS:** all bids submitted will be read at the City's regularly scheduled bid opening for the designated project. However, the reading of a bid at bid opening should not be construed as a comment on the responsiveness of such bid or as any indication that the City accepts such bid as responsive. The City will make a determination as to the responsiveness of bids submitted based upon compliance with all applicable laws, City of Forney purchasing guidelines, and project documents, including but not limited to the bid/proposal specifications and required submittal documents. The City will notify the successful bidder upon award of the contract and, according to state law all bids received will be available for inspection at that time.
24. **BID SUMMARY SHEET:** bid summary results will be made available forty-eight (48) hours after bid opening. Bidders desiring a copy of the bid summary sheet may request the results forty-eight hours (48) hours after the bid opening through the CivCast website or by emailing [kgroves@forneytx.gov](mailto:kgroves@forneytx.gov)
25. **MINOR DEFECT:** the City reserves the right to waive any minor defect, irregularity, or informality in any bid. The City may also reject any or all bids without cause prior to award.
26. **EVALUATION:** bids/proposals will be evaluated as outlined in the bid/proposal document. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities

not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

27. **SPLIT AWARD:** the City reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid. The City reserves the right to take into consideration contract administration costs for multiple award contracts when determining low bid.
28. **PROTESTS:** all protests regarding the bid solicitation process must be submitted in writing to the Finance Department 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 any protests relating to alleged improprieties or ambiguities in the specifications. The limitation does not include protests relating to staff recommendations as to award of this bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary prior to council award. All staff recommendations will be made available for public review ninety-six (96) hours prior to consideration by the City Council by emailing: [kgroves@forneytx.gov](mailto:kgroves@forneytx.gov).

### **SECTION III: GENERAL TERMS AND CONDITIONS**

#### **BONGING, PURCHASE ORDER AND PAYMENTS:**

1. **BID SECURITY/BOND REQUIREMENTS:** If required, bid security shall be submitted with bids. Any bid submitted without bid bond, or cashiers/certified check, shall be considered non-responsible and will not be considered for award. Performance and/or payments bonds, when required, shall be submitted (along with power of attorney), to the City prior to commencement of any work pursuant to the agreement provisions.

A BOND REQUIRED BY THIS SECTION MUST BE EXECUTED BY A CORPORATE SURETY IN ACCORDANCE WITH SECTION 1, CHAPTER 87, ACTS OF THE 56TH LEGISLATURE, REGULAR SESSION, 1959 (ARTICLE 7.19-1, VERNON'S TEXAS INSURANCE CODE).

A BOND REQUIRED UNDER THIS SECTION MUST CLEARLY AND PROMINENTLY DISPLAY ON THE BOND OR ON AN ATTACHMENT TO THE BOND:

THE NAME, MAILING ADDRESS, PHYSICAL ADDRESS, AND TELEPHONE NUMBER, INCLUDING THE AREA CODE, OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT.

2. **FUNDING:** The Contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Forney, which fiscal year ends on September 30th of each year, shall be subject to Forney City Council approval. In the event that the Forney City Council does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

3. **ADDITIONAL TERMS:** Notwithstanding acceptance by the City of the goods or services resulting from an award, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by City.
4. **PURCHASE ORDERS:** a purchase order(s) shall be generated by the City to the successful vendor. The purchase order number must appear on all itemized invoices and packing slips. The City will not be held responsible for any work orders placed and/or performed without a valid current purchase order number.
5. **PAYMENT FOR LABOR AND MATERIALS; NO LIENS**

Progress Payments - At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to City of Forney Project Manager for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation (Approved Work Order) as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

A five percent (5%) retainage with respect to progress payments will be withheld until final completion and the project has been accepted by City Council.

Work Order Time – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided and approved in the executed Work Order Form.

**Liquidated Damages:** For each day Contractor fails to achieve Substantial Completion of the Project Work Order within the completion times approved by the City and Contractor (legal holidays excluded), Contractor shall pay the sum of Two Hundred Fifty Dollars (\$250.00) in Liquidated Damages for each and every calendar day that the City is unable to utilize the Project Work Order for its intended use. Any sums due and payable hereunder by Contractor shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Agreement.

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm, or corporation having furnished labor, material, or both in the performance of this contract. It shall be the responsibility of each person, firm, or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however, that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of the 5% retainage that will be withheld.

Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer, and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

**6. SCOPE AND PERIOD OF GUARANTEE**

The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.

The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.

The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.

If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

7. **PRICE ESCALATION:** price escalations may be permitted by the City of Forney during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the Contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply

only to the products(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The City of Forney reserves the right to accept or reject any/all price escalations.

8. **PRICE REDUCTION:** if during the life of the contract, the Contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the City of Forney's contracted prices, an equitable adjustment shall be made in the contract price.
9. **INVOICING:** Invoices shall be submitted to the City of Forney, Attention: Engineering Department, PO Box 826, Forney, TX 75126 or electronically to [kgoves@forneytx.gov](mailto:kgoves@forneytx.gov)
10. **PAYMENT TERMS:** Are net 30 in accordance with the Texas Prompt Payment Act (Texas Government Code, Chapter 2251), unless otherwise specified by the City in the bid/proposal packet.
11. **TAXES:** The City of Forney is exempt from federal manufacturer's excise and state sales and use tax under Section 151 of the Texas Tax Code. Tax must not be included in bid. Tax exemption certificates will be executed by the City and furnished upon request, and the Contractor shall comply with all provisions of Section 151.309.
12. **DELINQUENT TAXES:** section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Forney. Therefore, payment to a Contractor for goods or services provided to the City under contract or Purchase Order may be withheld in the event the Contractor owes delinquent taxes to the City.

#### **CONTRACT:**

13. **INTERLOCAL AGREEMENT:** successful bidder agrees to extend prices and terms to all entities who have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Forney.
14. **PATENT RIGHTS:** The Contractor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
15. **ASSIGNMENT:** The Contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
16. **AUDIT:** The City of Forney reserves the right to audit the records and performance of Contractor during the contract and for three years thereafter or as specified.
17. **CHANGE ORDERS:** no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the City of Forney.
18. **INDEMNIFICATION:** Vendor/Contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the Contractor, its officers,



agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the Contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate contractors. City does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Vendor/Contractor, at its own expense, is expressly required to defend City against all such claims. City reserves the right to provide a portion or its own entire defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If Contractor fails to retain counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City.

In addition to Contractor's intellectual property infringement indemnification and defense requirements herein, if an infringement claim occurs, or in Contractor's opinion is likely to occur, Contractor shall, at its expense: (a) procure for city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by Contractor to City whether manufactured by Contractor or a third party. Contractor represents that, to the best of its knowledge, City's use of products that are provided supplied, or sold by Contractor to City as part of this agreement does not constitute an infringement of any intellectual property rights and City has the legal right to use said products. City enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the Contractor.

19. **TERMINATION FOR DEFAULT:** the City of Forney reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract immediately in the event the Contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
20. **REMEDIES:** The Contractor and the City of Forney agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
21. **VENUE:** this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Kaufman County, Texas. Exclusive venue shall be in Kaufman County, Texas.

22. **EMPLOYMENT ELIGIBILITY VERIFICATION:** the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The Contractor warrants that Contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the City. Contractor warrants that Contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

23. **DISCLOSURE OF CERTAIN RELATIONSHIPS:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Forney not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. By submitting a response to this request, Contractor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code

#### **SECTION IV: SCOPE OF WORK/SPECIFICATIONS**

##### **1. PROJECT**

The following specifications are intended to describe the minimum requirements for Asphalt repair. The bid shall be based on a fixed price per the specification as required, and shall also be provided for the removal of existing Asphalt.

The City estimates the average annual expenditures for Asphalt Rehabilitation Work to be approximately **\$500,000**. This estimate does not constitute an order, but only implies the City's probable expenditures for the contract period. Work performed under the contract will be ordered and scheduled on an as needed basis through the use of "Asphalt Work Orders" (**Sample Form "1"**), and is subject to annual budgetary appropriations.

The Contractor shall furnish all labor, materials and equipment necessary to complete Asphalt projects in accordance with the City's specifications and scheduling for each project.

**The rates quoted on the Bid Form (bid pricing sheets) within CivCast must be all-inclusive.** "All-inclusive" shall be construed as costs incorporating all charges for labor, material, equipment and any other cost incurred. No separate line item rates or charges will be accepted.

Unless otherwise stated herein, all materials, equipment, and construction methods covered under this contract shall conform to the Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments, Texas Department of Transportation (TXDOT, as applies) and the City of Forney Design Standards.

COMPLIANCE WITH LAWS The contractor shall fully comply with all local, State and Federal laws, including all codes, ordinance and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

**CONTRACTOR MUST OBTAIN COPIES OF THE LATEST CITY OF FORNEY STANDARD DETAILS [www.forneytx.gov](http://www.forneytx.gov) AND NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENT STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION WITH FORNEY AMENDMENTS. CONTRACTOR SHALL HAVE ONE COPY ON THE PROJECT AT ALL TIMES.**

Bid prices shall remain firm for a period of one year. Contractor shall provide written notification to the City of any proposed price increase. Contract renewals are not dependent upon approval of price increases.

Unit prices as stated on the "Bid Form" (Exhibit "B") will be the basis for the payment to the Contractor for completion of work.

## **2. GENERAL INFORMATION**

For this contract, the basis for determining quantities and project schedule will be for the entire work directed by the City for an individual project in a specific geographic area. The work for each individual project may include one or more intermittent repair areas throughout the project length.

The Contractor will be responsible for all signing and barricading and will comply with those portions of the "Texas Manual on Uniform Traffic Control Devices for Streets and Highways" which pertain to construction.

The Contractor shall provide means for adequately controlling and avoiding soil erosion during construction (no separate pay item).

The Contractor shall coordinate with the property owners to determine the existence and extent of any existing sprinkler systems. If the Contractor encounters any sprinkler systems during construction, he shall repair and/or replace it in as good or better condition than before (no separate pay item).

Contractor shall provide door hangers to all affected property owners two (2) days prior to construction as directed by the City. Additional door hangers could be requested by City (no separate pay item). The door hangers as a minimum shall have the following information:

- Contractor's name and phone number
- Construction start date and estimated completion date
- Notify the residents not to park in the construction area

The Contractor is responsible for notifying and working with all utility companies as needed.

The Contractor shall take precautions and use care to avoid damaging, disturbing or disrupting existing private facilities on private or public property, i.e. fences, sprinkler facilities, shrubs, landscaping, etc. The Contractor shall restore, to the City's satisfaction, any damaged property at the Contractor's expense.

LABOR AND MATERIALS - Unless otherwise provided, the contractor shall provide and pay for all labor, equipment, tools, construction equipment and machinery, traffic control devices, tack, water, utilities, transportation, portland cement and other facilities and services, necessary for the proper execution and completion of the work.

Completion of a particular project is defined to include the satisfactory performance of all minor and non-pay work items such as form removal, backfill, final grading, clean-up, restoration/replacement of all damaged private and public property, etc.

### **3. WORK ORDER BOND REQUIREMENTS**

For the duration of this contract Payment Bonds and Performance Bonds may be required (**Bond Exhibits F - I**), to be determined by the dollar value of each Asphalt Work Order (**Sample Form "1"**). Lien releases will be required and given to the City at the end of each work order. No payment by the City will be made to the Contractor for completed work until the Contractor delivers a lien release for any costs, actual or incidental, incurred during the completion of each work order.

### **4. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS**

All bidders must affirmatively demonstrate responsibility, and must meet the following requirements:

- have adequate financial resources, or the ability to obtain such resources as required;
- be able to comply with the required or proposed delivery schedule;
- have a satisfactory record of performance and safety;
- have a satisfactory record of integrity and ethics;
- be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

### **5. OFFERS**

Bidders shall fill out the bid form completely, stating all prices in figures. The prices in the offer shall be full compensation. The costs of all material, labor, equipment, and incidental work required to complete the project ready for use must be included in the unit prices for the bid items provided on **Sample Form "1"**, and no direct compensation will be made for any other work. Material on hand will not be paid until all work is completed.

### **6. TESTING**

All tests required will be paid for by the City. All re-testing will be paid for by the Contractor. The Contractor shall use care in removing existing pavement so as not to damage the subgrade. If the City indicates that additional compaction tests or methods are required for specific areas, costs associated with such will be paid for by the City, provided the tests are not required due to Contractor negligence. Generally, no heavy-duty trucks or construction machinery will be allowed on a recently poured sections until cured to the required strength per City standards.

### **7. GRADES**

Contractor is responsible for all surveying and staking for projects covered by this agreement as needed. Contractor is responsible for insuring that gutter grades allow for proper drainage.

### **11. EXCAVATION AND BORROW**

There will be no extra pay item for typical grading operations required to reconstruct or match existing pavement grades, profiles, or cross-sections. There will be no extra pay item for typical backfilling procedures.

### **12. WORK ORDERS**

City shall issue Asphalt Work Orders for each project (Sample Form 1). Each work order shall be uniquely numbered, and shall contain a description of the location and required work. Contractors awarded an agreement shall review the work order, complete the project cost (based on the contracted pricing) and provide an estimated start and completion date. The City **must review and approve in writing** each work order before work is to commence. Note: That Performance and Payment Bonds will be required as stipulated in Section I/Paragraph "Bonds".

### **13. CONSTRUCTION SCHEDULE**

Contractor must give notice of any water service interruptions to residents at least **48** hours in advance.

### **14. PROTECTION OF PUBLIC AND PRIVATE PROPERTY**

The Contractor shall exercise reasonable care to protect all existing features and utilities in the public right-of-way (ROW). This includes but not limited to landscaping, fencing, sprinkler systems, drain lines, and invisible dog fences. Any item damaged due to negligence shall be repaired or replaced in kind by the Contractor as directed by the Engineer no additional compensation will be allowed.

During performance and up until the date of final acceptance, the contractor shall be under the absolute obligation to protect the finished work against any damage. In the event such damage, the contractor shall promptly replace or repair such work, whichever the City shall determine to be preferable. All risk of loss or damage to the work shall be borne solely by the contractor until final completion and acceptance of all work by the City of Forney.

### **15. EASEMENTS**

- a) Contractor must conduct all work within the street right-of-way, within designated areas on City-owned property, or within easements obtained for this project. All disturbed areas shall be reshaped, smoothed, top soiled, seeded, and/or sodded. All removal items shall be completely removed and disposed of. All remaining items shall be saved from damage.
- b) Any damage that occurs to private property will be the responsibility of the Contractor. In the event the Contractor gets off the permanent or temporary easements, then all costs to restore the property shall be at the Contractor's expense and final acceptance of the project may be withheld unless the claim is being addressed.
- c) All areas of new sidewalk construction will be subject to the availability of right-of-way in that given area.
- d) Any obstructions or structures in place in City right-of-way that are in conflict with the placement of the sidewalks are to be removed as carefully and prudently as possible and placed within the private property line. All costs of removal are incidental to the project.
- e) In the event that a citizen makes a claim against the Contractor or subcontractor, the Contractor shall do the following:
  - i. Investigate the claim within a reasonable period of time when notified by a citizen or the City of Forney.
  - ii. Within 5 days after completing the investigation, the Contractor shall notify in writing the person making the claim that the Contractor is approving or denying the claim or a part thereof. The City shall receive a copy of the written notification.
  - iii. Assure that claims shall not be denied for frivolous reasons.
  - iv. In the event, the City of Forney determines after notification by a citizen that the Contractor has failed to comply with the above provisions and after notifying the Contractor and determining that the Contractor has failed to comply with the above provisions, the City of Forney may, in its direction, withhold payment to the Contractor until the provisions set forth above are complied with.

### **16. CONTROL OF CONTRACTOR**

- a) The Contractor shall be fully responsible for maintaining alignment and grade.
- b) The Contractor shall set and maintain all intermediate points, offset points, lines, grades, elevations, and offset elevations not set by the Engineer. The accuracy of the Contractor's surveys and staking shall be his responsibility.

- c) A reasonable amount of time shall be allowed by the Contractor after he calls for inspections of the form boards by the City prior to placement of the Asphalt. The Contractor shall not claim additional compensation for any delay due to the City exercising this right, for any corrective work which may be required as the result of the Contractor's errors or any removal and replacement of items not inspected or approved.
- d) Removal of existing sidewalks, curbs, 4" stone base beneath Asphalt, all finishing, backfill, and seeding, forming of ramped areas, and other related activities shall be incidental to the cost of the contract.
- e) No imperfections in the completed sidewalk will be accepted. It will be the Contractor's responsibility to prevent vandalism or destruction on the surface of wet Asphalt.
- f) Before work is to commence, the Contractor is to video all existing conditions with the date and timestamp and provide a copy to the City.

#### **17. INSPECTION**

The Contractor shall conduct his work in full cooperation with the City. The City must be notified for inspection prior to the placement of any materials; patch, curb, panel replacement, street work, sidewalk or restoration. Any materials placed before an inspection by the City shall be deemed unacceptable and no compensation will be allowed.

#### **18. INCIDENTAL ITEMS**

Unless otherwise indicated, there will be no separate pay items for the following miscellaneous construction items. Costs for these items shall be considered incidental to other contract bid items.

- Removing asphalt patches, or capping
- Adjusting water valve stacks in the paving and parkway area (Asphalt pad is paid under sidewalk)
- Adjusting Manholes and Cleanouts in the paving area
- Final cleanup
- Erosion control
- Irrigation damage or irrigation adjustments

#### **20. DELIVERY CHARGES**

All delivery charges (FOB work sites) shall be included in the bid price.

#### **21. BARRICADING AND TRAFFIC CONTROL**

Streets will remain open to thru traffic and emergency vehicles during the duration of each project **(They can be closed to thru traffic in certain situations with pre-approval)**. Barricading and construction signage shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD) requirements and shall be considered incidental in cost.

#### **22. SAW-CUTTING**

All existing Asphalt shall be sawed to limits of removal to insure uniformity. Any waste or slurry created from cutting the Asphalt shall be vacuumed and properly disposed of. Costs for saw cutting shall be addressed on the Bid Form **(Exhibit "B")**.

#### **23. LOCATING UTILITIES**

Contractor shall be required to locate and protect all utilities, including sprinkler systems and other private underground installations. The Contractor shall protect all utilities during construction. Sprinkler system and other private underground installation relocation and repair shall be done at Contractor's expense if damaged.

#### **24. FINAL CLEAN UP**

Contractor will be responsible for the removal and proper disposal of waste created during the project duration, and will restore all disturbed areas to original condition or better. Areas disturbed by construction are to be sodded with the same type of grass that existed before construction began. The Contractor is encouraged to minimize the grassed area that is disturbed because all grass restoration shall be included. All damage to grassed areas shall be held to a minimum that only the edges need restoration. All disturbed areas caused by work will need to be reestablished back to existing conditions prior to construction.

Cleanup shall follow immediately after and at the same rate as construction. Cleanup shall not be delayed until the entire project is finished. All work shall be limited to one side of a street at a time. All work, including cleanup and backfilling, shall be completed before moving to another area, with the exceptions of seeding and mulching and any asphalt repairs. The Contractor will have dry black dirt available at all times for backfill. No delays in backfilling will be allowed due to weather. Final clean up shall be complete prior to payment from the City for each work order.

## **25. WARRANTY**

Successful bidder shall warrant that all work shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title, for a minimum of 2 years.

SECTION V: EXHIBITS

**EXAMPLE** FORM "1": ASPHALT WORK ORDER



**ASPHALT WORK ORDER -Example**  
**Forney Agreement RFP 2021-004**

Asphalt Work Order # \_\_\_\_\_ Date: \_\_\_\_\_

Contractor: \_\_\_\_\_ Phone: \_\_\_\_\_

Forney Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Location of Work: \_\_\_\_\_

Description of Work:  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contractor's Response:**

| Item | Description                                       | Unit | Quantity | Unit Price | Total Price |
|------|---------------------------------------------------|------|----------|------------|-------------|
| 1    | Saw-Cut and Remove Existing Asphalt               | SY   |          |            |             |
| 2    | 6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum) | SY   |          |            |             |
| 3    | 4" Type D HMAC (48 Ton Minimum)                   | SY   |          |            |             |
| 4    | 2" Type D HMAC (48 Ton Minimum)                   | SY   |          |            |             |
| 5    | 6" Flexbase                                       | SY   |          |            |             |
| 6    | Crack Sealing                                     | LF   |          |            |             |
| 7    | Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)  | SY   |          |            |             |
| 8    | Milling Work (2")                                 | SY   |          |            |             |



|    |                                                          |         |  |  |  |
|----|----------------------------------------------------------|---------|--|--|--|
| 9  | Wedge Mill (1-2")                                        | SY      |  |  |  |
| 10 | Wedge Mill (2-4")                                        | SY      |  |  |  |
| 11 | Wedge Mill (4-6")                                        | SY      |  |  |  |
| 12 | Petromat 4598 Paving Fabric                              | SY      |  |  |  |
| 13 | Striping (Traffic Paint) 4" White Lines on Edges of Road | LF      |  |  |  |
| 14 | Striping (Traffic Paint) 4" Yellow Dashed Center Line    | LF      |  |  |  |
| 15 | Striping (Traffic Paint) 4" Yellow Solid Center Line     | LF      |  |  |  |
| 16 | 12" White Crosswalk Lines (Traffic Paint)                | LF      |  |  |  |
| 17 | Install 24" Stop Bar (Traffic Paint)                     | LF      |  |  |  |
| 18 | Removal of Existing Markings                             | LF      |  |  |  |
| 19 | Type B Material Delivered (6 Ton Minimum)                | PER TON |  |  |  |
| 20 | Type D Material Delivered (6 Ton Minimum)                | PER TON |  |  |  |
| 21 | Asphalt Rejuvenation                                     | SY      |  |  |  |

\*All items include traffic control, testing, and mobilization.

Total Price: \_\_\_\_\_

Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Special Requirements: \_\_\_\_\_

Performance Bond No.: \_\_\_\_\_ Payment Bond No.: \_\_\_\_\_

Before Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

After Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Approved by City of Forney

Approved by Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**\*By accepting this work order the contractor acknowledges that it has examined and carefully studied the specifications and details and clearly understands the work to be performed as identified above.**

## **EXHIBIT "A":**

### **MINIMUM INSURANCE & BONDING REQUIREMENTS**

By submitting a quote or bid the Contractor is acknowledging the insurance requirements, and is asserting that if awarded a written contract or purchase order, the vendor will comply with all insurance requirements as specified herein within 10 days of request by the City. Should the Contractor fail to submit the required insurance certificate within 10 days of request, vendor understands that they shall be deemed non-responsive and forfeit any applicable bid bond. Contractor also acknowledges that in award of a contract, the bid specification and subsequent purchase order constitutes a written contract and all insurance requirements are in effect.

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid. A certificate of insurance and endorsement pages meeting all requirements and provisions outlined herein shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. The City, at its own discretion, may require a certified copy of the policy.

The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, Owner shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, durations, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract

**All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Forney.**

### **MINIMUM INSURANCE AND BONDING REQUIREMENTS**

#### **A. Purpose**

The Owner seeks comprehensive insurance and bonding protection with limits adequate to respond to exposure confronting the Owner, the Engineer, and any other public entity (herein "Public Entity") in which the work is undertaken.

#### **B. Conditions Applicable to All Policies:**

1. **Qualifications of Insurers:** Insurers shall be duly licensed or approved non-admitted carriers and comply with all applicable state insurance laws and requirements of duly constituted insurance regulatory authorities.
2. **Insurance Company Rating:** Insurers shall maintain an A.M. Best Insurance Guide rating of at least B+VI, or better. Surplus lines carriers shall maintain an A.M. Best Insurance Guide rating of at least A+VI.

3. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact: Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by the TDI to the company affording coverage may be a signatory on the Certificate of Insurance and Bond Power of Attorney or Attorney-In-Fact (verification with TDI will be required). In the case of surplus lines carriers or non-admitted carriers only agents licensed as surplus lines agents may sign a Certificate of Insurance on behalf of the surplus lines carrier or non-admitted carrier affording coverage (verification with TDI will be required).
  4. Cancellation Notice: The Owner shall be given at least 30 days' notice by certified mail before the cancellation, or any material change in coverage.
  5. Additional Insured: With the exception of Workers' Compensation policies, the Owner, or Public Entity, and Engineer shall be named as additional insureds.
  6. Waiver of Subrogation: All policies must include a Waiver of Subrogation in favor of the Owner.
  7. Certificate Holder: The Owner shall be listed as a certificate holder.
  8. Deductibles: Deductibles may not exceed \$1,000, unless approved by the Owner.
  9. Occurrence Policy: Insurers must furnish "occurrence" policies.
  10. These requirements are in addition to the requirements adopted by the Texas section of the American Society of Civil Engineers.
  11. The Owner reserves the right to modify these requirements in the event it deems said modifications(s) to be appropriate.
- C. Comprehensive General Liability (CGL) (including independent contractor's liability, completed operations and contract liability)
1. Minimum Policy Limits (minimum combined single limits (CSL) for bodily injury and property damage)
    - a. \$1,000,000 per occurrence
    - b. \$2,000,000 general aggregate
    - c. \$2,000,000 aggregate for products and completed operations coverage
  2. Owner's and Contractor's Protective Liability Coverage (OC&P): Minimum policy limits of \$1,000,000
  3. XCU: XCU exclusions must be removed from the policy.
  4. Contractual Liability Insurance: If surplus lines policy, any non-standard exclusions must be attached to Certificate of Insurance.
  5. Policy Exclusions: Certificate of Insurance must identify all policy exclusions (*i.e.*, pollution, punitive damages, subcontractors).
- D. Comprehensive Auto and Truck Liability Insurance - Minimum CLS policy limits for bodily injury and property damage
1. \$500,000 per occurrence

2. \$1,000,000 aggregate for vehicles with gross weight of 26,000 lbs. or more.
3. Coverage shall be afforded for hired and non-owned autos.

E. Workers' Compensation

1. Authority to do Business in Texas: Insurance carrier must be authorized to conduct business in the State of Texas or must obtain a Texas endorsement.
2. Policy Limits: Maintain minimum statutory policy limits \$100,000/\$100,000/ \$500,000
3. Waiver of Subrogation: Policy must include a waiver of subrogation in favor of the Owner.
4. Certificate Holder: The Owner must be listed as a certificate holder.
5. Staff Leasing Agreement:  
In the event of a staff leasing agreement:
  - a. Staff leasing company must furnish a Certificate of Insurance.
  - b. Staff leasing company must be licensed.
  - c. Staff services agreement must meet the requirements of Section 91.032 of the Texas Labor Code.
  - d. The Contractor must represent in writing that only employees covered under the staff services agreement will work on the project.
  - e. Contractor and staff leasing company must furnish the Owner with 30 days advance written notice of either parties' intent to terminate the staff services agreement.

F. Performance, Payment and Maintenance Bonds:

1. A surety company shall be listed on Treasury Circular 570. In determining whether the surety on the bond holds a certificate of authority from the United States Secretary of the Treasury, a party may conclusively rely on the list of companies holding certificates of authority as acceptable sureties on federal bonds published in the Federal Register by the United States Department of the Treasury covering the date on which the bond was executed.
2. A bond that is made, given, tendered, or filed may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.
3. The bonds shall be effective for at least two years from the date final payment is made.
4. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact – Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by TDI to the company affording coverage may be a signatory on the Bond (verification with TDI will be required).
5. Bonding company shall maintain an A.M. Best rating of A+V or better.

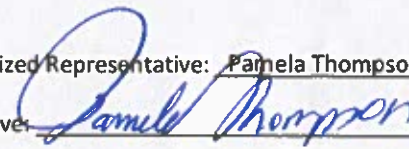
**VERIFICATION OF COVERAGE**

Contractor shall provide the City with certificates of insurance indication coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City of Forney reserves the right to require complete, certified copies of all required insurance policies at any time.

## 1. Exhibit B – Proposal Document Check List

**Submittal Checklist:** *(To determine validity of proposal each of the following must be included in the proposal submittal.)*

- ☒ Exhibit B – Checklist / Bid Form / Vendor Acknowledgement
- ☒ Acknowledge Addenda *(If applicable)*
- ☒ Exhibit C - Bidders Qualification Statement
- ☒ Exhibit D - Client Work/Reference History
- ☒ Exhibit E - Contractor's Safety Record
- ☒ Exhibit G - Bid Bond or Cashier's Check *(If submitting bid and are electing to provide a cashier's check in lieu of a bid bond, the cashier's check must be physically dropped off in a sealed envelope referencing the RFP No. before the due date of this bid at the address provided on the City of Forney Bid Cover Sheet.)*
- ☒ Exhibit J - Conflict of Interest (CIQ) Form
- ☒ Exhibit K - Suspension of Debarment Certificate
- ☒ Exhibit L - Minority and /or Woman Owned Business
- ☒ Form 1295 Certificate of Interested Party must be submitted with the Texas Ethics Commission
- ☒ Confidentiality/Non-Disclosure Agreement
- ☒ Cooperative Governmental Purchasing Notice

|                                                                                                                                                      |                                                       |             |                |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-------------|----------------|
| All proposals submitted to the City of Forney shall include this page with the submitted Proposal.                                                   |                                                       |             |                |
| RFQ Number:                                                                                                                                          | 2021-004                                              |             |                |
| Project Title:                                                                                                                                       | Annual Price Agreement Asphalt Maintenance and Repair |             |                |
| Submittal Deadline:                                                                                                                                  | April 12, 2021, 2:00 p.m. CST                         |             |                |
| Proposer(s)'s Legal Name:                                                                                                                            | Anderson Asphalt & Concrete Paving, LLC               |             |                |
| Address:                                                                                                                                             | 11343 Mathis Avenue                                   |             |                |
| City, State & Zip                                                                                                                                    | Dallas, Texas 75229                                   |             |                |
| Federal Employers Identification Number #                                                                                                            | 26-3494724                                            |             |                |
| Phone Number:                                                                                                                                        | (214) 352-3400                                        | Fax Number: | (214) 352-3402 |
| E-Mail Address:                                                                                                                                      | coryh@aacpaving.com                                   |             |                |
| <b>Proposer(s) Authorization</b>                                                                                                                     |                                                       |             |                |
| I, the undersigned, have the authority to execute this Proposal in its entirety as submitted and enter into a contract on behalf of the Proposer(s). |                                                       |             |                |
| Printed Name and Position of Authorized Representative: Pamela Thompson                                                                              |                                                       |             |                |
| Signature of Authorized Representative:                           |                                                       |             |                |
| Signed this 08 (day) of April (month), 2021 (year)                                                                                                   |                                                       |             |                |

**EXHIBIT "B":**

**BID FORM AND VENDOR ACKNOWLEDGEMENT**

**CITY OF FORNEY ANNUAL PRICE AGREEMENT CONTRACT for  
ASPHALT MAINTENANCE & MATERIALS**

**PAY ITEMS**

Any and all work specifically called for in the Contract Documents or which is required for the proper construction of items called for in the Contract Documents is to be performed by the Contractor unless specifically indicated otherwise. The cost of all work for which there is no separate pay item in the proposal shall be included in the price for a related pay item such that work called for or required by the Contract Documents will be constructed for the Contract Price.

The following descriptions are intended to clarify the nature of the work required for this project. The provisions of the standard technical specifications shall apply, except as otherwise specified herein: Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item. The contract shall be awarded based on the "TOTAL BASE BID FOR ALL ITEMS".

**Pay Item 1: Saw-Cut and Remove Existing Asphalt**

This item shall consist of the work, labor and materials necessary to saw cut and remove existing pavement of various thickness and for all types of pavement under the visible pavement. This pay item includes the proper disposal and haul off of the material. Measurement for payment shall be on a square yard basis.

**Pay Item 2: 6" HMAC (2" Type D on 4" Type B)**

This item shall consist of the work, labor and materials necessary to install (2" Type D HMA on 4" Type B HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 2" Type D and 4" Type B. Measurement for payment shall be on a per square yard basis.

**Pay Item 3 and 4: 4" and 2" Type D HMA**

This item shall consist of the work, labor and materials necessary to install 4" Type D HMA or 2" Type D HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 4" Type D and 2" Type D. Measurement for payment shall be on a per square yard basis. This work includes all testing, surface prep, seal coats, and tack coats.

**Pay Item 5: 6" Flexbase**

This item shall consist of all the work, labor, materials and equipment associated with providing and installing flexbase at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 301.5. Dust control is part of this item. Measurement shall be on a square yard basis.

**Pay Item 6: Crack Sealing**

This item shall consist of all the work, labor, materials and equipment associated with providing and installing crack sealing at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 302. Material specifications shall be provided at the request of the City prior to installing the crack sealing. Measurement shall be on a linear foot basis.

**Pay Item 7: Pulverize, Cement Treat/Stabilize**

Pulverize, Cement Treat/Stabilize: This item shall consist of all the work, labor and materials associated with pulverizing existing asphalt into the existing base (6") and treat with 22lb/SY of cement. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

**Pay Item 8: Milling Work**

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement (2") at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

**Pay Item 9 - 11: Wedge Mill**

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

**Pay Item 19 & 20: Material to be Delivered**

This item shall consist of all the labor, hauling of the materials per bid item to location directed by the City (location site is Public Works at 2011 E Buffalo Street, Forney, TX 75126). All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a tonnage basis.

\*All pay items not listed is describe in description in bid form.

**RAP is not allowed in the HMA** – Material specs must meet North Central Texas COG Public Works Construction Standards.

*Clarification  
accepted*

**City of Forney Bid Form RFP 2021-004**

| Item | Description                                              | Unit | Bid Price        |
|------|----------------------------------------------------------|------|------------------|
| 1    | Saw-Cut and Remove Existing Asphalt                      | SY   | \$ <b>67.75</b>  |
| 2    | 6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)        | SY   | \$ <b>282.00</b> |
| 3    | 4" Type D HMAC (48 Ton Minimum)                          | SY   | \$ <b>45.00</b>  |
| 4    | 2" Type D HMAC (48 Ton Minimum)                          | SY   | \$ <b>31.50</b>  |
| 5    | 6" Flexbase                                              | SY   | \$ <b>40.00</b>  |
| 6    | Crack Sealing                                            | LF   | \$ <b>3.50</b>   |
| 7    | Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)         | SY   | \$ <b>51.55</b>  |
| 8    | Milling Work (2")                                        | SY   | \$ <b>3.75</b>   |
| 9    | Wedge Mill (1-2")                                        | SY   | \$ <b>3.75</b>   |
| 10   | Wedge Mill (2-4")                                        | SY   | \$ <b>4.00</b>   |
| 11   | Wedge Mill (4-6")                                        | SY   | \$ <b>4.60</b>   |
| 12   | Petromat 4598 Paving Fabric                              | SY   | \$ <b>35.60</b>  |
| 13   | Striping (Traffic Paint) 4" White Lines on Edges of Road | LF   | \$ <b>6.00</b>   |
| 14   | Striping (Traffic Paint) 4" Yellow Dashed Center Line    | LF   | \$ <b>7.00</b>   |
| 15   | Striping (Traffic Paint) 4" Yellow Solid Center Line     | LF   | \$ <b>7.00</b>   |
| 16   | 12" White Crosswalk Lines (Traffic Paint)                | LF   | \$ <b>25.00</b>  |
| 17   | Install 24" Stop Bar (Traffic Paint)                     | LF   | \$ <b>25.00</b>  |
| 18   | Removal of Existing Markings                             | LF   | \$ <b>25.00</b>  |
| 19   | Type B Material Delivered (6 Ton Minimum)                | TON  | \$ <b>190.00</b> |
| 20   | Type D Material Delivered (6 Ton Minimum)                | TON  | \$ <b>230.00</b> |
| 21   | Asphalt Rejuvenation                                     | SY   | \$ <b>13.00</b>  |

\*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.



### **City of Forney Bid Form RFP 2021-004**

| <b>Item</b> | <b>Description</b>                                       | <b>Unit</b> | <b>Bid Price</b> |
|-------------|----------------------------------------------------------|-------------|------------------|
| 1           | Saw-Cut and Remove Existing Asphalt                      | SY          | \$67.75          |
| 2           | 6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)        | SY          | \$282.00         |
| 3           | 4" Type D HMAC (48 Ton Minimum)                          | SY          | \$5.00           |
| 4           | 2" Type D HMAC (48 Ton Minimum)                          | SY          | \$3.50           |
| 5           | 6" Flexbase                                              | SY          | \$40.00          |
| 6           | Crack Sealing                                            | LF          | \$3.50           |
| 7           | Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)         | SY          | \$51.55          |
| 8           | Milling Work (2")                                        | SY          | \$3.75           |
| 9           | Wedge Mill (1-2")                                        | SY          | \$3.75           |
| 10          | Wedge Mill (2-4")                                        | SY          | \$4.00           |
| 11          | Wedge Mill (4-6")                                        | SY          | \$4.60           |
| 12          | Petromat 4598 Paving Fabric                              | SY          | \$35.60          |
| 13          | Striping (Traffic Paint) 4" White Lines on Edges of Road | LF          | \$6.00           |
| 14          | Striping (Traffic Paint) 4" Yellow Dashed Center Line    | LF          | \$7.00           |
| 15          | Striping (Traffic Paint) 4" Yellow Solid Center Line     | LF          | \$7.00           |
| 16          | 12" White Crosswalk Lines (Traffic Paint)                | LF          | \$25.00          |
| 17          | Install 24" Stop Bar (Traffic Paint)                     | LF          | \$25.00          |
| 18          | Removal of Existing Markings                             | LF          | \$25.00          |
| 19          | Type B Material Delivered (6 Ton Minimum)                | TON         | \$190.00         |
| 20          | Type D Material Delivered (6 Ton Minimum)                | TON         | \$230.00         |
| 21          | Asphalt Rejuvenation                                     | SY          | \$13.00          |

\*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.

This budget may vary from fiscal year to fiscal year and is subject to annual budgetary approval by City Council. The City will also have the option to decrease or increase the amount of work during the contract period, as needed, based on funding. Some of the pay items may not be used.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where directed by the City. Upon written notification of award of the contract, the unit prices shall be valid for a period of one year. The contract will serve as an "annual" contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

Refer to the specific terms outlined for an "Automatic Option to Extend" in the Standard Form of Agreement.

**The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.**

Company Name: Anderson Asphalt & Concrete Paving, LLC

Principal Place of Business Address: 11343 Mathis Street, Dallas Texas 75229

Principal Place of Business Phone: (214) 352-3400

Authorized Representative Signature: 

Printed Name: Pamela Thompson

E-mail Address of Representative: coryh@aacpaving.com

Title: President

Date: 04/09/2021

Acknowledgement of Addenda: #1      #2      #3      #4      #5

**EXHIBIT "C":**

**BIDDERS QUALIFICATION STATEMENT**

Project: Bid No. RFP 2021-004 Annual Price Agreement Contract - Asphalt

Contractor: Anderson Asphalt & Concrete Paving, LLC

Indicate One: Sole Proprietor \_\_\_\_\_ Partnership X \_\_\_\_\_  
Corporation \_\_\_\_\_ Joint Venture \_\_\_\_\_ Other \_\_\_\_\_

Name: Pamela Thompson Partner: Ronald Adnerson

Title: President Title: Vice President

Address: 11343 Mathis Street Address: 11343 Mathis Street

City: Dallas City: Dallas

State & Zip: Texas, 75229 State & Zip: Texas, 75229

Phone: (214) 352-3400 Phone: (214) 352-3400

Email: coryh@aacpaving.com Email: coryh@aacpaving.com

State and Date of Incorporation, Partnership, Ownership, Etc. Texas

Location of Principal Office: 11343 Mathis, Dallas, Texas 75229

Contact and Phone at Principal Office: Cory Henneberg (972) 310-2259

Number of Years in Business as a Contractor on Above Types of Work: 12

Liability Insurance Provider and Limits of Coverage: USI Southwest Dallas /CL 1,000,000.00

Workers Compensation Insurance Provider: USI Southwest Dallas /CL

Address: 2711 N Haskell Ave Suite 2000, Dallas, TX 75204

Contact and Phone: \_\_\_\_\_

Contact's Email Address: \_\_\_\_\_

**EXHIBIT "D":**

**CLIENT WORK HISTORY/REFERENCES**

Bidder: See Attached

List all experience/awarded contracts of similar size and the scope of work during the past (5) years.

1. Project: \_\_\_\_\_

Owner/Agency: \_\_\_\_\_

Contract Price: \$ \_\_\_\_\_ Dates of Service: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

\_\_\_\_\_

2. Project: \_\_\_\_\_

Owner/Agency: \_\_\_\_\_

Contract Price: \$ \_\_\_\_\_ Dates of Service: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Project Description: \_\_\_\_\_

\_\_\_\_\_

3. Project: \_\_\_\_\_  
Owner/Agency: \_\_\_\_\_  
Contract Price: \$ \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_

4. Project: \_\_\_\_\_  
Owner/Agency: \_\_\_\_\_  
Contract Price: \$ \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_

**PROJECT 1** MISCELLANEOUS ASPHALT PATCHING BID NO. 2019-55-B

Project Name: Town of Prosper

Project Location: Asphalt Patching

Project Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Start Date: 07/01/2019 Original Completion Date: \_\_\_\_\_ Actual Completion Date: \_\_\_\_\_

Reason for Final Completion Date Adjustment (if applicable): \_\_\_\_\_  
\_\_\_\_\_

Original Project Award Amount: 119,530.00 Change Order(s) Amount: NONE

Reason for Change Order(s): \_\_\_\_\_  
\_\_\_\_\_

Owner Name: TOWN OF PROSPER

Owner Address: 601 W. FIFTH ST.

PROSPER, TX 75078

Owner Contact Name: Frank Owner Contact Phone: \_\_\_\_\_

Owner Contact Email Address: \_\_\_\_\_

**PROJECT 2**

Project Name: Mill & Overlay Pavement Resurfacing Project – Bid # RFP 2019-007

Project Location: City of Forney

Project Description: Mill & Overlay existing streets  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Start Date: 07/22/2019 Original Completion Date: \_\_\_\_\_ Actual Completion Date: \_\_\_\_\_

Reason for Final Completion Date Adjustment (if applicable): \_\_\_\_\_

**REFERENCE 1** City of GrandviewCompany Name: 304 E. CrinerAddress: Grandview, Texas 76050Contact Name: David Henley Phone: (817)866-3399 ext 228

Contact Email Address: \_\_\_\_\_

Project Name/Description: Main Street - From FM 4 to 32' from Railroad Tracks

Project Completion Date: \_\_\_\_\_ Final Project Amount: \_\_\_\_\_

**REFERENCE 2**Company Name: IRON MIKE CONSTRUCTIONAddress: 6950 S. Tucson Way, Suite LCentennial, CO 80112Contact Name: Michael Yaggi Phone: (720) 474-4653Contact Email Address: myaggi@ironmikeconstruction.comProject Name/Description: Cowboy Club Entrance and Dam RepairProject Completion Date: 09/19 Final Project Amount: 125,000.00**REFERENCE 3**Company Name: Town of Shady ShoresAddress: 101 S. Shady Shores RoadShady Shores, TX 76208Contact Name: Richard A. Arvizu, PE Phone: 972.644.2800Contact Email Address: RAA@binkleybarfield.comProject Name/Description: "Pothole" Repairs - W Shady and S ShadyProject Completion Date: \_\_\_\_\_ Final Project Amount: 35,000.00

**EXHIBIT "E":**

**CONTRACTOR'S SAFETY RECORD**

- I. Complete the matrix below for the last five years, as obtained from OSHA required logs:

OSHA Log # \_\_\_\_\_ (contractor to indicate the OSHA reporting form used to report the numbers below)

| Description                    | 2016 | 2017 | 2018 | 2019 | 2020 |
|--------------------------------|------|------|------|------|------|
| Number of injuries & illnesses |      |      |      |      |      |
| Number of lost time accidents  |      |      |      |      |      |
| Number of recordable cases     |      |      |      |      |      |
| Number of fatalities           |      |      |      |      |      |

- II. Please answer the following questions regarding your safety program

- a. Are regular project safety meetings held for Field Supervisor(s)?

☒ yes  
☐ no

If yes, frequency:

☒ weekly  
☐ bi-monthly  
☐ monthly  
☐ as needed

- b. Are project safety inspections conducted?

☒ yes  
☐ no

If yes, who performs inspections? safety officer

How often? weekly

Who is required to attend? all field employees

- c. Does your organization have a written safety program?

☒ yes  
☐ no

If yes, provide a copy. It will become a compliance document upon contract award.

- d. Does your organization have a safety orientation program for new employees?



☒ yes  
☐ no

For employees promoted to Field Supervisor?

☒ yes  
☐ no

If yes, does your Supervisor Safety Program include instructions on the following:

|                          |                                         |                                        |
|--------------------------|-----------------------------------------|----------------------------------------|
| Safety work practices    | <input checked="" type="checkbox"/> yes | <input type="checkbox"/> no            |
| Tool box safety meetings | <input checked="" type="checkbox"/> yes | <input type="checkbox"/> no            |
| First aid procedures     | <input type="checkbox"/> yes            | <input checked="" type="checkbox"/> no |
| Accident investigation   | <input checked="" type="checkbox"/> yes | <input type="checkbox"/> no            |
| Fire protection          | <input type="checkbox"/> yes            | <input checked="" type="checkbox"/> no |
| New worker's orientation | <input checked="" type="checkbox"/> yes | <input type="checkbox"/> no            |

CITY OF FORNEY, TEXAS

RESOLUTION NO. 21-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS  
AWARDING A CONTRACT FOR SERVICES TO ANDERSON ASPHALT &  
CONCRETE PAVING, LLC FOR ASPHALT MAINTENANCE SERVICES AND  
MATERIALS SERVICES WITHIN THE CITY OF FORNEY; AUTHORIZING THE  
CITY MANAGER TO TAKE ALL ACTION NECESSARY TO COMPLY WITH THIS  
RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Forney, Texas (the "City") desires to award a contract for services and execute an agreement between the City of Forney and Anderson Asphalt & Concrete Paving, LLC for asphalt maintenance services and materials within the City of Forney.

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

**Section 1.** The above and foregoing premises are true and correct and are incorporated herein and made part hereof for all purposes.

**Section 2.** The bid for asphalt maintenance services and materials within the City of Forney is hereby awarded to Anderson Asphalt & Concrete Paving, LLC and the City Manager is authorized to enter into an Agreement for the services.

**Section 3.** This Resolution shall take effect immediately from and after its passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS, this 4 day of May, 2021.**

ATTEST:

  
Mary Penn, Mayor

  
Dorothy Brooks, City Secretary



CITY OF FORNEY  
ENGINEERING DEPARTMENT



May 6, 2021

Cory Henneberg  
Anderson Asphalt & Concrete Paving, LLC  
11343 Mathis Street  
Dallas, TX 75229

Capital Improvement Program

P.O. Box 826  
402 N. Bois d'Arc St.  
Forney, TX 75126

972.552.6561 P  
469.689.0719 F

[cmcquiston@forneytx.gov](mailto:cmcquiston@forneytx.gov)  
[cityofforney.org](http://cityofforney.org)

Reference: 2021 Annual Price Agreement Contract - Asphalt  
Bid # RFP 2021-004 - Notice to Award Contract

Dear Mr. Henneberg:

On May 4, 2021, the City Council awarded the contract to Anderson Asphalt & Concrete Paving, LLC for the above-referenced project.

Please execute the following enclosed documents and return them to our office:

1. Standard Form of Agreement
2. Performance Bond (as needed with each approved Work Order)
3. Payment Bond (as needed with each approved Work Order)
4. Insurance Information
5. Vendor Information Sheet
6. W-9 Form
7. Complete Form 1295

Please print two sets of the contract documents and return two executed original sets to our office. The City also requires documentation for the proof of the insurance coverage, a copy of the minimum insurance and bonding requirements is attached for your convenience. Please make sure to include two (2) copies of the Certificates of Insurance.

Upon receiving the contract documents from you, we will obtain the City Manager's signature and return two executed copies to you.

Should you have any questions, please contact my office at 972-552-6561.

Sincerely,

Candy McQuiston,  
Manager of Capital Improvement Program

**EXHIBIT "F":**

**STANDARD FORM OF AGREEMENT**

STATE OF TEXAS }

COUNTY OF KAUFMAN }

THIS AGREEMENT, made and entered into this the 4th day of May, A.D. 2021, by and between the City of Forney, of the County of Kaufman and State of Texas acting through its Mayor, thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Anderson Asphalt & Concrete Paving, LLC of the City of Dallas, County of Dallas and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

**ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS**

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Request for Proposals, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by City of Forney, herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same in accordance with the terms of the individual work orders, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year

and day first above written.

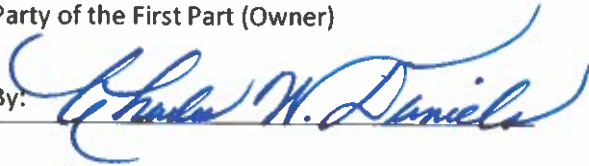
City of Forney

Anderson Asphalt & Concrete Paving, LLC

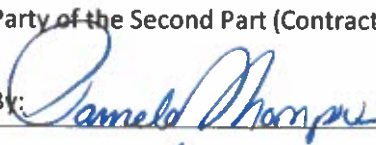
Party of the First Part (Owner)

Party of the Second Part (Contractor)

By:



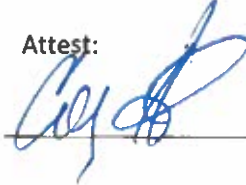
By:



Attest:



Attest:



END OF STANDARD FORM OF AGREEMENT

RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street  
Maintenance & Materials

**EXHIBIT "G":**

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, Anderson Asphalt & Concrete Paving, LLC  
as PRINCIPAL, and SureTec Insurance Company, as SURETY are held and firmly bound unto the City  
of Forney hereinafter called the "Local Public Agency", in the penal sum of five percent of the Gross Amount  
of Bid, lawful money of the United States, for the payment of which sum well and truly to be made, we bind  
ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these  
presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying  
Bid, dated April 12th, 2021, for RFP 2021-004 - Annual Price Agreement Contract for Asphalt  
Street Maintenance & Materials (Project Description)

NOW, THEREFOR, if the Principal shall not withdraw said Bid within the period specified therein after  
the opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and  
shall within the period specified therefor, or if no period be specified, within ten (10) days after the  
prescribed forms are presented to him for signature, enter into a written contract with the Local  
Public Agency in accordance with the Bid as accepted, and give bond with good and sufficient surety or  
sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or  
in the event of the withdrawal of said Bid within the period specified, or the failure to enter into such  
Contract and give such bond within the time specified, if the Principal shall pay the Local Public Agency the  
difference between the amount specified in said Bid and the amount for which the local Public Agency  
may procure the required work or supplies or both, if the latter be in excess of the former, then the above  
obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several  
seals this 12th day of April, 2021, the name and corporate seal of each corporate party being hereto  
affixed and these presents signed by its undersigned representative, pursuant to authority of its governing  
body.

Anderson Asphalt & Concrete Paving, LLC (SEAL)

  
\_\_\_\_\_

(SEAL)

Attest By: \_\_\_\_\_

  
\_\_\_\_\_

# **SureTec Insurance Company**

## **IMPORTANT NOTICE Statutory Complaint Notice/Filing of Claims**

To obtain information or make a complaint: You may call the Surety's toll-free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company  
9737 Great Hills Trail, Suite 320  
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at:

PO Box 149104  
Austin, TX 78714-9104  
Fax#: 512-490-1007  
Web: <http://www.tdi.texas.gov>  
Email: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

**PREMIUM OR CLAIMS DISPUTES:** Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

---

Obligee: City of Forney  
Project: RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street Maintenance & Materials  
Principal: Anderson Asphalt & Concrete Paving, LLC  
Bid Bond

POA #: 4221029

# SureTec Insurance Company

## LIMITED POWER OF ATTORNEY

**Know All Men by These Presents**, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Clem F. Lesch, Eric Lesch, Melissa Lesch, Felix Navejar

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20<sup>th</sup> of April, 1999.)

**In Witness Whereof**, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 25<sup>th</sup> day of November, A.D. 2019.



SURETEC INSURANCE COMPANY

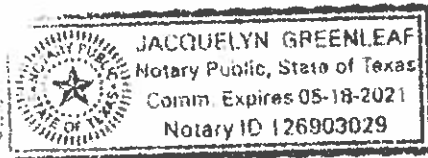
By: \_\_\_\_\_

John Knox Jr., CEO

State of Texas  
County of Harris

ss:

On this 25<sup>th</sup> day of November, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



\_\_\_\_\_  
Jacquelyn Greenleaf, Notary Public  
My commission expires May 18, 2021

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 12<sup>th</sup> day of April, 2021, A.D.

\_\_\_\_\_  
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221029  
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

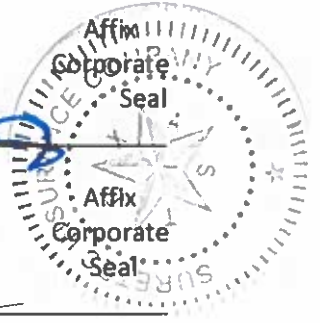


SureTec Insurance Company

Felix Navejar, Attorney-in-Fact

Attest By:

Eric Lesch, Witness



Countersigned

By N/A

\*Attorney-in Fact, State of N/A

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Pamela Thompson <sup>President</sup> ~~Secretary~~ of the LLC. Corporation named as Principal in the within bond: that \_\_\_\_\_, who signed the said bond on behalf of the Principal was then PRESIDENT of said corporation; that I know his signature, and his signature thereto is genuine; that said bond was duly signed, sealed, and attested to, for in behalf of said corporation by authority of this governing body.

**EXHIBIT "H":**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

STATE OF TEXAS           §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: That \_\_\_\_\_ ("Principal") of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of Texas, as principal, and \_\_\_\_\_ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of \_\_\_\_\_ Dollars and Zero Cents (\$\_\_\_\_\_.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the \_\_\_\_ day of \_\_\_\_\_, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is hereby referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

**THE OBLIGATION TO PAY SAME** is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the \_\_\_\_ of \_\_\_\_\_, A.D. \_\_\_\_\_ 20\_\_\_\_, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

**ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS**

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

**WORK ORDER # \_\_\_\_\_**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal shall fully and faithfully perform all the terms, covenants and conditions of the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of any Principal default, and reimburse and repay Owner all outlay and expense which Owner may incur in making good such default, then this obligation shall be null and void; otherwise to remain in full force and effect.

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

PROVIDED FURTHER, that Surety, for value received, stipulates and agrees that no change, extension of

time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms, covenants and conditions of the Contractor to the work performed thereunder.

PROVIDED FURTHER, that the penal sum of this bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this bond.

PROVIDED FURTHER, that Surety agrees that the bond provides for the repairs and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of completion and acceptance of the improvements by the Owner.

The undersigned agent of Surety is hereby designated by Surety as the Resident Agent in \_\_\_\_\_ County to whom any requisite notices may be delivered and upon whom service of process may be had in matters arising out of this bond.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day \_\_\_\_ of, 2021.

\_\_\_\_\_

\_\_\_\_\_

PRINCIPAL

SURETY

By: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Printed or Typed Name

Printed or Typed Name

\_\_\_\_\_

\_\_\_\_\_

Title

Title

Address:

Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Physical Address (if not same as mailing address):

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---

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Telephone Number (including area code):

---

Email Address:

---

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):  
1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

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**EXHIBIT "I":**

**PAYMENT BOND**

Bond No. \_\_\_\_\_

STATE OF TEXAS           §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: \_\_\_\_\_ ("Principal") of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of Texas, as principal, and \_\_\_\_\_ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of \_\_\_\_\_ Dollars and Zero Cents (\$\_\_\_\_\_.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the \_\_\_\_ day of \_\_\_\_\_, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

**THE OBLIGATION TO PAY SAME** is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the \_\_\_\_ of \_\_\_\_\_, A.D. 20\_\_\_\_, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

**ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS**

CITY OF FORNEY, TX (Various Locations)  
AGREEMENT# RFP 2021-004

**WORK ORDER # \_\_\_\_\_**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal and its subcontractors shall well and faithfully make payment to each and every claimant, as defined in Chapter 2253 of the Texas Government Code, as amended, supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the

provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms, covenants and conditions of the Contractor to the work performed thereunder.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day \_\_\_\_ of, 2021.

\_\_\_\_\_

PRINCIPAL

SURETY

By: \_\_\_\_\_

\_\_\_\_\_

Printed or Typed Name

Printed or Typed Name

\_\_\_\_\_

Title

Title

Address:

Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Physical Address (if not same as mailing address):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number (including area code):

\_\_\_\_\_

Email Address:

---

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):

1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

---

---

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**Exhibit "J":**

## CONFLICT OF INTEREST QUESTIONNAIRE

**For vendor doing business with local governmental entity**

FORM CIQ

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

|   |                          |                                                                                 |
|---|--------------------------|---------------------------------------------------------------------------------|
| 2 | <input type="checkbox"/> | Check this box if you are filing an update to a previously filed questionnaire. |
|---|--------------------------|---------------------------------------------------------------------------------|

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information in this section is being disclosed.

N/A

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

☐ Yes☒ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

Signature of vendor doing business with the governmental entity

04/09/2021

Date \_\_\_\_\_



**EXHIBIT "K":**

**SUSPENSION OR DEBARMENT CERTIFICATE**

Non-Federal entities are prohibited from contracting with or making subcontract awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$100,000.00 or more and all subcontract recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, Proposer certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, Common Rule.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

**EXHIBIT "L":**

**FOR MINORITY**

**AND/OR**

**WOMAN OWNED BUSINESS ENTERPRISES**

(To be completed only if applicable)

Minority and/or Woman-Owned Business Enterprises are encouraged to participate in City of Forney's procurement process. In order to be identified as a Qualified Minority and/or Woman-Owned Business Enterprise in the City of Forney, this form, along with a copy of your certification, must be returned to the City of Forney Purchasing Division. You should return these documents with this response, or if you have already submitted this form and a copy of your certification to the Purchasing Division, it is not necessary to re-send certification.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

FAX NO.: (214) 352-3402

INDICATE ALL THAT APPLY

       Minority Owned Business Enterprise

  X   Woman Owned Business Enterprise

**EXHIBIT "M":**

**PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

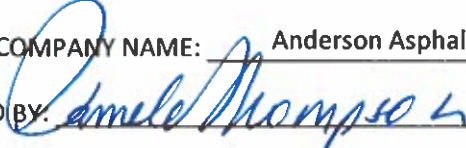
**CERTIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2270.001**

State law requires certification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public fund of the governmental entity.

By signing below, Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

The following definitions apply to this state statute:

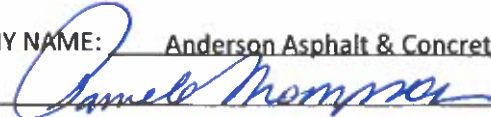
(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By signing below, Contractor hereby certifies that Section 2270.001 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

**SECTION VI:**

**GENERAL CONDITIONS OF THE CONTRACT**

### Non-Collusion Acknowledgment

The undersigned Proposer affirms that they are duly authorized to execute this Proposal, that this company, corporation, firm, partnership or individual has not prepared this Proposal in collusion with any other Proposer, and that the contents of this Proposal as to prices, terms and conditions thereof have not been communicated by the undersigned Proposer, nor by Proposer's employee, affiliate, representative, partner, subcontractor, or agent, to any other individual or entity engaged in this type of business prior to the official opening of this RFP.

Company Name: Anderson Asphalt & Concrete Paving, LLC

Signature of Company Officer: 

Company Officer Printed Name: Pamela Thompson

Title President



ACCOUNTS PAYABLE  
P.O. BOX 826  
FORNEY, TX 75126  
972-564-7300 x106  
FAX: 972-564-7350

COMPANY NAME Anderson Asphalt & Concrete Paving LLC

**PAYMENT INFORMATION**

CONTACT PERSON Pamela Thompson SECOND CONTACT Bonnie Bishop

TELEPHONE NUMBER 214 352-3400 FAX 214 352-3402 E-MAIL pthompson@aacpaving.com

PAYMENT ADDRESS 11343 Mathis Ave

CITY Dallas STATE Texas ZIP CODE 75229

FEDERAL ID NUMBER 26-3494724 TYPE OF BUSINESS

☐ SOLE PROPRIETORSHIP

☒ PARTNERSHIP LLC-P

☐ CORPORATION

PAYMENT TERMS Per Contract

CITY OF FORNEY  
ACCOUNT NUMBER \_\_\_\_\_

**ORDERING INFORMATION (IF DIFFERENT FROM PAYMENT INFORMATION)**

CONTACT PERSON \_\_\_\_\_ SECOND CONTACT \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_

PAYMENT ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

FEDERAL ID NUMBER \_\_\_\_\_ PAYMENT TERMS \_\_\_\_\_

CITY OF FORNEY  
ACCOUNT NUMBER \_\_\_\_\_

**PLEASE COMPLETE AND MAIL OR FAX BACK, ATTENTION ACCOUNTS PAYABLE**

**SECTION VI:**

**GENERAL CONDITIONS OF THE CONTRACT**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By





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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the



recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.



- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown



or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.



6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.



- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Engineer;
  - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Shop Drawing or Sample submittal;
  - 6. The issuance of a notice of acceptability by Engineer;
  - 7. The end of the correction period established in Paragraph 15.08;
  - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

**7.18 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**7.19 Delegation of Professional Design Services**

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01   *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02   *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03   *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04   *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.



9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

**10.05 *Determinations for Unit Price Work***

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

**10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work***

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

**10.07 *Limitations on Engineer's Authority and Responsibilities***

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

**10.08 *Compliance with Safety Program***

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### ARTICLE 12—CLAIMS

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge



and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
  - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
  - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
  - 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
  - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 6. Expenses incurred in preparing and advancing Claims.
  - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
  - 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
    - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
    - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
      - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
      - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
  - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,



or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*C. Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.



- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
  - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**SECTION VII:**

**SUPPLEMENTARY CONDITIONS**

## **SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT**

### ***Definitions – Add the following paragraphs:***

#### **SC-1.01**

52. *Written Notice* - Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
53. *Extra Work* - The term "Extra Work" as used in this contract shall be understood to mean and include all work that may be required by the Engineer or Owner to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under Section 3.04, herein.
54. *Working Day* - A "Working Day" is defined as any day not including Saturdays, Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.
55. *Calendar Day* - "Calendar Day" is any day of the week or month, no days being excepted.
56. *Substantially Complete* - By the term "substantially completed" is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

#### **SC-3.03,B *Reporting and Resolving Discrepancies* – Add the following paragraph:**

2. As provided in Article 3.03,A of the General Conditions, the Contractor is responsible for reporting discrepancies in the Contract Documents to the Engineer for interpretation and instructions. However, should the Contractor fail to report the discrepancy to the Engineer, the Contract Documents shall be interpreted in the following order with the first-listed elements having priority over subsequently listed elements:
  - a. Signed Agreement
  - b. Performance and Payment Bonds
  - c. Special Bonds (if any),
  - d. Proposal
  - e. Supplementary Conditions of the Construction Contract
  - f. Request for Proposals (Advertisement)
  - g. Technical Specifications
  - h. General Conditions of the Construction Contract
  - i. Plans

In the event differing degrees of performance are required by any of Contract Documents, the more stringent requirement, as determined by the Engineer, will be enforced. In cases of dimensional discrepancies, annotated and calculated dimensions shall govern over scaled dimensions.

**SC-5.06 Property Insurance – Add the following paragraph:**

- F. All losses or damage arising out of the nature of the work, or from the action of the elements, or from groundwater, or from any unusual obstruction or difficulty, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

**SC-6.02 Labor, Working Hours – Add the following paragraph:**

- C. The Contractor shall employ only competent, efficient workers and shall not use any unfit person on the work or one not skilled in the work assigned to him; and shall at all times maintain good order among his employees.

Whenever the Owner shall inform the Contractor in writing that, in his opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the Owner may orally require immediate removal of an employee for cause, to be followed by written confirmation.

**SC-6.03 Services, Materials, and Equipment – Add the following paragraphs:**

- D. Unless otherwise expressly provided in the contract drawings or specification, the work shall be performed according to the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The Owner shall judge and determine the Contractor's compliance with these requirements. All materials used in the construction of this project shall be new.
- E. All materials salvaged from the Owner's property shall remain the property of the Owner. The Contractor shall take reasonable care not to damage materials which are to be removed as a part of this construction. Should the Owner decline to accept the salvaged materials, the Contractor shall dispose of the materials as described herein for construction debris.

**SC-6.09 Laws and Regulations – Add the following paragraphs:**

- D. The contractor shall fully comply with all local, state and federal codes and ordinances applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.
- E. Codes and ordinances having jurisdiction and specified codes shall serve as minimum requirements, but, if the contract documents indicate requirements which are in excess of those minimum requirements, then the requirements of the contract documents shall be followed. Should there be any conflicts between the contract documents and codes, or any ordinances, report these with the bid.

**SC-6.10 Taxes – Add the following paragraph:**

- B. This contract is issued by an organization that qualifies for exemption pursuant to the provisions of Section 151.309 of VTCA Tax Code. According to amended Section 151.311 of the VTCA Tax Code, the Contractor performing this separated contract is considered a seller of the materials that will remain as an improvement to the realty on this project. To be exempt from sales tax on these materials, the Contractor must issue a resale certificate to its supplier(s) and obtain an exemption certificate from the Owner.

**SC- 6.19 Contractor's General Warranty and Guarantee – Add the following paragraph:**

- D. All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner without the necessity of separate transfer or assignment thereof; provided, that if directed by the Engineer, the Contractor shall assign such warranties and guarantees in writing to the Owner.

**SC-8 Owner's Responsibilities – Add the following section:**

8.13 Collateral Contracts

The Owner agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such a manner as not to delay the progress of the work, or damage said Contractor, except where such delays are specifically mentioned elsewhere in the Contract Documents.

**SC-9.04 Authorized Variations in Work – Add the following paragraph:**

- C. No verbal conversation, understanding or agreement with any officer or employee or agent of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms, conditions or obligations contained in the contract documents.

**SC-10 Changes in the Work; Claims– Add the following section:**

10.06 Extra Work

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

Method "A" - by agreed unit prices; or

Method "B" - by agreed lump sum; or

Method "C" - If neither Method "A" nor Method "B" is agreed upon before the Extra Work is commenced or afterward, at the Owner's choosing, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method "C", then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the Contractor of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Owner, or by them agreed to. The ENGINEER may direct the from in which accounts of the "actual field cost" shall be kept



and the records of these accounts shall be made available to the Engineer. The Engineer or Owner may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 per cent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) per cent of the "actual field cost" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost."

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

**SC-13.07 *Correction Period***

In this section, change the words "Substantial Completion" to read "Certificate of Completion and Acceptance".

**SC-14.02 *Progress Payments***

**Change paragraph A.3 to read:**

3. When progress payments are made, the Owner shall then pay the Contractor the total amount for Work completed in the approved Application for Payment, less 5 percent of the amount thereof, which 10 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the Owner under the terms of this Agreement.

**Change paragraph C.1 to read:**

1. Fifteen days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

**SC-14.06 *Final Inspection – Add the following paragraph:***

- B. If the work is found to be completed in accordance with the Contract Documents, the Engineer, when requested to do so by the Contractor, shall issue to the Owner and the Contractor the Certificate of Completion and Acceptance or to advise the Contractor in writing of the reason for non-acceptance. All project warranties and guarantees shall begin not before the date the Certificate of Completion and Acceptance is issued by the Engineer.

**SC-14.07 Final Payment – Add the following paragraphs:**

**D. Payments Withheld**

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

1. Defective work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Failure of the Contractor to make payments properly to sub-contractors or for material or labor.
4. Damage to another contractor.
5. Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
6. Reasonable indication that the work will not be completed within the contract time.

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

**E. Delayed Payments**

Should the Owner fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, then the Owner shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) per cent per annum, unless otherwise specified, from date due as provided under "Progress Payments" and "Final Payment," until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment, but the right is expressly reserved to the Contractor in the event payments be not promptly made, as provided under "Progress Payments," to at any time thereafter treat the contract as abandoned by the Owner and recover compensation, as provided under "Abandonment by Contractor" or "Abandonment by Owner," unless such payments are withheld in accordance with the provisions of "Payment Withheld."

**F. Payment for Labor and Materials; No Liens**

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

**SC-14      *Payments to Contractor and Completion – Add Sections 14.10 and 14.11 as follows:***

**14.10 Delays; Extension of Time; Liquidated Damages**

The Contractor shall be entitled to an extension of working time under this contract only when claim for such extension is submitted to the Owner in writing by the Contractor within seven days from and after the time when any alleged cause of delay shall occur; and then only when such time is approved by the Owner. In adjusting the contract working time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to inability to obtain supplies and materials, acts of God, or the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions or delays of subcontractors due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the contract should require work and materials in greater amounts or quantities than those set forth in the contract, requiring more time for completion than the anticipated time, then the contract working time shall be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the Contractor.

No adjustment to working time shall be made if, concurrently with the equitable cause for delay, there existed a cause for delay due to the fault or negligence of the Contractor, his agents, employees or subcontractors; and no adjustment shall be made to the contract price and the Contractor shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in adjustment to the working time hereunder, including delays caused by the acts or negligence of the Owner. Notwithstanding any other provision of the contract documents, all claims for extension of working time must be submitted in accordance with paragraph 12.03, and no act of the Owner shall be deemed a waiver or entitlement of such extension.

**14.11 Liquidated damages for failure to complete on time:**

The amount of liquidated damages for this project is \$ 500.00 per calendar day.

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the Contractor shall be in default after the time stipulated in the contract by and between Owner and Contractor because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amounts are agreed to be the amounts of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Contractor under this contract; and if said monies are insufficient to cover the amount owing, then the Contractor or his surety shall pay any additional amounts due.

Where there are multiple items of work that each have a separate time of completion, liquidated damages shall be applied to each time of completion. Liquidated damages shall be applied for each day from the specified time of completion until the requirements for that item of work have been met.

**SC-15      *Suspension of Work and Termination – Add the following sections:***

**15.05 Termination of Contract in Case of National Emergency**

Whenever, because of a national emergency, so declared by the President of the United States or other lawful authority, it becomes impossible for the Contractor to obtain all the

necessary labor, material and equipment for the prosecution of the work with reasonable continuity for a period of two months, the Contractor shall within seven (7) days notify the Owner in writing, giving a detailed statement of the efforts which have been made and listing all necessary items of labor, material and equipment not obtainable. If, after investigation, the Owner finds that such conditions exist and that the inability of the Contractor to proceed is not attributable in whole or in part to the fault or neglect of the Contractor, then if the Owner cannot after reasonable effort assist the Contractor in procuring and making available the necessary labor, materials and equipment within thirty (30) days, the Contractor may request the Owner to terminate the contract and the Owner shall within thirty (30) days comply with the request, and the termination shall be based on a final settlement, which shall include, but not be limited to, the payment for all work executed and any loss sustained upon any plant or materials and reasonable profit thereon, but not anticipated profits on work which has not been performed.

#### 15.06 Abandonment by Contractor

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or the Engineer, or if the Contractor fails to comply with the orders of the Engineer, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the Owner or the Surety on the performance bond, or another contractor in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Articles 10 and 12, it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after receipt of such notice, then the Owner may provide for completion of the work in either of the following elective manners:

B. The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or his Surety shall pay the amount of such excess to the Owner; or

C. The Owner under sealed bids, after give (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract

prove to be less than what would have been the cost to complete under this contract, the Contractor and/or his Surety shall be credited therewith. When the work shall have been substantially completed the Contractor and his Surety shall be so notified and the Certificates of Completion and Acceptance shall be issued. A complete itemized statement of the contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and his Surety, whereupon the Contractor and/or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificates of Completion and Acceptance.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this contract; or when the Contractor and/or his Surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety at the respective addresses designated in this contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the Contractor or his Surety, to their proper owners. The books on all operations provided herein shall be open to the Contractor and his Surety.

#### 15.07 Abandonment by Owner

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

**SC-17      *Miscellaneous – Add the following sections:***

**17.7    Assignments**

The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the Owner.

**17.8    Unlawful Provisions Deemed Stricken**

If this contract contains any unlawful provisions not an essential part of the contract and which shall not appear to have been a controlling or material inducement to the making thereof, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful part shall be considered stricken from the contract without affecting the remainder of the contract.

**17.9    Service of Notices**

The Owner and the Contractor shall each designate addresses where all notices, directions or other communication may be delivered, or to which they may be mailed.

Notices to the surety or sureties on contract bonds shall be directed or delivered to the home office, or to the agent or agents who executed the bonds on behalf of the surety or sureties, or to their designated agent for delivery of notices.

Actual delivery of any such notice, direction or communication to the aforesaid places, or depositing it in a postpaid wrapper addressed thereto in any post office regularly maintained by the United States Postal Service shall be conclusively deemed to be sufficient service thereof upon the above persons as of the date of such delivery or deposit.

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally, or, if the Contractor be a corporation, upon any officer or director thereof.

**17.10   All Legal Provisions Included**

It is the intent and agreement of the parties of this contract that all legal provisions of law required to be inserted herein, shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

**17.11   No Waiver of Legal Rights**

Inspection by the Engineer, any order, measurement, quantity or certificate by the Engineer, any order by the Owner for payment of money, any payment for or acceptance of any work, any extension of time or possession taken by the Owner, shall not operate as a waiver of any provisions of the contract or any power therein reserved to the Owner of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The Owner reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the Contractor or his agents

and the Engineer or his assistants, discovered in the work after the final payment has been made.

Neither final acceptance of the work, nor final payment, shall relieve the Contractor of the responsibility for faulty materials or workmanship, and the Contractor shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the Owner shall constitute acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

#### 17.12 Obligation to Perform Functions

Any failure or neglect on the part of Owner, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve Contractor from full compliance with the contract documents nor render Owner liable to Contractor for money damages, extensions of time or increased compensation of any kind.

**SECTION VIII**  
**GENERAL REQUIREMENTS**



## **SUMMARY OF WORK**

### **PART 1: GENERAL**

#### **1.01 WORK COVERED BY CONTRACT DOCUMENTS**

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of asphalt streets, parking lots, driveways, driveway aprons, flumes, sidewalks, curbs, and gutters. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as – needed basis to perform general asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

#### **1.02 CONTRACTS**

##### **A. Contract Documents**

1. The Contract Documents under which this project is to be constructed include the following:
  - a. Request for Proposals
  - b. Instructions to Bidders.
  - c. Proposal.
  - d. Contract including the General Conditions and Supplementary Conditions of the Construction Contract.
  - e. Bond Forms
  - f. Specifications – Technical Specifications Divisions 1 through Division 2, the North Central Texas Council of Governments Standard Specifications for Public Works Construction – 4th Edition and the City of Forney Addendum thereto, and the Texas Department of Transportation “Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges”, dated June 1, 2004.
2. Contract Drawings and Specifications if applicable

The Owner shall furnish the Contractor, without charge, four (4) copies of the contract and any supplemental drawings and specifications. At least one copy of all drawings and specifications shall be accessible at all times to the Owner at the job site.

##### **3. Supplemental Drawings and Specifications**

In order to carry out the intent of the contract documents and to assist the Contractor in performing his work, the Owner, after the execution of the contract, may, by supplemental

drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the contract documents and reasonably inferable therefrom. Therefore, no extra costs shall be allowed by the Owner on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the contract documents, incurring extra costs, unless the Contractor has first brought the matter, in writing, to the Owner's attention for adjustment before proceeding with the work covered by such.

If the Owner shall decide that there is no departure from the requirements of the contract documents, the Contractor shall then proceed with the work as shown, specified or directed. If the Owner shall decide that extra work is involved, he shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued.

#### 4. Errors and Corrections in Drawings and Specifications

The Contractor shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications; and the Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the contract documents. In case of any errors, omissions or discrepancies in the drawings or specifications, the Contractor shall promptly submit the matter to the Owner who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the Contractor without this determination and instructions shall be at the Contractor's own risk and expense. The work is to be made complete as intended by the contract documents.

#### B. Alteration of Plans and Specifications

The Owner reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract and bonds. Such changes shall be issued by the Engineer.

### 1.03 CONTRACTOR USE OF PREMISES

#### A. Land for Construction Purposes

1. The Contractor shall confine his operations within the Owner's easements and property. The Owner reserves the right to limit the Contractor's access to certain portions of his property to limit interference with the Owner's operations. The Owner will designate areas that may be used by the Contractor for storage of materials and equipment, employee parking and for other construction uses.
2. Contractor shall be solely responsible for obtaining and shall pay all costs in connection with any additional work area, or storage site access to the site. The Contractor shall submit to the Owner, written agreements with private property owners for the use of their land for construction purposes.
3. It shall be understood that the responsibility for protection and safekeeping of equipment and materials on or near the site will be entirely that of the Contractor and that no claim shall be made against the Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by these stored materials and equipment, the Contractor owning or responsible for the

stored material, or equipment, shall immediately move same. No materials or equipment may be placed upon the property until Owner has agreed to the location contemplated by the Contractor to be used for storage.

#### B. Damage to Existing Property

1. The Contractor will be held responsible for any damage to existing structures, work, plantings, materials, equipment or other improvements because of his operations and shall repair or replace any damaged structures, work, plantings, materials, equipment or other improvements to the satisfaction of, and at no additional cost to the Owner.
2. The Contractor shall protect all existing structures, work, plantings, materials, equipment or other improvements and property from damage and shall provide bracing, shoring or other work necessary for such protection at no additional cost to the Owners.
3. The Contractor shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges or other public or private property that may be caused by transporting equipment, materials or men to or from work. Contractor shall make satisfactory and acceptable arrangements with the agency having jurisdiction over the damaged property concerning its repair or replacement.

#### C. Protection of Persons and Property

The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any are adjacent to said work site. No separate compensation shall be paid to the Contractor for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property.

The Contractor shall assume all duties owed by the Owner to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the Contractor shall at his own cost and expense provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, lights, signs and other precautionary measures for the protection of persons or property as may be prudent or necessary, or as are required by law. The Contractor's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs and lights and other precautionary measures shall not cease until the project shall have been completed and accepted by the Owner, and shall cease when the certificate of acceptance is issued by the Owner.

If the Owner discovers that the Contractor has failed to comply with the applicable federal and state law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the Owner may order the Contractor to take such additional precautionary measures as required by law to be taken to protect persons and property.

In addition, the Contractor shall be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such

damage, the Owner may order the damaged portion immediately removed and replaced by and at the cost and expense of the Contractor.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas State Department of Transportation.

#### D. Protection of Work

During performance and up to date of final acceptance, the Contractor shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the Contractor shall promptly replace or repair such work, whichever the Owner shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the Owner's approval of or failure to prohibit means and methods of construction used by the Contractor. All risk of loss or damage to the work shall be borne solely by the Contractor until final completion and acceptance of all work by the Owner, as evidenced by the Owner's issuance of a certificate of acceptance.

**PAYMENT  
PROCEDURES**

**PART 1:GENERAL**

**1.1 MEASUREMENT**

**A. General**

1. This is a unit price project. The unit bid price(s) shall cover all work described in the proposal. All other work shown on the contract drawings, or required by the specifications or other contract documents shall be subsidiary to the bid items described in the proposal. All costs in connection with the work, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction plant equipment, and tools; and performing all labor and supervision necessary to complete the work shall be included in the bid price(s) named in the proposal.
2. No item required by the Contract Documents for the proper and successful completion of the work will be paid for outside of or in addition to the price submitted in the proposal. Work done solely for the convenience of the Contractor shall not be measured and paid for unless such work has been authorized in writing by the Owner or his representative. Work done of a temporary nature will not be measured or paid for.

**1.2 PAYMENT**

Payment for all work performed under the proposed Contract will be made by the Owner in the manner set forth in the General Contract Conditions for Construction and the Supplementary Conditions of the Construction Contract.

## **PROJECT MANAGEMENT AND COORDINATION**

### **PART 1: GENERAL**

#### **1.01 INDEPENDENT CONTRACTOR**

The relation of the Contractor to the Owner shall be that of an independent Contractor.

#### **1.02 RELATIONS WITH OTHER CONTRACTORS**

##### **A. Working Area, Coordination with other Contractors, Final Cleanup**

The Contractor shall confine his equipment, storage of materials and construction operations to the area shown on the contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the Owner, and shall not unreasonably encumber the site or public right-of-way with his construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the Contractor. Other Contractors of the Owner may enter upon and use such portions of the area and for such times as determined by the Owner are necessary for all purposes required by their contracts. The Contractor shall give to such other Contractors all reasonable facilities and assistance to the end that the work on this and the other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the Contractor for his use shall be provided by him at his own cost and expense.

Upon completion of the work and before final acceptance and final payment shall be made, the Contractor shall completely clean and remove from the site of the work surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at Contractor's sole cost.

##### **B. Other Contractors, Obligation to Cooperate**

The Owner may award other contracts for additional work on this project, and the Contractor shall fully cooperate with such other contractors and shall coordinate and fit his work to be done hereunder to such additional work as may be contracted by the Owner. At the time of bidding, prospective bidders shall be advised of other planned contract work that is expected to affect the work area. The Contractor shall not commit or permit any acts that shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the Contractor that another contractor is failing to coordinate his work with the work under this contract as directed by the Owner, the Owner will investigate the charge and take such necessary action as the situation may require. However, the Owner shall not be liable to the Contractor for damages suffered by the Contractor due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the Owner. Should any interference occur between contractors, the Engineer may furnish the Contractor with written instructions designating priority of effort or change in methods; whereupon the Contractor shall immediately comply with such direction. In such event, Contractor shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the contract price shall be due the Contractor.

### 1.03 PROJECT COORDINATION

No attempt has been made in the contract documents to segregate work to be performed by any trade or subcontract. Any segregation between trades and crafts will be solely a matter for agreement between the Contractor and his subcontractors. The Contractor will be responsible for the coordination of all trades and work under the various divisions and sections of the specifications. All transactions of the Engineer will be with the Contractor. Subcontractors will be considered only in the capacity of employees or workers, and shall be subject to the same requirements as to character and competency as the Contractor.

### 1.04 METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the contract drawings, specifications or bulletins, the means and methods of construction shall be such as the Contractor may choose; subject, however, to the Owner's right to prohibit means and methods proposed by the Contractor that in the Owner's judgment:

- A. shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
- B. shall cause unnecessary or unreasonable inconvenience to the public; or
- C. shall not produce finished work in accordance with the requirements of the contract documents; or
- D. shall not assure the work to be completed within the time allowed by the contract.

The Owner's approval of the Contractor's means or methods of construction, or the Owner's failure to exercise his right to prohibit such means or methods, shall not relieve the Contractor of his responsibility for the work or of his obligation to accomplish the result intended by the contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the Contractor against the Owner. Where the contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, the Contractor shall submit his proposed plan of procedure to the Owner sufficiently in advance to permit a reasonable time for determining the adequacy and safety of the proposed plan. Failure to submit the proposed plan within a reasonable time shall not create a cause of action for damages for resulting delay in the work or be a cause for extension of working time for completion of the work.

### 1.05 TRAFFIC CONTROL

- A. The Contractor shall provide, to the Owner, a Traffic Control Plan for each street at least five (5) days before beginning work on the project. The Traffic Control Plan shall include, but is not limited to, estimated volume of traffic, traffic patterns during each construction phase and locations of any required temporary roadways. The Contractor shall not begin work on any street until receiving, in writing, an approved Traffic Control Plan.

## **PROJECT MEETINGS**

### **1.01 PRECONSTRUCTION CONFERENCE**

Before any construction begins on the project a preconstruction conference may be held at the direction of the Engineer. The date, time and location of meeting will be selected by the Engineer or CIP Manager. The Contractor or his Contract Coordinator, the Contractor's superintendent and any key foreman shall be present at this conference. The Engineer, his field representative and the Owner or his representatives may also be present. At this conference, the Contractor shall present the following submittals as required in Section 01 33 00– Submittal Procedures:

- A. Construction Schedule
- B. Schedule of Monthly Payments
- C. Schedule of Values

### **1.02 PROGRESS MEETINGS**

At the direction of the City, the Contractor and his superintendent shall attend job progress meetings to discuss critical aspects in the prosecution of the work. The Owner or his representatives may also attend these meetings. The meetings will be held at a place and time selected by the Engineer.



## CODES

### PART 1: GENERAL

#### 1.01 REFERENCE SPECIFICATIONS

Whenever reference is made to the furnishing of materials or testing thereof to conform to the Standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification or tentative specification adopted and published at the time of advertisement for bids, even though reference has been made to an earlier standard. Such standards are made a part hereof to the extent that is indicated or intended.

The following are names and abbreviations of such groups:

|            |                                                                                                  |
|------------|--------------------------------------------------------------------------------------------------|
| AASHTO     | American Association of State Highway and Transportation Officials                               |
| ACI        | American Concrete Institute                                                                      |
| AIEE       | American Institute of Electrical Engineers                                                       |
| AISC       | American Institute of Steel Construction                                                         |
| ALSC       | American Lumber Standards Committee                                                              |
| ANSI       | American National Standards Institute                                                            |
| ASCE       | American Society of Civil Engineers                                                              |
| ASA        | American Standards Association                                                                   |
| ASTM       | American Society for Testing Materials                                                           |
| AWSC       | American Welding Society Code                                                                    |
| AWWA       | American Water Works Association                                                                 |
| Fed. Spec. | Federal Specification                                                                            |
| Navy Spec. | Navy Department Specification                                                                    |
| NEC        | National Electric Code                                                                           |
| NEMA       | National Electrical Manufacturers Association                                                    |
| NCTCOG     | North Central Texas Council of Governments Standard Specifications for Public Works Construction |
| U.L. Inc.  | Underwriter's Laboratories, Incorporated                                                         |

Where no reference is made to a code, standard, or specification, the Standard Specifications of the agencies listed above, as appropriate, shall govern.

## 1.02 COORDINATION OF SPECIFICATIONS AND CODES

If the Specifications and Drawings show requirements that are in excess of codes and ordinances, then the Specifications and Drawings shall be followed. Should there be any conflicts between the Specifications and Drawings and the codes and ordinances having jurisdiction, the Contractor shall report these in his bid.

**ABBREVIATIONS AND  
ACRONYMS**

**PART 1: GENERAL**

**1.01 ABBREVIATIONS AND SYMBOLS**

The following abbreviations and symbols are used in the Specifications and Drawings. The Contractor shall notify the Engineer if the meaning of any abbreviation or symbol is unclear.

|                       |             |
|-----------------------|-------------|
| Asph.                 | Asphalt     |
| Assy.                 | Assembly    |
| @                     | At          |
| Ave.                  | Avenue      |
| BL or $\perp$         | Base Line   |
| Bot or Btm.           | Bottom      |
| Cl                    | Clear       |
| CL or $\oplus$        | Center Line |
| CO                    | Clean Out   |
| Cond.                 | Conduit     |
| Corr.                 | Corrugated  |
| Cu.                   | Cubic       |
| CF                    | Cubic Feet  |
| CY or C.Y.            | Cubic Yard  |
| Culv.                 | Culvert     |
| Dia. or $\varnothing$ | Diameter    |
| Dr.                   | Driveway    |
| Dwls                  | Dowels      |
| °                     | Degree      |
| EA.                   | Each        |
| EF                    | Each Face   |
| Elev. or EL.          | Elevation   |

|              |                                                                                                                      |
|--------------|----------------------------------------------------------------------------------------------------------------------|
| EW           | Each way                                                                                                             |
| F.           | Fahrenheit                                                                                                           |
| Ft. or '     | Foot or Feet                                                                                                         |
| Gal.         | Gallon                                                                                                               |
| Galv.        | Galvanized                                                                                                           |
| HDG          | Hot-dip galvanized                                                                                                   |
| Hor.         | Horizontal                                                                                                           |
| In. or "     | Inches                                                                                                               |
| ID           | Inner Diameter                                                                                                       |
| Lin.         | Linear                                                                                                               |
| L.F.         | Linear Foot                                                                                                          |
| Lb.          | Pound                                                                                                                |
| MH           | Manhole                                                                                                              |
| Max.         | Maximum                                                                                                              |
| '            | Minutes                                                                                                              |
| Min.         | Minimum                                                                                                              |
| Mono.        | Monolithic                                                                                                           |
| NCTCOG       | North Central Texas Council of Governments                                                                           |
| NCTCOG Specs | Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments |
| No. or #     | Number                                                                                                               |
| OC           | On Center                                                                                                            |
| OCEW         | On Center Each Way                                                                                                   |
| OD           | Outer Diameter                                                                                                       |
| /            | Per                                                                                                                  |
| %            | Per Cent                                                                                                             |
| Ø            | Phase or Diameter                                                                                                    |
| PE           | Plain End                                                                                                            |
| PSI or psi   | Pounds per square inch                                                                                               |

|            |                                           |
|------------|-------------------------------------------|
| PV or P.V. | Plug Valve                                |
| PVC        | Polyvinylchloride                         |
| R.         | Radius                                    |
| RCP        | Reinforced Concrete Pipe                  |
| Reinf.     | Reinforced                                |
| Rem.       | Remove                                    |
| Rep.       | Replace                                   |
| R/W or ROW | Right-of-way                              |
| Sani.      | Sanitary                                  |
| "          | Seconds                                   |
| Sim.       | Similar                                   |
| Spa.       | Spaces or Spacing                         |
| Sq.        | Square                                    |
| SF or S.F. | Square Feet                               |
| SY or S.Y. | Square Yard                               |
| Std.       | Standard                                  |
| St.        | Street or Storm                           |
| Str.       | Strength or Structure                     |
| SL or §    | Survey Line                               |
| Sym.       | Symmetrical                               |
| Typ.       | Typical                                   |
| T.C.E.Q.   | Texas Commission on Environmental Quality |
| TxDOT      | Texas Department of Transportation        |
| Vert.      | Vertical                                  |
| Vol.       | Volume                                    |
| w/         | With                                      |
| WWF        | Welded Wire Fabric                        |
| Yd.        | Yard                                      |

## DEFINITIONS

### PART 1: GENERAL

#### 1.01 DEFINITIONS

Supplementing the Definition of Terms contained in the General Provisions, words, phrases or other expressions used in these Contract Documents shall have the meanings as follows:

- A. "Contract Documents" shall be synonymous with the term "Contract."
- B. "Owner" shall be synonymous with the term "City" and shall mean the City of Forney.
- C. "Consulting Engineer" shall mean the City of Forney City Engineer, or its duly authorized agents acting within the scope of the particular duties entrusted them in each case.
- D. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner or a basis for Proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings submitted by the successful bidder with his Proposal, provided such drawings are acceptable to the Owner, (d) drawings furnished by the Owner to the Contractor during the progress of the work, and (e) engineering data and drawings submitted by the Contractor during the progress of the work, provided such drawings are acceptable to the Consulting Engineer.
- E. Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as allowed" or words or phrases of like importance are used, it shall be understood that the order, direction, requirement, permission or allowance of the Owner or Consulting Engineer is intended only to the extent of judging compliance with the terms of the contract. None of these terms shall imply the Owner or the Consulting Engineer has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision and the sole responsibility therefor are strictly reserved for the Contractor.
- F. Similarly the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import are used, it shall be understood that such work, materials and methods shall be approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner or Consulting Engineer to the extent provided in "E" above.
- G. Whenever in these Contract Documents the expression "it is understood and agreed," or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract.
- H. Whenever in these Contract Documents the words "Provide, "Furnish and Install," "Install" or words of like effect and import, unless otherwise particularly specified, shall mean that the Contractor is to both purchase all materials and provide all labor and equipment required to perform the work described. The Owner will not furnish any material, labor or equipment unless specifically provided for in the Contract Documents.
- I. Whenever in these Contract Documents, the word "Proposed" or words of like effect and import are used, it shall be understood that the work described as being "proposed" is to be constructed as a part of this contract.

- J. Whenever in these Contract Documents, the word "New" or words of like effect and import are used, it shall be understood that the work described as being "new" is to be constructed as a part of this contract.
- K. Whenever in these contract documents, the word "Future" or words of like effect and import are used, it shall be understood that the work described as being "future" is not to be constructed as a part of this contract but is contemplated in the future and is referenced in these documents only for the information of the Owner and Contractor.

## **QUALITY CONTROL**

### **1.01 TESTING LABORATORY SERVICES**

- A. Material testing shall be performed by an independent testing laboratory that is paid for by the City. Any retests and additional testing required by the city inspector will be paid for by the Contractor. The city will choose testing locations. The testing laboratory shall be acceptable to the city.
- B. Testing Laboratory Services to be Paid for by Contractor
  - 1. All material tests including retests and additional testing required by the city inspector.
- C. The Owner reserves the right to initiate any other tests of materials and workmanship.
- D. When the Engineer or the Owner's representative does initiate any test which reveals a condition that does not meet the requirements of the specifications, then the Contractor shall reimburse the Owner for the cost of such failing tests, as well as for subsequent tests made at the direction of the Engineer until it is found that the deficiency so revealed has been corrected. Nothing in this paragraph shall be construed to relieve the Contractor of the cost of testing any material in which technical specifications require the Contractor to pay such costs.

### **1.02 ENGINEERING OBSERVATION SERVICES**

- A. The Owner may appoint (either directly or through the Engineer) such observers as the Owner deems proper to review the material furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the Engineer, or observers, for the proper observation of the work. Should the Contractor object to any interpretation of the contract by an observer, the Contractor may make written appeal to the Engineer for a decision.
- B. Observers shall have the authority to reject work that is unsatisfactory, faulty, or defective or does not conform to the requirements of the drawings and specifications. Observation shall not relieve the Contractor from any obligation to construct the work strictly in accordance with the drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at his own expense.

### **1.03 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

- A. All work that has been rejected or condemned shall be repaired or if it cannot be repaired satisfactorily, it shall be removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given (save as herein provided), work done without proper inspection, or any extra or unclassified work done without written authority and prior agreement in writing as to prices, may be ordered removed at the Contractor's expense. Upon failure to repair satisfactorily or to remove and replace (if so directed) rejected, unauthorized or condemned work or materials immediately after receiving notice from the Engineer, the Engineer will (after giving written notice to the Contractor) have the authority to cause defective work to be remedied, removed, replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due (or to become due) to the Contractor.
- B. In the event defective work or unauthorized work cannot be satisfactorily removed from the work as determined by the Owner and the Engineer, the Owner may deduct from any monies due (or to become due) the Contractor such amount as would be required, as determined by the Engi-



neer, to remove and replace such defective work or unauthorized work even though such work may remain in place.

- C. Neither the observation by the Owner or Consulting Engineer or any of their officials, employees, or agents nor any order by the Owner or Consulting Engineer for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Owner or Consulting Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of provision of this Contract, or of any power herein reserved to the Owner, or any right to damages herein provided, nor shall waiver of any breach in this Contract be held to be a waiver of any other subsequent breach.

#### 1.04 UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely thereby. No portions of the work shall be constructed under conditions that would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

## **TEMPORARY FACILITIES AND CONTROLS**

### **1.01 TEMPORARY CONSTRUCTION ELECTRICITY**

All power for lighting, operation of the Contractor's plant or equipment, or for any other use by the Contractor shall be provided by the Contractor, at his sole cost and expense.

### **1.02 TEMPORARY WATER**

All water required for and in connection with the work to be performed and for any specified tests of piping, equipment, devices, etc., for compacting backfill material or for any other use as may be required for proper completion of the work, shall be provided by the Contractor at his expense. No separate payment for water used or required will be made and all costs in connection therewith shall be included in the proposal.

### **1.03 TEMPORARY SANITARY FACILITIES**

Enforce strict observance of sanitary and health regulations by employees on the plant site. Furnish an adequate number of chemical toilets. The chemical toilets and their maintenance shall meet requirements of the Texas Commission on Environmental Quality. Immediately correct facilities or maintenance methods failing to meet these requirements.

### **1.04 PROTECTION AND RESTORATION OF PROPERTY**

The Contractor shall be responsible for all damage or injury to property of any character by any act by the Contractor, or agents, or any time due to defective works or materials or due to his failure reasonably or properly to prosecute the work, and said responsibility shall not be released until the work shall have been completed or accepted. When and where any such damage or injury is done to public or private property by the Contractor, he shall restore or have restored at his own cost and expense such property to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in a manner acceptable to the Owner or the Engineer. In case of failure by the Contractor to restore such property or make good such damage or injury, the Engineer may, upon forty-eight hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any monies due the Contractor under his contract.

### **1.05 FENCES AND FENCE GAPS**

- A. The Contractor shall construct and maintain all fence gaps required for the construction of these projects at his own expense as required by the Engineer. All fence gaps required shall be so constructed that they will be equal to the fence in which they are built. When requested by property owners, the Contractor shall maintain locks on all fence gaps.
- B. Before constructing a fence gap, the Contractor shall brace the fence on both sides of the cut to prevent sagging.
- C. Fences which must be removed completely during construction shall be replaced immediately with an equal or better quality fence.

### **1.06 CONSTRUCTION ACCESS**

The Contractor's access to the construction site shall be from existing City streets and highways.

#### 1.07 LAND FOR CONSTRUCTION PURPOSES

The Contractor shall confine his construction operations to stay within the limits of the property owned by the Owner or easements obtained by the Owner. Authority to enter private property outside these limits shall be obtained in writing from the owner of the property and a copy filed with the Owner.

#### 1.08 CONTROL OF TRASH AND DEBRIS

Clean the working areas each day, remove all trash and waste materials, and maintain the site in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is waste material or rubbish and the manner and place of disposal. On or before the completion of the work, carefully clean out all pits, pipes, chambers or conduits; remove all temporary structures and remove all rubbish from the area, leaving them in first-class condition.

#### 1.09 CROSSINGS, BARRICADES, LIGHTS AND FLAGMEN

- A. The Contractor, at his own expense, must maintain such crossings as designated by the Engineer, to prevent serious interruption of traffic on streets and highways.
- B. Where the work is carried on in or adjacent to any street or highway, the contractor shall, at his own expense, furnish, erect and maintain such barricades, fences, lights and danger signals, shall provide such flagmen, and shall take such other precautionary measures for the work, as are necessary. All barricades shall be painted in a color that will be visible at night and shall be illuminated by lights from sunset to sunrise. The term "lights," as used herein, shall mean flares, flashers or both. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish flagmen in sufficient numbers to protect the work.
- C. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by the Contractor at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs and lights, and for providing watchmen, shall not cease until the project shall have been accepted by the Owner.

## **PRODUCT REQUIREMENTS**

### **PART 1: GENERAL**

#### **1.01 MATERIALS AND CONSTRUCTION METHODS**

- A. The detailed Specifications herein are divided into several sections, covering various materials and methods of construction, and the applicable parts of each section shall apply to the Contract work.
- B. Rejected or condemned materials shall be immediately removed from the site of the work.
- C. All materials to be used in this project must be new, except for the encasement pipe for highway bores. Do not incorporate materials which have been used for temporary purposes into the permanent construction unless written consent of the Engineer has been obtained.

#### **1.02 ACCEPTANCE AND SUBSTITUTIONS**

- A. Where materials or equipment are specified by the trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to establish an equal basis for the evaluation of bids. Where the words "equivalent," "proper," or "equal to" are used, they shall be understood to mean that the article or process is equal, in the opinion or judgment of the Engineer, to the article or process specified by name. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved samples. Notwithstanding that the words "equal to" or other such expressions are not used in the Specifications, the material, manufactured article, or process specifically designated shall be used. A substitute shall be approved in writing by the Engineer, and the Engineer shall have the right to require the use of such specifically designated material, article or process.
- B. Substitutions after the award of Contract shall be made only within sixty (60) days after the notice to proceed. Furnish all required supporting data. The submittal of substitutions for review shall not be cause for time extensions.
- C. Where substitutions are offered, the substituted product shall meet the product performance as set forth in the specified manufacturer's current catalog literature, as well as meeting the details of the Contract Documents.
- D. The details on the drawings and the requirements of the Specifications are based on the first listed material or equipment. If any other than the first listed material or equipment is furnished, then assume responsibility for the correct function, operation, and accommodation of the substituted item. If there are misfits or changes in work required, either in this section or other sections of the Contract, or in both, bear all costs concerning all changes arising out of the use of other than the first listed item specified.

#### **1.03 STORAGE OF MATERIALS**

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground and shall be placed under cover when so directed. Stored materials shall be placed and located to facilitate prompt inspections.

#### 1.04 STORAGE OF EQUIPMENT

- A. All equipment shall be boxed, crated, or otherwise completely enclosed and protected during shipment, handling, and storage. All equipment shall be protected from exposure to the elements and shall be kept thoroughly dry at all times.
- B. Equipment shall be stored according to the manufacturer's recommendations.
- C. Painted surfaces shall be protected against impact, abrasion, discoloration and other damage. All painted surfaces damaged before acceptance of equipment shall be repainted to the satisfaction of the Engineer.
- D. Electrical equipment, controls, and insulation shall be protected against moisture or water damage. All space heaters provided in the equipment shall be kept connected and operating at all times until equipment is placed in service.

**FIELD**  
**ENGINEERING**

**PART 1: GENERAL**

**1.01 LINE AND GRADES**

1. Dimensions for lines and elevations for grades of structures, appurtenances, and utilities are indicated on Drawings, together with other pertinent information required for laying out work.
2. Basic horizontal and vertical control points will be established or designated by the Engineer. These points shall be used as datum for work under this contract. All additional survey, layout, and measurement work shall be performed by the Contractor as a part of the work under this contract. If conditions vary from those indicated, notify Engineer immediately, who will make minor adjustments required.
3. The Contractor shall provide an experienced instrument man, competent assistants, and such instruments, tools, stakes, and other materials as required to complete the survey, layout, and measurement work. In addition, the Contractor shall furnish, without charge, competent men from his force and such tools, stakes and other materials as the Engineer may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by the Contractor.
4. The Contractor shall keep the Engineer informed, a reasonable time in advance, of the times and places at which he wishes to do work, so that horizontal and vertical control points may be established and any checking deemed necessary by the Engineer may be done with minimum inconvenience to the Engineer and minimum delay to the Contractor.
5. Engineer may perform checks to verify accuracy of Contractor's layout work and that completed Work complies with Contract Documents.
6. Any existing survey points or other control markers destroyed without proper authorization will be replaced by owner of the survey points or control markers at the Contractor's expense.

**1.02 CONTRACTOR'S RESPONSIBILITIES**

- A. Provide additional survey and layout required.
- B. Locate and protect reference points prior to starting site preparation.
- C. Check and establish exact location of existing facilities prior to construction
- D. In event of discrepancy in data or staking provided by Engineer, request clarification before proceeding with work.
- E. Preserve and leave undisturbed control staking until Engineer has completed checks it deems necessary.
- F. Re-establish reference points resulting from destruction by Contractor's operations.
- G. Maintain accurate log of survey work as it progresses as a Record Document.
- H. On request of Engineer, submit documentation.

- I. Provide competent employee(s), tools, stakes, and other equipment and materials as Engineer may require to:
  - 1. Establish control points, lines, and easement boundaries.
  - 2. Check layout, survey, and measurement work performed by others.
  - 3. Measure quantities for payment purposes.
- J. Cooperate with Engineer so that checking and measuring may be accomplished with least interference to Contractor's operations.
- K. Any work done without being properly located may be ordered removed and replaced at the Contractor's expense.

#### 1.03 PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, bench marks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or bench marks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or bench marks.

## **CLEANING AND WASTE MANAGEMENT**

### **PART 1: GENERAL**

#### **1.01 DESCRIPTION**

- A. Throughout the construction period, maintain the project in a standard of cleanliness as described in this Section.
- B. Beyond the standards described in this Section, comply with requirements for cleaning up as described in various other Sections of these Specifications.

#### **1.02 QUALITY ASSURANCE**

- A. Conduct daily inspection to verify that requirements of cleanliness are being met.
- B. In addition to the standards described in this Section, comply with pertinent requirements of governmental agencies having jurisdiction.

### **PART 2: PRODUCTS**

#### **2.01 CLEANING MATERIALS AND EQUIPMENT**

Provide personnel, equipment and materials needed to maintain the specified standard of cleanliness.

#### **2.02 COMPATIBILITY**

Use only cleaning materials and equipment that are compatible with the surface being cleaned, as recommended by the manufacturer of the material or as approved by the Engineer.

### **PART 3: EXECUTION**

#### **3.01 PROGRESS CLEANING**

##### **A. General**

1. Retain stored items in an orderly arrangement allowing maximum access, not impeding drainage or traffic and providing protection of materials.
2. Do not allow the accumulation of scrap, debris and waste material.
3. Provide adequate storage for items awaiting removal from the job site, observing requirements for fire protection and protection of the ecology.

##### **B. Site**

1. Daily inspect the site and pick up scrap, debris and waste material. Remove such items to the place designated for their storage.
2. Weekly inspect arrangements of materials stored on the site; restack, tidy or otherwise service all arrangements to meet the requirements of paragraph above.



3. Maintain the site in a neat and orderly condition to the approval of the Engineer.

C. Graffiti

Promptly remove all evidence of graffiti.

3.02 FINAL CLEANING

A. Before completion of the Work, remove from the job site all tools, surplus materials, equipment, scrap, debris and waste. Conduct final progress cleaning as described in Article above.

B. Unless otherwise specifically directed by the Engineer, hose down all paved areas on the site and all sidewalks. Completely remove all resultant debris.

C. Exterior - Structures

Visually inspect all exterior surfaces and remove all traces of soil, waste material, smudges and other foreign matter. Remove all traces of splashed material from adjacent surfaces. If necessary to achieve a uniform degree of exterior cleanliness, hose down the exterior of the structure. Where there are stubborn stains not removable with water, the Engineer may require light sandblasting, repainting, or other cleaning at no additional cost to the Owner.

D. Schedule final cleaning as approved by the Engineer to enable the Owner to accept a completely clean project.

## **CLOSEOUT PROCEDURES**

### **1.01 CLEANING**

Upon completion of the work, the Contractor shall remove from the site all plant materials, tools, and equipment belonging to him and leave the site with an appearance acceptable to the Engineer. The Contractor shall thoroughly clean and polish all equipment and materials installed by him and deliver over such materials and equipment in a bright, clean, polished and new-appearing condition.

### **1.02 FINAL OBSERVATION**

When the work has been substantially completed, and at a time mutually agreeable to the Owner, Consulting Engineer, and Contractor, the Consulting Engineer will make a final observation of the work and report to the Owner his findings as to the acceptability and completeness of the work.

### **1.03 PROJECT RECORD DOCUMENTS**

Before final payment on the project is made, the Contractor will be furnished with two sets of Plans to record project data. Project data shall include but not be limited to the following:

**A. Changes in construction not covered by a change order or field order including:**

1. Changes in dimensions.
2. Changes in material.
3. Any variation in construction details.
4. Any critical dimensions not shown on the original Plans to include:
  - a. Location of electrical conduits.
  - b. Location of miscellaneous piping and utilities, including all utilities uncovered or otherwise located during the construction of the project

**B. Mark both sets of prints and submit to Engineer for approval.**

### **1.04 OPERATIONS AND MAINTENANCE DATA**

**A. The Contractor shall furnish, before initial testing, four (4) copies of an indexed Maintenance Manual, composed of suppliers' brochures on all equipment and materials with moving parts, including performance curves, with size, model, figure number, etc., indicated to identify the unit furnished. Maintenance Manuals are to be of a hard back, loose-leaf type and of a durable quality. Manuals shall be indexed and tabbed.**

**B. Each set to include the following:**

1. Manufacturers' parts list identified with the make, model and serial number of the equipment furnished.
2. Control and wiring diagrams.
3. Installation, operation, lubrication and maintenance instructions.
4. Manufacturers' recommended spare parts lists.

- C. Provide schematic system flow and control diagrams identifying the location and function of all system components, valves and controls.
- D. Two (2) copies are to be supplied to the Owner and two (2) copies to the Engineer before the inspection and testing of the equipment. Following the testing phase, the Engineer's approval of the submitted documents shall be requested by the Contractor. Final Payment on the project will not be made until an approved manual (4 copies) has been delivered.

#### 1.05 FINAL PAYMENT

- A. Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of retainage.
- B. Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

#### 1.06 GUARANTEE

##### A. Scope and Period of Guarantee

- 1. The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.
- 2. The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.
- 3. The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

##### B. Notification and Service under the Guarantee

- 1. Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.
- 2. If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments, or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety.
- 3. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party

chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

**SECTION**  
**AGGREGATE BASE COURSES**

**PART 1:GENERAL**

**1.1 DESCRIPTION**

This section of the specifications includes the furnishing of all plant, labor, equipment, and materials, and the performance of all operations required to complete the flexible base. The flexible base shall be constructed in one or more courses in conformity with these specifications and the lines, grades, and sections shown on the drawings.

**1.2 QUALITY ASSURANCE**

**A. Testing Agency**

The Contractor shall employ the services of an independent testing laboratory, acceptable to the Owner, to test the degree of compaction of all completed flexible base and to test the thickness. The Owner or his representative will select the exact location of the tests. Furnish one test for each 500 square yards of roadway surface or fraction thereof.

The Owner will employ the services of an independent testing laboratory to test the degree of compaction of all completed flexible base and to test the thickness. The Owner will pay for the cost of each density test which meets the specified density. The Contractor will pay for the cost of each density test which does not meet the density requirement.

**B. Reference Standards**

Moisture - Density Relationships of Soils (ASTM D698)

**1.3 SUBMITTALS**

**A. Submit the following data on flexible base furnished on this project:**

1. Name and location of pit or quarry.
2. Name of supplier
3. Test data showing compliance with all provisions of this specification.

**B. If requested, submit a 40 lb. representative sample of the base material to the Engineer for independent analysis.**

**1.4 PROTECTION**

**A. Work on the sub-base or base course(s) shall not be accomplished during freezing temperatures nor when the subgrade is wet. When the aggregates contain frozen materials or when the underlying course is frozen, the construction shall be stopped.**

**B. Hauling equipment may be routed over completed portions of the course, provided no damage results and provided that such equipment is routed over the full width of the course to avoid rutting or uneven compaction. However, the Engineer in charge shall have full and specific authority to stop all hauling over completed or partially completed base course when, in his opinion, such hauling is causing damage. Any damage resulting to the course from routing equipment over the course shall be repaired by the Contractor at his own expense.**

## PART 2:PRODUCTS

### 2.1 AGGREGATES

- A. The aggregate shall be crushed stone and the fine aggregate shall be screenings obtained from crushed stone.
- B. The crushed stone shall consist of hard, durable particles or fragments of stone, free from dirt or other objectionable matter, and shall contain not more than 8 percent of flat, elongated, soft or disintegrated pieces.
- C. The crushed aggregate shall have a percent of wear not more than 45 at 500 revolutions, as determined by AASHTO T 96 (Los Angeles Rattler Test).
- D. The crushed aggregate shall have a minimum soaked and re-molded laboratory CBR of 100 at 100 percent maximum density.
- E. The crushed aggregate shall not show evidence of disintegration nor show a total loss greater than 12 percent when subjected to five cycles of the sodium sulphate accelerated soundness test using AASHTO T 104.
- F. All material passing the No. 4 mesh sieve produced in the crushing operation of the stone shall be incorporated in the material unless there is an excessive amount that, if included, would not meet the gradation requirements.
- G. The crushed aggregate shall meet the requirements of the gradations given in the following table when tested by AASHTO T 11 and T 27.

**TABLE 1. REQUIREMENTS FOR GRADATION OF AGGREGATE**

| Sieve Designation<br>(square openings) | Percentage by Weight<br>Passing Sieve |
|----------------------------------------|---------------------------------------|
| 2 inch                                 | 100                                   |
| 1½ inch                                | 100                                   |
| 1 inch                                 | 70-95                                 |
| ¾ inch                                 | 55-85                                 |
| No. 4                                  | 30-60                                 |
| No. 40                                 | 10-25                                 |
| No. 200                                | 3-20                                  |

- H. The gradations in the table represent the limits that shall determine suitability of aggregate for use from the sources of supply. The final gradations selected within the limits designated in the table shall be well graded from coarse to fine and shall not vary from the low limit on one sieve to the high limit on the adjacent sieves or vice versa.
- I. The amount of the fraction of material passing the No. 200 mesh sieve shall not exceed one half the fraction passing the No. 40 mesh sieve.
- J. The portion of the aggregate, including any blended material, passing the No. 40 mesh sieve shall have a liquid limit of not more than 35 and a plasticity index of not more than 10 when tested following AASHTO T 89 and T 90.

- K. The selection of any of the gradations shown in the table shall be such that the maximum size aggregate used in any course shall not be more than two thirds the thickness of the layer of course being constructed.

## 2.2 ADDITIONAL FINE MATERIAL

If additional fine material, more than that naturally present in the base course material, is necessary for correcting the gradation to the limitations of the specified gradation, or for the satisfactory bonding of the base material, or for changing the soil constants of the material passing the No. 40 mesh sieve, it shall be uniformly blended and mixed with the base course material at the crushing plant or by an approved plant. There shall be no reworking of the base course material in place to obtain the specified gradation. The additional fine material for this purpose shall be obtained from the crushing of stone, gravel or slag and when used, shall be of a gradation as necessary to accomplish the specified gradation in the final mixed base course material.

## 2.3 MATERIAL

- A. The material for the flexible base shall be composed of crusher-run broken stone, obtained from approved sources, and shall consist of hard durable particles of stone mixed with approved binding material. The material shall be screened or otherwise manipulated before crushing, in a manner satisfactory to the Engineer, so that all soil, clay, and other objectionable material will be removed. Crushed stone mined from the Austin Chalk formation will not be used.
- B. When properly slaked and tested by standard laboratory methods, the processed flexible base material shall meet the following requirements:

|                          |        |
|--------------------------|--------|
| Retained on 1¾" sieve    | 0%     |
| Retained on ¾" sieve     | 20-60% |
| Retained on No. 4 sieve  | 40-75% |
| Retained on No. 40 sieve | 70-85% |

- C. Material passing the No. 40 sieve shall be known as "Soil Binder" and shall meet the following requirements when tested by standard laboratory methods:

|                                       |      |
|---------------------------------------|------|
| The liquid limit shall not exceed     | 40.0 |
| The plasticity index shall not exceed | 10.0 |

## 2.4 EQUIPMENT

- A. Sheepsfoot Rollers

Sheepsfoot rollers shall meet the applicable requirements of TxDOT Specification Item 212, except that the provisions relating to measurement and payment shall not be applicable.

- B. Pneumatic Tired Roller

Pneumatic tired rollers shall meet the applicable requirements of TxDOT Specification Item 214, except that the provisions relating to measurement and payment shall not be applicable.

- C. Flat Wheel Rollers

Flat wheel rollers shall be either self propelled two-axle tandem roller weighing not less than eight (8) tons, or a self propelled three-wheel roller weighing not less than ten (10) tons.

## **PART 3:EXECUTION**

### **3.1 OPERATION AT SOURCES OF SUPPLY**

All work involve in clearing and stripping of quarries and pits, including the handling of unsuitable material, shall be performed by the contractor at his own expense. The material shall be obtained from approved sources. Unless otherwise specified, all material shall be mined from full depth vertical sections of the pit or quarry. The material shall be handled in a manner that shall secure a uniform and satisfactory product.

### **3.2 EQUIPMENT**

All equipment necessary for the proper construction of this work shall be on the project, in first-class working condition, and approved by the Engineer before construction is permitted to start.

### **3.3 SUBGRADE PREPARATION**

- A. The subgrade shall be constructed in conformity with the lines, grades and sections shown on the drawings. All unstable or otherwise objectionable material shall be removed from the subgrade and replaced with approved material. All holes, ruts and depressions shall be filled with approved material, and if required, the subgrade shall be thoroughly wetted with water and reshaped and rolled to the extent directed by the Engineer to place the subgrade in an acceptable condition to receive the base material.
- B. The surface of the subgrade shall be finished to line and grade as established and in conformity with the typical section shown on the drawings. Any deviation in cross section greater than one-half (1/2") inch in a length of sixteen (16') feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping and re-compacting by sprinkling and rolling.
- C. Sufficient subgrade shall be prepared in advance to insure satisfactory prosecution of the work. Material excavated in the preparation of the subgrade that is not needed for the embankment shall be used in the construction of adjacent shoulders and slopes or otherwise disposed of as directed. Any additional material required for the completion of the shoulders and slopes shall be secured from sources shown on the drawings or as designated by the Engineer.

### **3.4 PLACING OF BASE MATERIAL**

#### **A. First Course**

- 1. Immediately before placing the base material, the subgrade shall be checked as to conformity with grade and section. No material shall be placed in snow or on a soft, muddy, or frozen underlying course.
- 2. The material shall be delivered in approved vehicles of a uniform capacity and it shall be the responsibility of the Contractor that the required amount of specified material shall be delivered in each 100 - foot station. Hauling over the non-compacted base course shall not be permitted.
- 3. Material deposited upon the subgrade shall be spread and shaped the same day unless otherwise directed in writing by the Engineer. In the event inclement weather or other unforeseen circumstances render impractical the spreading of the material during the first twenty-four (24) hour period, material shall be scarified and spread as directed by the Engineer.
- 4. The material shall be deposited and spread in lanes in uniform layers and without segregation of size to such loose depth that, when compacted, the layers shall have the required thickness.



5. The base aggregate shall be spread by spreader boxes, motor graders or other approved devices or methods that shall spread the aggregate in the required amount to avoid or minimize the need for re-handling the material and to prevent the rutting of the underlying course. The devices shall be equipped with strike-off templates or screeds that can be adjusted or controlled to secure the required thickness of the material.
6. All areas and "nests" of segregated coarse or fine material shall be corrected or removed and replaced with well-graded material as directed by the Engineer. Such binder material shall be carefully and evenly incorporated with the material in place by scarifying, harrowing, brooming or by other approved methods.
7. The course shall be sprinkled as required and compacted to the extent necessary to provide not less than the percent density as hereinafter specified under "Density." In addition to the requirements specified for density, the full depth of flexible base shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. Unless otherwise permitted by the Engineer, the aggregate shall not be spread more than 2,000 square yards in advance of the rolling. After each section of flexible base is completed, tests as necessary will be made by the Engineer. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements.
8. Throughout this entire operation, the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the drawings, and to the established lines and grades. In those areas on which pavement is to be placed, any deviation greater than one-fourth ( $\frac{1}{4}$ " ) inch in cross section in a length of sixteen feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping, and re-compacting by sprinkling and rolling. All irregularities, depressions, or weak spots that develop shall be corrected immediately by scarifying the areas affected, adding suitable material as required, reshaping and re-compacting by sprinkling and rolling. Should the base course, due to any reason or cause, lose the required stability, density and finish before the surfacing is complete, it shall be re-compacted and refinished at the sole expense of the Contractor.
9. When using sheepsfoot rollers, the layer of loose material shall not exceed eight (8") inches for 25 ton pneumatic rollers, or ten (10") inches if fully loaded 50 ton pneumatic rollers are used.

#### B. Succeeding Courses

1. Construction methods shall be the same as prescribed for the first course.
2. The surface of the final course shall be finished smooth by "slush rolling" with a satisfactory flat wheeled roller. Before placing the surfacing on the completed base, the final course of flexible base shall be dry cured to the extent directed by the Engineer.

#### C. Density

The flexible base shall have a uniform compacted density throughout of 95%.

### 3.5 SURFACE TEST

After the course has been completely compacted, the surface shall be tested for smoothness and accuracy of grade and crown. Any portion lacking the required smoothness or failing in accuracy of grade or crown shall be scarified, reshaped, re-compacted and otherwise manipulated as the Engineer may direct until the required smoothness and accuracy are obtained. The finished surface shall not vary more than  $\frac{3}{8}$  inch from a 16-foot straightedge when applied to the surface parallel with and at right angles to, the centerline. For area to receive pavement, the finished surface shall not vary more than  $\frac{1}{4}$  inch from a 16-foot straightedge.

### **3.6 THICKNESS**

The thickness of the base course shall be determined by depth tests or cores taken at intervals in such a manner that each test shall represent no more than 300 square yards. When the base deficiency is more than 1/2 inch, the Contractor shall correct such areas by scarifying, adding satisfactory base mixture, rolling, sprinkling, reshaping, and finishing in accordance with these specifications. The Contractor shall replace, at his own expense, the base material where borings have been taken for test purposes.

### **3.7 MAINTENANCE**

Following the completion of the base course, the Contractor shall perform all maintenance work necessary to keep the base course in a condition satisfactory for priming. After priming, the surface shall be kept clean and free from foreign material. The base course shall be properly drained at all times. If cleaning is necessary, or if the prime coat becomes disturbed, any work or restitution necessary shall be performed at the expense of the Contractor.

**END OF SECTION**

**SECTION IX**  
**ROAD-MIX ASPHALT PAVING**

**PART 1:GENERAL**

**1.1 DESCRIPTION**

This section covers the design, mixing and placing of hot mix asphaltic concrete for pavement. The pavement shall consist of a binder course, a leveling-up course, a surface course, or any combination of these courses as shown on the plans. The courses are to be composed of a compacted mixture of mineral aggregate and asphaltic material. The pavement shall be constructed on the previously completed and approved subgrade, base, existing pavement, bituminous surface or prepared slab as herein specified and in accordance with the details shown on the plans.

**1.2 QUALITY ASSURANCE**

**A. Asphalt Design Mix**

1. Pay for the services of an independent laboratory approved by the Engineer to perform design tests using varying proportions of aggregates and asphaltic materials.
2. Pay for laboratory to submit a written report in duplicate to the Engineer with the following data for each mix tested:

**a. AGGREGATES**

- (1) Source and type
- (2) Gradation
- (3) Deleterious substance

**b. ASPHALT MIX**

- (1) Gradation
- (2) Asphalt content (% by weight)
- (3) Percent voids
- (4) Theoretical specific gravity
- (5) Laboratory specific gravity
- (6) Percent laboratory density
- (7) Unit weight
- (8) Hveem stability
- (9) Grade asphalt

3. All materials shall meet or exceed the specifications listed under "Materials" and be approved by the Engineer.

4. Each type of mix shall conform to the master grading for each type listed in "Paving Mixture".

#### B. Source Quality Control

1. The materials proposed to be used may be inspected and tested at any time during their preparation for the work.
2. If the sources of supply do not furnish a uniform product or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved materials from other approved source.
3. Sources of supply may not be changed without prior approval from the Engineer.
4. Approval of both the materials and source of supply must be obtained from the Engineer prior to delivery of the material.
5. The mixing plant shall continuously produce a consistent mixture meeting all of the requirements of this specification.

### 1.3 SUBMITTALS

Submit copies of the design mix and results of tests for review.

### 1.4 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Prior to stockpiling of aggregates, the area shall be cleaned of trash, weeds and grass and be relatively smooth. Aggregates shall be stockpiled in such a manner as to prevent mixing of one aggregate with another.
- B. The asphaltic mixture shall be hauled to the work site in tight vehicles previously cleaned of all foreign material. The inside of the truck body may be given a light coating of oil to prevent the mixture from adhering to the body. In cool weather or long hauls, canvas covers and insulating of the truck may be required.

### 1.5 JOB CONDITIONS

#### A. Illumination

Do not place asphaltic concrete before sunrise or later than will normally permit completion of all finishing operations during sufficient natural light.

#### B. Protection

Do not place asphaltic concrete during rain, sleet or snow or when such precipitation is imminent.

#### C. Cold Weather Placement

1. The tack coat or the asphaltic concrete mixture when placed with a spreading and finishing machine shall not be placed when the air temperature is below 45 F and falling, but may be placed when the air temperature is above 40 F and rising.
2. The asphaltic concrete mixture when placed by hand or with a motor grader shall not be placed when the air temperature is below 60 F and falling, but may be placed when the air temperature is 50 F and rising.

3. The prime coat, tack coat or asphaltic mixture shall be placed only when the humidity, general weather conditions and temperature and moisture condition of the base, in the opinion of the Engineer, are suitable.
4. The air temperature shall be taken in the shade away from artificial heat.
5. No asphaltic mixture will be accepted which has a temperature of 225 F or less when delivered.

## **PART 2: PRODUCTS**

### **2.1 MATERIALS**

#### **A. Mineral Aggregate**

Mineral aggregate shall consist of fine aggregate, coarse aggregate and mineral filler.

##### **1. Fine Aggregate - Aggregate passing No. 10 Sieve**

| Sieve | Percent Passing |
|-------|-----------------|
| 10    | 100             |
| 200   | 10-30           |

Fine aggregate shall consist of sand or stone screenings or a combination thereof. Fine aggregate shall be comprised of durable particles, free from injurious foreign matter. The plasticity index of that part of the fine aggregate, passing the No. 40 sieve, shall not be more than 6.

2. Coarse aggregate - aggregate retained on No. 10 sieve. The coarse aggregate shall consist of clean, durable fragments of stone, or gravel of uniform quality throughout. Coarse aggregate shall be free from clay, organic or other injurious foreign matter occurring either free or as a coating on the aggregate. Materials removed by standard laboratory decantation shall be not more than two (2%) percent except when the plasticity index of the removed material is less than 6, the amount shall not be more than four (4%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent loss when subjected to the Los Angeles Abrasion Test.

3. Mineral Filler - The mineral filler shall consist of thoroughly dry stone dust, slate dust, portland cement or other mineral dust approved by the Engineer. The mineral filler shall be free from foreign and other injurious matter. When tested by TxDOT Bulletin 6-14, or equivalent, it shall meet the following grading requirements:

|                                         |      |
|-----------------------------------------|------|
| Passing a 30 mesh sieve                 | 100% |
| Passing No. 80 sieve, not less than     | 90%  |
| Passing a 200 mesh sieve, not less than | 65%  |

#### **B. Asphaltic Material**

Asphalt for the paving mixture shall be of the type of oil asphalt as determined by the Engineer and shall meet the following requirements of asphalts. The grade of asphalt used shall be as

designated by the Engineer after design tests have been made using the mineral aggregates that are to be used in the project, and the various grades of asphalt. If more than one type of asphaltic concrete mixture is specified for the project only one grade of asphalt will be required for all types of mixture, unless otherwise shown on the plans.

#### 1. Oil Asphalt

The materials shall be homogeneous, shall be free from water, shall not foam when heated at 347°F, and shall meet the following requirements:

| Type-Grade                                                                 | OA-90        |      | OA-135       |      | OA-230       |      |
|----------------------------------------------------------------------------|--------------|------|--------------|------|--------------|------|
|                                                                            | Min.         | Max. | Min.         | Max. | Min.         | Max. |
| Penetration at 32°F (0°C) 200g., 60 sec.                                   | --           | --   | --           | --   | --           | --   |
| Penetration at 77°F (25°C) 100g., 5 sec.                                   | 85           | 100  | 120          | 150  | 210          | 250  |
| Penetration at 115°F, 50g., 5 sec.                                         | --           | --   | --           | --   | --           | --   |
| Ductility at 77°F (25°C), 5 cm/min., cms: Original                         | 100          | --   | 100          | --   | 170          | --   |
| Flash Point C.O.C., °F (°C)                                                | 450<br>(230) | --   | 450<br>(230) | --   | 450<br>(230) | --   |
| Softening point, R. & B., °F                                               | 113          | 140  | 104          | 140  | 86           | 122  |
| Thin Film Oven Test, ½ in. Film, 50 g., 5 hours, 325°F (16°C)              | --           | 0.8  | --           | 1.3  | --           | 1.5  |
| Penetration of Residue, at 77°F (25°C), 100 g., 5 sec., % of Original Pen. | 50           | --   | 45           | --   | 37           | --   |
| Solubility in Trichloroethylene, %                                         | 99.5         | --   | 99.5         | --   | 99.5         | --   |

#### 2. Cut Back Asphalt

The material shall be free from water and shall meet the requirements shown in the following table:

| Type - Grade                                                                                      | RC-2 |      | MC-1 |      |
|---------------------------------------------------------------------------------------------------|------|------|------|------|
|                                                                                                   | Min. | Max. | Min. | Max. |
| Flash Point TOC °F                                                                                | 80   | --   | 100  | --   |
| Furol Viscosity at 77°F, sec                                                                      | --   | --   | 110  | 150  |
| Furol Viscosity at 122°F, sec                                                                     | 200  | 300  | --   | --   |
| Furol Viscosity at 140°F, sec                                                                     | --   | --   | --   | --   |
| Furol Viscosity at 180°F, sec                                                                     | --   | --   | --   | --   |
| The distillate, expressed as percent by volume of total distillate to 680°F, shall be as follows: |      |      |      |      |

|                                     |      |     |      |     |
|-------------------------------------|------|-----|------|-----|
| Off at 437°F                        | 50   | 75  | --   | 25  |
| Off at 500°F                        | 70   | 90  | 40   | 70  |
| Off at 600°F                        | 90   | --  | 75   | 93  |
| Off at 680°F                        | --   | --  | --   | 50  |
| Off between 600°F and 680°F         | --   | --  | --   | --  |
| Test on residue:                    |      |     |      |     |
| Penetration at 77°F, 100 g., 5 sec. | 110  | 150 | 150  | 200 |
| Ductility at 77°F, 5 cm/min, cms.   | 100  | --  | 100  | --  |
| Solubility in CCl <sub>4</sub> %    | 99   | --  | 99.5 | --  |
| Spot Test                           | Neg. |     | Neg. |     |

When tested in accordance with the AASHTO Standard Method of Test of Asphaltic Materials by Oliensis Spot Method T-102-38, oil asphalts, cut-back asphalts shall show a negative result unless it is definitely proved that the parent crude cannot be processed to yield asphaltic material which will give a negative result regardless of how carefully the crude is processed. When such proof is furnished, the use of the following modified solvent will be permitted, and no other clauses or requirements of the standard tests are waived or changed.

The modified solvent shall be distillate from the parent crude from which the asphaltic material under test was made, and shall have the following distillation characteristics:

|                       |              |
|-----------------------|--------------|
| Initial boiling point | Above 300°F  |
| 50 percent off at     | 335 to 355°F |
| End point             | Below 410°F  |

### 3. Tack Coat

The material shall meet the requirements for Cut-Back Asphalt RC-2, diluted by the addition of not to exceed fifteen (15%) percent of an approved grade of gasoline and/or kerosene by volume, or a cut-back asphalt made by combining 50 to 70 percent of the asphaltic material as specified for the paving mixture with 30 to 50 percent gasoline and/or kerosene by volume.

## 2.2 ASPHALTIC CONCRETE MIXTURE

The paving mixture shall consist of a uniform mixture of coarse aggregate, fine aggregate, asphaltic material and mineral filler, if required.

### A. Types

The grading of each constituent of the mineral aggregate shall be such as to produce, when properly proportioned, a mixture which when tested in accordance with standard laboratory methods will conform to the limitations for master grading given below for the type specified:

**TYPE "A" (COARSE GRADED BINDER COARSE)**

| PASSING                   | RETAINED           | PERCENT BY WEIGHT |
|---------------------------|--------------------|-------------------|
| 2¼" screen                |                    | 100%              |
| 2" screen                 |                    | 97-100%           |
| 2" screen                 | 1" screen          | 15-40 %           |
| 1" screen                 | ½" screen          | 15-40 %           |
| ½" screen                 | ¼" screen          | 10-25 %           |
| ¼" screen                 | No. 10 mesh sieve  | 5-20 %            |
| No. 10 mesh sieve (total) |                    | 65-80 %           |
| No. 10 mesh sieve         | No. 40 mesh sieve  | 5-20 %            |
| No. 40 mesh sieve         | No. 80 mesh sieve  | 3-15 %            |
| No. 80 mesh sieve         | No. 200 mesh sieve | 1-8 %             |
| No. 200 mesh sieve        |                    | 1-10 %            |

Asphaltic material: 3% to 6% of the mixture by weight.

**TYPE "B" (FINE GRADED BASE OR LEVELING UP COURSE)**

| PASSING                   | RETAINED           | PERCENT BY WEIGHT |
|---------------------------|--------------------|-------------------|
| 1¼" screen                |                    | 100 %             |
| 1" screen                 |                    | 95-100 %          |
| 1" screen                 | ½" screen          | 20-50 %           |
| ½" screen                 | ¼" screen          | 10-40 %           |
| ¼" screen                 | No. 10 mesh sieve  | 5-25 %            |
| No. 10 mesh sieve (total) |                    | 55-70 %           |
| No. 10 mesh sieve         | No. 40 mesh sieve  | 0-30 %            |
| No. 40 mesh sieve         | No. 80 mesh sieve  | 4-20 %            |
| No. 80 mesh sieve         | No. 200 mesh sieve | 3-20 %            |
| No. 200 mesh sieve        |                    | 0-6 %             |

Asphaltic material: 3.5% to 7% of the mixture by weight

**TYPE "C" (COARSE GRADED SURFACE COURSE)**

| PASSING | RETAINED | PERCENT BY WEIGHT |
|---------|----------|-------------------|
|---------|----------|-------------------|



|                           |                    |          |
|---------------------------|--------------------|----------|
| 1" screen                 |                    | 100 %    |
| 3/4" screen               |                    | 95-100 % |
| 3/4" screen               | 1/2" screen        | 15-40 %  |
| 1/2" screen               | 1/4" screen        | 10-35 %  |
| 1/4" screen               | No. 10 mesh sieve  | 10-30 %  |
| No. 10 mesh sieve (total) |                    | 50-70 %  |
| No. 10 mesh sieve         | No. 40 mesh sieve  | 0-30 %   |
| No. 40 mesh sieve         | No. 80 mesh sieve  | 4-25 %   |
| No. 80 mesh sieve         | No. 200 mesh sieve | 3-25 %   |
| No. 200 mesh sieve        |                    | 0-6 %    |

Asphaltic material: 3.5% to 7% of the mixture by weight.

#### TYPE "D"

| PASSING                   | RETAINED           | PERCENT BY WEIGHT |
|---------------------------|--------------------|-------------------|
| 5/8" screen               |                    | 100 %             |
| 1/2" screen               |                    | 95-100 %          |
| 1/2" screen               | 1/4" screen        | 20-50 %           |
| 1/4" screen               | No. 10 mesh sieve  | 10-30 %           |
| No. 10 mesh sieve (total) |                    | 50-70 %           |
| No. 10 mesh sieve         | No. 40 mesh sieve  | 0-30 %            |
| No. 40 mesh sieve         | No. 80 mesh sieve  | 4-25 %            |
| No. 80 mesh sieve         | No. 200 mesh sieve | 3-25 %            |
| No. 200 mesh sieve        |                    | 0-6 %             |

Asphaltic material: 4.0% to 8.0% of the mixture by weight.

#### B. Tolerances

The exact grading of the aggregate and the asphalt content to be used in the above mixture, within the limits specified, will be designated by the Engineer and the mixture produced shall conform to this designated grading and asphalt content within the following respective tolerances:

| PASSING   | RETAINED  | PERCENT BY WEIGHT |
|-----------|-----------|-------------------|
| 2" screen | 1" screen | 5 %               |

|                           |                    |     |
|---------------------------|--------------------|-----|
| 1" screen                 | ½" screen          | 5 % |
| ¾" screen                 | ½" screen          | 5 % |
| ½" screen                 | ¼" screen          | 5 % |
| ⅜" screen                 | ¼" screen          | 5 % |
| ¼" screen                 | No. 10 mesh sieve  | 5 % |
| No. 10 mesh sieve (total) |                    | 5 % |
| No. 10 mesh sieve         | No. 40 mesh sieve  | 3 % |
| No. 40 mesh sieve         | No. 80 mesh sieve  | 3 % |
| No. 80 mesh sieve         | No. 200 mesh sieve | 3 % |
| No. 200 mesh sieve        |                    | 3 % |

Asphaltic material: 0-5%

#### C. Testing

1. An independent laboratory, as approved by the Engineer, shall be engaged by the Contractor. The laboratory shall make the following minimum number of daily tests:
  - a. One sample (three test specimens) for determination of density and stability.
  - b. One sample for determination of proportioning of materials.
2. The asphaltic concrete shall have the following laboratory density and stability:
  - a. Density - 94% to 98% (optimum 96%)
  - b. Stability - not less than 40% (Hveem or equivalent)

#### D. Equipment

##### 1. Mixing Plants

- a. Mixing plants that will not continuously produce a mixture meeting all of the requirements of this specification will be condemned.
- b. Mixing plants may be either the weight-batching type or the continuous mixing type. Both types of plants shall be equipped with satisfactory conveyor, power units, aggregate handling equipment, hot aggregate screens and bins and dust collectors and shall consist of the following essential pieces of equipment:

##### 2. Asphaltic Material Heating Equipment

Asphaltic material heating equipment shall be adequate to heat the amount of asphaltic material required to the desired temperature. Asphaltic material may be heated by steam coils which shall be absolutely tight. Direct fire heating of asphaltic materials will be permitted, provided the heater used is manufactured by a reputable concern and there is positive circulation of the asphalt throughout the heater. Agitation with steam or air will not be permitted. The heating apparatus shall be equipped with a recording thermometer with a

24 hour chart that will record the temperature of the asphaltic material at the highest temperature.

## **PART 3:EXECUTION**

### **3.1 EQUIPMENT**

All equipment necessary for the construction of the hot mix asphaltic concrete pavement shall be on the project and shall be approved by the Engineer as to condition before the Contractor will be permitted to begin construction operations on which the equipment is to be used.

#### **A. Spreading and Finishing Machine**

The spreading and finishing machine shall be of a type approved by the Engineer and shall be capable of producing a surface that will meet the requirements of the typical cross section and the surface test.

#### **B. Motor Grader**

The motor grader, if used, shall be a self-propelled power motor grader; it shall be equipped with pneumatic tired wheels, shall have a blade length of not less than twelve (12') feet, shall have a wheel base of not less than sixteen (16') feet and shall be tight and in good operating condition and approved by the Engineer.

#### **C. Pneumatic Tire Rollers**

The pneumatic tire roller shall be an acceptable self-propelled roller mounted on pneumatic tired wheels, with the weight capable of being varied uniformly from 225 to 365 pounds per inch width of tire tread, so constructed as to be capable of being operated in both a forward and a reverse direction and shall have suitable provisions for moistening the surface of the tires while operating. All tires of the same roller shall be smooth tread of equal size and diameter and shall be arranged in such a manner that the gap between the tires of one axle will be covered by the tires of the other. The tire pressure of each tire shall be adjusted as directed by the Engineer and this pressure shall not vary by more than 5 pounds per square inch.

#### **D. Tandem Roller**

This roller shall be an acceptable power driven tandem roller weighing not less than eight (8) tons.

#### **E. Three Wheel Roller**

This roller shall be acceptable power driven three wheel roller weighing not less than ten (10) tons.

#### **Straightedges and Templates**

The Contractor shall provide acceptable 16 foot straightedges for surface testing. Satisfactory templates shall be provided as required by the Engineer.

### **3.2 BASE PREPARATION**

Immediately before the tack coat or asphaltic concrete mixture is place, the base, subgrade, existing pavement, or bituminous surface shall be thoroughly cleaned in an approved manner to the satisfaction of the Engineer. Base shall be approved by Engineer prior to placement of any asphalt material.

### 3.3 APPLICATION

#### A. Tack Coat

1. When a tack coat is shown on the plans or is required by the Engineer, the surface shall be given a uniform application of tack coat. This tack coat shall be applied as directed by the Engineer, with an approved sprayer at a rate of not to exceed 0.10 gallon per square yard of surface. Where the asphaltic concrete mixture will adhere to the surface on which it is to be placed without the use of a tack coat, the tack coat may be eliminated by the Engineer. If in the opinion of the Engineer, a tack coat is necessary between any of the asphaltic concrete courses, a tack coat shall be used. The rate of tack coat application shall be estimated by the Engineer.
2. Care shall be taken not to injure the tack coat. The tack coat shall be allowed to stand long enough for sufficient evaporation of its volatile parts.
3. All surfaces of gutter, headers, manholes, valve boxes, etc. that will be in contact with the asphaltic concrete mixture, and all joints shall be given a thin uniform coat of the asphaltic material used for the tack coat.

#### B. Prime Coat

When a prime coat is shown on the plans or is required by the Engineer, the surface shall receive a uniform application of prime coat. This prime coat shall be applied as directed by the Engineer, with an approved sprayer evenly and smoothly under a pressure necessary for proper distribution. The Contractor shall provide all necessary facilities for determining the temperature of the asphaltic material and the rate at which it is applied.

#### C. Asphaltic Concrete

1. Generally, the asphaltic mixture shall be dumped and spread on the approved prepared surface with a spreading and finishing machine in such manner that when properly compacted the finished pavement will be smooth, of uniform density and will meet the requirements of the typical cross sections and the surface tests. Unless otherwise indicated or specified, all asphaltic concrete material shall be placed and shall receive its initial rolling during daylight hours. The mixture shall be at a temperature between 225 F and 325 F when placed. During the application of asphaltic material, care shall be taken to prevent splattering of adjacent pavement, curb and gutter and structures.
2. In placing a level-up course with the spreading and finishing machine in the forms, binder twine or cord shall be set to line and grade established by the Engineer. When directed by the Engineer, level-up courses shall be spread with the motor grader.
3. When the asphaltic mixture is placed in a narrow strip along the edge of an existing pavement, or used to level up small areas of an existing pavement or placed in small irregular areas where the use of a finishing machine is not practical, the finishing machine may be eliminated when authorized by the Engineer, provided a satisfactory surface can be obtained by other approved methods. When hand spreading is authorized, the asphaltic material shall be dumped outside the area on which it is to be spread, and the entire load shall be distributed by shovels or satisfactory mechanical means in a uniform layer of such depth that after receiving its ultimate compaction by rolling, the requirements of the typical cross sections and surface tests will be met.
4. In places where the leveling-up course will be greater than two (2") inches compacted thickness, the material shall be placed and compacted in two or more courses.

5. Adjacent to gutters, headers, manholes, valve boxes, and structures, the surface shall be finished uniformly high so that when compacted it will be slightly above the edge of the flush structures.

### 3.4 COMPACTION

#### A. Rolling

1. Rolling with the pneumatic, three wheel and tandem rollers shall start longitudinally at the sides and proceed toward the center of the pavement, overlapping on successive trips by at least half the width of the rear wheels. Alternate trips of the roller shall be slightly different in length. Rolling shall be continued until no further compression can be obtained and all roller marks are eliminated. At least two rollers, as specified herein, shall be provided for each job, one of which shall be a pneumatic roller. Additional rollers shall be provided if needed. If required, the pavement shall be rolled diagonally in each direction with the tandem roller, the second diagonal rolling crossing the line of the first.
2. The motion of the roller shall be slow enough at all times to avoid displacement of the asphaltic concrete mixture. If any displacement occurs, it shall be corrected at once by the use of rakes and addition of fresh mixture where required. The roller shall not be allowed to stand on pavement which has not been fully compacted and which has not cooled to the normal atmospheric temperature. To prevent adhesion of the surface mixture to the roller, the wheels shall be kept thoroughly moistened with water, but an excess of water will not be permitted. All rollers must be in good mechanical condition. Necessary precautions shall be taken to prevent the dropping of gasoline, oil, grease or other foreign matter on the pavement, either when the rollers are in operation or when standing.
3. The edges of the pavement along curbs, headers, manholes, valve boxes, and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the roller, shall be thoroughly compacted with lightly oiled hand operated vibrating rollers or mechanical tamps.
4. Each course after final compaction shall have a density of not less than 95% laboratory density.

#### B. Hand Tamping

The edges of the pavement along curbs, headers and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the rollers, shall be thoroughly compacted with lightly oiled tamps.

### 3.5 CONSTRUCTION JOINTS

The placing of the mixture shall be as nearly continuous as possible, and the roller shall pass over the unprotected edge of the freshly laid mixture only when the laying is discontinued for such length of time as will permit chilling or cooling the mixture. In every case when resuming the work, the material shall be cut back so as to produce a slightly beveled edge for the full depth of the course; the material cut away shall be immediately removed from the site of the work, and fresh mixture shall be laid against the fresh cut, or if desired, a stout rope may be placed across the pavement where the joint is made. When resuming the work, the material laid shall be cut back to the rope which will be removed, together with the surplus materials, and the fresh mixture shall be laid against the joint thus formed. Hot smoothing irons may be used for sealing joints, but extreme care shall be used to avoid burning the surface. Construction joints shall be either parallel to or at right angles to the longitudinal axis of the work.

### 3.6 SURFACE TEST

The surface of the pavement, after ultimate compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a sixteen (16') foot straightedge placed parallel to the centerline of the roadway, it shall have no deviation in excess of  $\frac{1}{8}$ " per foot from the nearest point of contact. The maximum ordinate measured from the face of the straightedge shall not exceed  $\frac{1}{4}$ " at any point. All areas not conforming to this requirement shall be immediately corrected as directed by the Engineer.

### 3.7 THICKNESS TEST

The Engineer may cut cores from the pavement at selected locations in order to determine if the specified thickness of asphaltic concrete is being placed. If any core indicates a deficient thickness, the Contractor shall have the privilege of cutting additional cores at his own expense in order to define the area of deficient thickness. The Contractor shall overlay the areas of deficient thickness designated by the Engineer with a minimum of  $1\frac{1}{2}$ " of additional hot mix asphaltic concrete.

**END OF SECTION**

# ASPHALT WORK ORDER NO # 2023-003

City of Seagoville

Anderson Asphalt & Concrete Paving, LLC

Date: January 1, 2023

Description of work: Work is for Bluff Street

|           |                                                                                                                                            |                                            |          |              |               |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|----------|--------------|---------------|
| Street:   | Bluff Street (From Kaufman goping 2,500LF)                                                                                                 | SF                                         | 52,500   | 2500 LF      |               |
| Scope:    | Cement Stabilize using 45LB/SY, Microcrack, Prime, 4" Type B and 2" Type D Superpave. Includes Traffic Control (CLOSED TO THROUGH TRAFFIC) |                                            |          |              |               |
| Item      | Description                                                                                                                                | Unit                                       | Quantity | Unit Price   | Total Price   |
| 1         | Traffic Control (CLOSED TO THROUGH TRAFFIC)                                                                                                | LS                                         | 1        | \$ 4,600.00  | \$ 4,600.00   |
| 2         | Cement Stabilize using 45LB/SY ( INCL. PRIME COAT)                                                                                         | SF                                         | 52,500   | \$ 1.95      | \$ 102,375.00 |
| 3         | 4" Type B WMA TXDOT 340                                                                                                                    | SF                                         | 52,500   | \$ 3.15      | \$ 165,375.00 |
| 4         | 2" Type D WMA SUPERPAVE                                                                                                                    | LF                                         | 52,500   | \$ 1.80      | \$ 94,500.00  |
| 5         | Backfill edge of pavement                                                                                                                  | SF                                         | 10,000   | \$ 1.20      | \$ 12,000.00  |
| 6         | Mobilization                                                                                                                               | LS                                         | 1        | \$ 11,200.00 | \$ 11,200.00  |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
|           |                                                                                                                                            |                                            |          |              |               |
| Sub-Total |                                                                                                                                            | Bluff Street (From Kaufman goping 2,500LF) |          |              | \$ 390,050.00 |
|           |                                                                                                                                            | Overall Total                              |          |              | \$ 390,050.00 |
|           |                                                                                                                                            | Total Amount of Work Order                 |          |              | \$ 390,050.00 |

\*All items include traffic control, and mobilization. Quantities are based on estimated measurements. Payment will be based on final field verification.

Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Special Requirements: \_\_\_\_\_

Performance Bond No.: \_\_\_\_\_ Payment Bond No.: \_\_\_\_\_

Before Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

After Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Before Video Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Approved by City of Seagoville:

Approved by Contractor:

Signature

Signature

Print Name

Cory Henneberg  
Print Name

Date

01/01/2023  
Date

## ***Regular Session Agenda Item: 16***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Hall Road for compensation in an amount not to exceed Eight Hundred Ninety Seven Thousand Four Hundred Fifty Dollars and Zero Cents (\$897,450.00) as set forth in Exhibit C, attached hereto and incorporated herein; authorizing the City Manager to execute any and all necessary documents; and providing an effective date.

### **BACKGROUND OF ISSUE:**

On or about May 15, 2023 the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement. the City of Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for , Anderson Asphalt & Concrete Paving, 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. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$897,450.00 for provision of asphalt road work on Hall Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C.

### **FINANCIAL IMPACT:**

\$897,450.00 Capital Projects Fund FY2024

### **RECOMMENDATION:**

City Staff recommends approval.

### **EXHIBITS:**

Resolution  
Master Interlocal Purchasing Agreement (Exhibit A)  
Anderson Asphalt & Concrete Paving (Exhibit B)  
Estimate from Anderson Asphalt (Exhibit C)



**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING ANDERSON ASPHALT & CONCRETE PAVING TO PROVIDE ASPHALT ROAD WORK ON HALL ROAD FOR COMPENSATION IN AN AMOUNT NOT TO EXCEED EIGHT HUNDRED NINETY SEVEN THOUSAND FOUR HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$897,450.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, 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 Forney 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 Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs, 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**, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$897,450.00 for provision of asphalt road work on Hall Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

**WHEREAS**, the City Council for the City of Seagoville, Texas has reviewed the estimate 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 Anderson Asphalt & Concrete Paving to provide asphalt road work on Hall Road as set forth in Exhibit C;

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

**SECTION 1.** The City Council hereby authorizes Anderson Asphalt & Concrete Paving to provide asphalt road work on Hall Road, to include provision of all necessary labor, equipment,

and materials, for compensation in an amount not to exceed Eight Hundred Ninety Seven Thousand Four Hundred Fifty Dollars and Zero cents (\$897,450.00), as set forth in Exhibit C, attached hereto and incorporated herein; and, the City Manager is authorized to execute any 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 18<sup>th</sup> day of September, 2023.

**APPROVED:**

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Lackey Stepper Sebastian, Mayor

**ATTEST:**

---

Sara Egan, City Secretary

**APPROVED AS TO FORM:**

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Victoria Thomas, City Attorney

# ASPHALT WORK ORDER NO # 2023-001

City of Seagoville

Anderson Asphalt & Concrete Paving, LLC

Date: January 1, 2023

Description of work: Work is for Hall Street

|           |                                                                                                                                            |                                           |          |              |               |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|----------|--------------|---------------|
| Street:   | Hall Street (Shady Lane to Frontage Road)                                                                                                  | SF                                        | 128,000  |              |               |
| Scope:    | Cement Stabilize using 45LB/SY, Microcrack, Prime, 4" Type B and 2" Type D Superpave. Includes Traffic Control (CLOSED TO THROUGH TRAFFIC) |                                           |          |              |               |
| Item      | Description                                                                                                                                | Unit                                      | Quantity | Unit Price   | Total Price   |
| 1         | Traffic Control (INCLUDES MESSAGE BOARD AT FRONTAGE ROAD)                                                                                  | LS                                        | 1        | \$ 8,000.00  | \$ 8,000.00   |
| 2         | Cement Stabilize using 45LB/SY ( INCL. PRIME COAT)                                                                                         | SF                                        | 128,000  | \$ 1.81      | \$ 231,680.00 |
| 3         | 4" Type B WMA TXDOT 340                                                                                                                    | SF                                        | 128,000  | \$ 3.22      | \$ 412,160.00 |
| 4         | 2" Type D WMA SUPERPAVE                                                                                                                    | LF                                        | 128,000  | \$ 1.77      | \$ 226,560.00 |
| 5         | Backfill area's withput curb                                                                                                               | LF                                        | 1,000    | \$ 0.05      | \$ 50.00      |
| 6         | Mobilization                                                                                                                               | LS                                        | 1        | \$ 19,000.00 | \$ 19,000.00  |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
|           |                                                                                                                                            |                                           |          |              |               |
| Sub-Total |                                                                                                                                            | Hall Street (Shady Lane to Frontage Road) |          |              | \$ 897,450.00 |
|           |                                                                                                                                            | Overall Total                             |          |              | \$ 897,450.00 |
|           |                                                                                                                                            | Total Amount of Work Order                |          |              | \$ 897,450.00 |

\*All items include traffic control, and mobilization. Quantities are based on estimated measurements. Payment will be based on final field verification.

Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Special Requirements: \_\_\_\_\_

Performance Bond No.: \_\_\_\_\_ Payment Bond No.: \_\_\_\_\_

Before Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

After Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Before Video Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Approved by City of Seagoville:

Approved by Contractor:

Signature

Signature

Print Name

Cory Henneberg  
Print Name

Date

01/11/2023  
Date

## ***Regular Session Agenda Item: 17***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing Anderson Asphalt & Concrete Paving to provide asphalt road work on Petty White Park Parking Lot for compensation in an amount not to exceed Two Hundred Six Thousand Six Hundred Fifty Dollars and Zero Cents (\$206,650.00) as set forth in Exhibit C, attached hereto and incorporated herein; authorizing the City Manager to execute any and all necessary documents; and providing an effective date.

### **BACKGROUND OF ISSUE:**

On or about May 15, 2023, the City of Seagoville and the City of Forney entered a Master Interlocal Purchasing Agreement. the City of Forney, Texas and, Anderson Asphalt & Concrete Paving have previously entered into an agreement for, Anderson Asphalt & Concrete Paving, 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. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$206,650.00 for provision of asphalt road work on Petty White Park Parking Lot, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C.

### **FINANCIAL IMPACT:**

\$206,650.00 Other Improvements Account FY2024

### **RECOMMENDATION:**

City Staff recommends approval.

### **EXHIBITS:**

Resolution  
Master Interlocal Purchasing Agreement (Exhibit A)  
Anderson Asphalt & Concrete Paving (Exhibit B)  
Estimate from Anderson Asphalt (Exhibit C)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING ANDERSON ASPHALT & CONCRETE PAVING TO PROVIDE ASPHALT ROAD WORK ON PETTY WHITE PARK PARKING LOT FOR COMPENSATION IN AN AMOUNT NOT TO EXCEED TWO HUNDRED SIX THOUSAND SIX HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$206,650.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, 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 Forney 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 Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs , 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**, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$206,650 for provision of asphalt road work on Petty White Park Parking Lot, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

**WHEREAS**, the City Council for the City of Seagoville, Texas has reviewed the estimate 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 Anderson Asphalt & Concrete Paving to provide asphalt road work on Petty White Park Parking Lot as set forth in Exhibit C;

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

**SECTION 1.** The City Council hereby authorizes Anderson Asphalt & Concrete Paving to provide asphalt road work on Petty White Park Parking Lot, to include provision of all necessary

labor, equipment, and materials, for compensation in an amount not to exceed Two Hundred Six Thousand Six Hundred Fifty Dollars and Zero cents (\$206,650.00), as set forth in Exhibit C, attached hereto and incorporated herein; and, the City Manager is authorized to execute any 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 18<sup>th</sup> day of September, 2023.

**APPROVED:**

---

Lackey Stepper Sebastian, Mayor

**ATTEST:**

---

Sara Egan, City Secretary

**APPROVED AS TO FORM:**

---

Victoria Thomas, City Attorney

Date \_\_\_\_\_

## ***Regular Session Agenda Item: 18***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City of Seagoville, Texas, ratifying the City Managers action to repair a partially collapsed sewer trench and parking lot at 1206 north U.S. Hwy 175; and authorizing the City Manager to make payment to Anderson Asphalt & Concrete Paving in an amount not to exceed \$33,100.00; as set forth in exhibit c, attached hereto and incorporated herein; authorizing the City Manager to execute any and all necessary documents; and providing an effective date.

### **BACKGROUND OF ISSUE:**

On or about May 15, 2023 the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement. the City of Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for , Anderson Asphalt & Concrete Paving, 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. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$33,100.00 for provision of asphalt road work to repair a partially collapsed sewer trench and parking lot at 1206 north U.S. Hwy 175, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C. This will authorize the City Manager to make payment to Anderson Asphalt & Concrete Paving in an amount not to exceed \$33,100.00.

### **FINANCIAL IMPACT:**

Funding for this contract in the amount of \$33,100.00 will be made from Other Improvements Account.

### **RECOMMENDATION:**

Staff recommends approval.

### **EXHIBITS**

Resolution  
Master Interlocal Purchasing Agreement (Exhibit A)  
Anderson Asphalt & Concrete Paving (Exhibit B)  
Estimate from Anderson Asphalt (Exhibit C)



**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS RATIFYING THE CITY MANAGERS ACTION TO REPAIR A PARTIALLY COLLAPSED SEWER TRENCH AND PARKING LOT AT 1206 NORTH U.S. HWY 175; AND AUTHORIZING THE CITY MANAGER TO MAKE PAYMENT TO ANDERSON ASPHALT & CONCRETE PAVING IN AN AMOUNT NOT TO EXCEED THIRTY THREE THOUSAND ONE HUNDRED DOLLARS AND ZERO CENTS (\$33,100.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS** the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, 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 Forney 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 Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs , 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**, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$33,100.00 for provision of asphalt road work at 1206 North U.S. HWY 175, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

**WHEREAS**, the City Council for the City of Seagoville, hereby approves the expenditures and authorizes the City Manager to make payment to Anderson Asphalt & Concrete Paving in an amount not to exceed \$33,100.00, for the repairs of the partially collapsed sewer trench and parking lot.

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

**SECTION 1.**The City of Seagoville does hereby approve the expenditures and authorizes the City Manager to make payment to Anderson Asphalt & Concrete Paving in an amount not to exceed \$33,100.00, for the repairs of the partially collapsed sewer trench and parking lot.

**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 18<sup>th</sup> day of September, 2023.

**APPROVED:**

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Lackey Stepper Sebastian, Mayor

**ATTEST:**

---

Sara Egan, City Secretary

**APPROVED AS TO FORM:**

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Victoria Thomas, City Attorney

# ASPHALT WORK ORDER NO # 2023-011

City of Seagoville

Anderson Asphalt & Concrete Paving, LLC

Date: September 7, 2023

*Description of work: Work is for Water Street from the frontage road to the new bridge*

| <b>Street:</b>   | Seagoville Veterinarian Hospital                          | SF                                      | 5,600    |             |              |
|------------------|-----------------------------------------------------------|-----------------------------------------|----------|-------------|--------------|
| <b>Scope:</b>    | Cement Stabilize using 45LB/SY, Microcrack and 2" Type D. |                                         |          |             |              |
| Item             | Description                                               | Unit                                    | Quantity | Unit Price  | Total Price  |
| 1                | Cement Stabilize using 45LB/SY ( INCL. PRIME COAT)        | SF                                      | 5,600    | \$ 2.35     | \$ 13,160.00 |
| 2                | 2" Type D WMA TXDOT 340                                   | SF                                      | 5,600    | \$ 2.90     | \$ 16,240.00 |
| 3                | Mobilization/Bond                                         | LS                                      | 1        | \$ 3,700.00 | \$ 3,700.00  |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
|                  |                                                           |                                         |          |             |              |
| <b>Sub-Total</b> |                                                           | <b>Seagoville Veterinarian Hospital</b> |          |             | \$ 33,100.00 |
|                  |                                                           | <b>Overall Total</b>                    |          |             | \$ 33,100.00 |
|                  |                                                           | <b>Total Amount of Work Order</b>       |          |             | \$ 33,100.00 |

\*All items include traffic control, and mobilization. Quantities are based on estimated measurements. Payment will be based on final field verification.

Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Special Requirements: \_\_\_\_\_

Performance Bond No.: \_\_\_\_\_ Payment Bond No.: \_\_\_\_\_

Before Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

After Photos Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Before Video Taken: \_\_\_\_\_ Yes \_\_\_\_\_ No

Approved by City of Seagoville:

Approved by Contractor:

Signature

Signature

Print Name

Cory Henneberg

Print Name

Date

9/7/2023

Date

EXCLUSIONS: Due to the abnormally high plasticity and no confinement Anderson Asphalt will not be able to warranty longitudinal cracking.

## ***Regular Session Agenda Item: 19***

**Meeting Date:**     **September 18, 2023**

**ITEM DESCRIPTION:**

Discussion regarding a potential civic center.

**BACKGROUND OF ISSUE:**

Mayor Pro Tem Magill requested the item to be placed on the agenda.

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

N/A

**EXHIBITS:**

Civic Center Handout

## Seagoville's Future Civic Center

The Chamber auction was held Saturday 8-20-2023 at the Kaufman Civic Center.

Saturday was the only available day that was open for the Chamber auction.

The center is booked every day.

Full day hall rental is \$ 1000.00 if the kitchen is required that is an addition \$ 250.00. See attachments.

Five days a week rental for hall only is \$ 260,000 per year (5 days a week), if kitchen is added for half that time that is an additional

\$ 65,000.00 for a total of \$ 325,000.00 per year rental.

**The Civic Center would pay for itself in a few years plus give Seagoville an added attraction.**













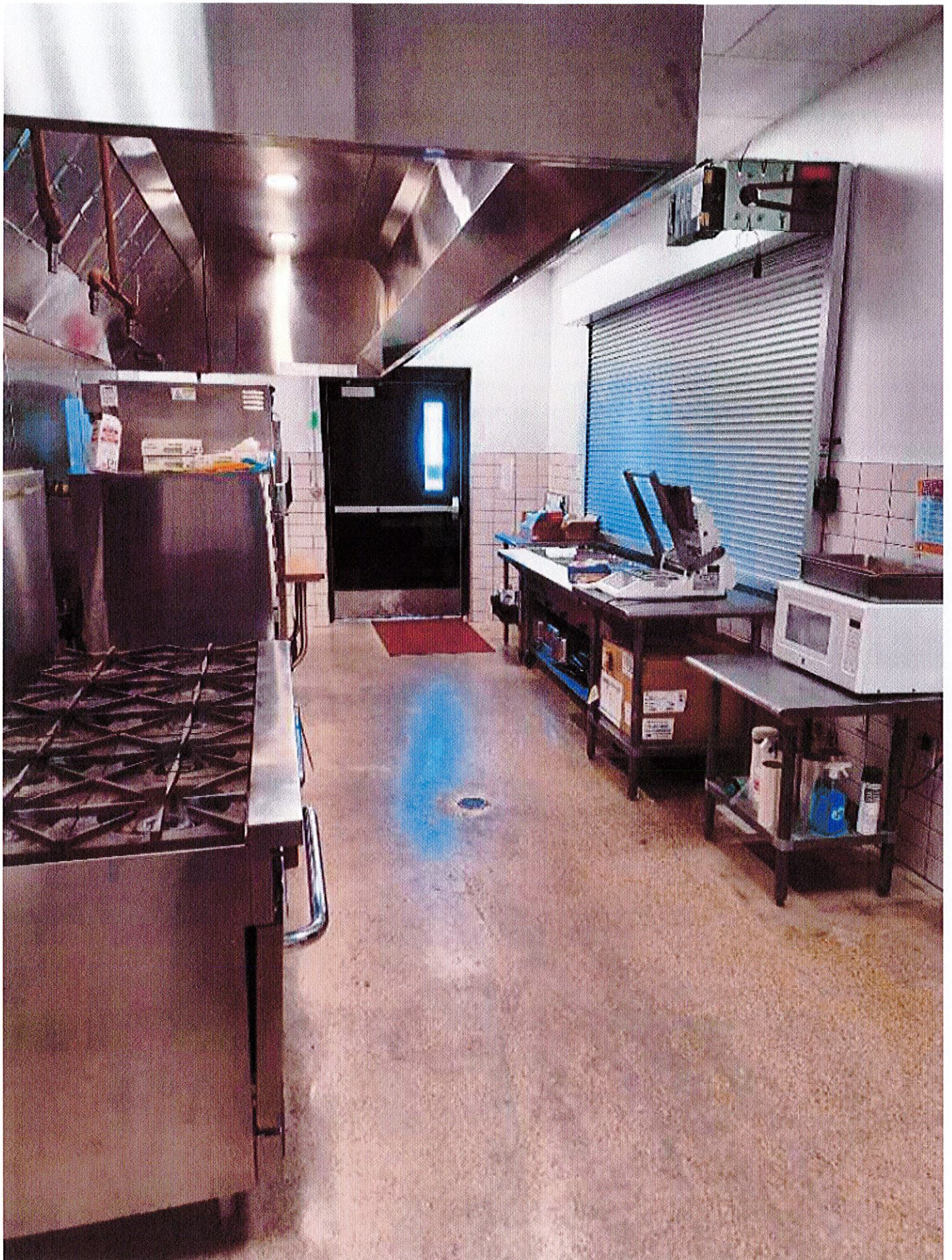
























## KAUFMAN CIVIC CENTER RENTAL AGREEMENT

In order to rent the Community Room within the City of Kaufman Civic Center, I, \_\_\_\_\_, ("Renter"), hereby agree to abide by the following terms and conditions and acknowledge that my failure to do so will result in immediate termination of this Agreement by the City and may result in additional fees and the loss of my rental deposit.

Key must be picked up between 9:00 am - 4:30 pm Monday-Friday at the Civic Center at 607 E. Fair Street, Kaufman, Texas 75142.

Date Key Picked Up: \_\_\_\_\_

Key must be returned the day after event.

Key# \_\_\_\_\_  
Returned? \_\_\_\_\_

Renter hereby acknowledges that failure to return the key after the event shall result in an additional \$75.00 key fee.

RENTER NAME: \_\_\_\_\_

ORGANIZATION NAME: \_\_\_\_\_

TYPE OF EVENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

CELL PHONE: \_\_\_\_\_ HOME: \_\_\_\_\_

WORK: \_\_\_\_\_ EMAIL: \_\_\_\_\_

EVENT DATE(S): \_\_\_\_\_

EVENT TIMES INCLUDING SET UP & CLEAN UP: \_\_\_\_\_

ESTIMATED NUMBER OF GUESTS: \_\_\_\_\_

KITCHEN USE: \_\_\_\_\_ DINING ROOM USE: \_\_\_\_\_

The Kaufman Civic Center reserves the right to book two half-day rentals on the same date.

**FINANCES:** Renter agrees to pay the City of Kaufman \$\_\_\_\_\_ for rental of the Kaufman Civic Center for a full day / half day / quarter-day usage. (circle one) Payment in full is required at least 14 days before the event.



**DEPOSIT:** A deposit of \$250.00 (no alcohol) or \$500.00 (with alcohol) is required to ensure that the Center is undamaged after use. The deposit is refundable if no property damage occurs and no additional cleaning is necessary. Deposit must be made on the date this Agreement is signed.

**ALCOHOL:** One of the following items **MUST** be initialed by Renter.

\_\_\_\_\_ There **WILL NOT** be alcohol at this event      \_\_\_\_\_ There **WILL** be alcohol at this event

**If alcohol will be present at the event, a licensed Police Officer MUST BE ON SITE FOR THE DURATION OF YOUR EVENT. The City of Kaufman requires four (4) officers for the first 100 guests and an additional officer for every 50 guests.**

\_\_\_\_\_ Number of officers needed  
\_\_\_\_\_ Number of hours  
\$ \_\_\_\_\_ Total cost for Security (if KPD)

**DATE CHANGES:** In the event Renter need to change the date of the rental, every effort will be made to transfer reservations to support the new date. All deposits are transferable to the new date; additional fees may apply. Renter further understands that last-minute changes can impact the quality of the event and that Kaufman Civic Center is not responsible for these compromises in quality. Renter understands that if the new date they are requesting has been previously booked Kaufman Civic Center cannot transfer the reservation to that requested date.

Please initial below next to each item to signify your agreement.

1. \_\_\_\_\_ I agree that this Agreement consists of a Memorandum of Understanding, a Rental Agreement, Rental Policy and Cleaning Procedures, and a contractual agreement with a City of Kaufman police officer (if applicable). I further agree that these documents shall constitute the full and complete Agreement between both parties. I further understand that the City may make changes to the agreement documents at any time.
2. \_\_\_\_\_ I agree to abide by the Kaufman Civic Center Rental Agreement and all related agreement documents, and those rules and regulations posted at the Center, and to make all related persons, including guests of the event, aware of all such rules and regulations. If I, or related persons, fail to abide by such terms and conditions, I will forfeit my rental deposit.
3. \_\_\_\_\_ I agree to promptly pay the City for any additional charges incurred while renting a space in the Center, as more fully explained in the Rental Policy and Cleaning Procedures. Additionally, the Center reserves the right to file a police report.



4. \_\_\_\_\_ I AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF KAUFMAN, TEXAS, AND THE CITY OF KAUFMAN CIVIC CENTER, FROM ANY AND ALL LIABILITY OR CLAIM OF LIABILITY TO OR BY ANY PERSON BROUGHT IN CONNECTION WITH THE USE OF THE CIVIC CENTER IN ANY WAY, AND I RELEASE THE CITY OF KAUFMAN, TEXAS AND THE CITY OF KAUFMAN CIVIC CENTER FROM ALL LIABILITY THEREOF.
5. \_\_\_\_\_ I agree to maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of the business risk with the City of Kaufman listed as an additional insured on the policy and a waiver of subrogation in favor of the City of Kaufman. Certificates of insurance shall be provided upon request.
6. \_\_\_\_\_ I agree that my rental is not confirmed until all agreement documents and the deposit are received and accepted by a Kaufman Civic Center representative.
7. \_\_\_\_\_ I agree that to receive my deposit back for a rental cancellation, I must notify the Kaufman Civic Center representative at least 14 calendar days before the scheduled rental date. I understand that if I cancel the Agreement within 14 calendar days of the scheduled rental date, I will forfeit my rental deposit.
8. \_\_\_\_\_ I agree that the City of Kaufman may terminate this Agreement at any time for any cause or convenience.

**I, the above-stated Renter, understand the Kaufman Civic Center Rental Agreement in its entirety and agree to abide by the aforementioned terms and conditions.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Civic Center Representative: \_\_\_\_\_ Date: \_\_\_\_\_

City Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_  
(For alcohol present)

Deposit Paid: Cash / Credit Card / Check# \_\_\_\_\_ Date: \_\_\_\_\_

Deposit Returned: Check# \_\_\_\_\_ Date: \_\_\_\_\_

Rental Paid: Cash / Credit Card / Check# \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

Security Paid: Cash / Credit Card / Check# \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_





## MEMORANDUM OF UNDERSTANDING

1. The "Center" shall refer to the Kaufman Civic Center and all property located at 607 E. Fair Street, Kaufman, TX 75142.
2. The term "Renter" includes every person (whether or not named or referred to in the Rental Agreement) who shall use the facilities of the Center by "Renters", with expressed or implied consent.
3. The Agreement consists of all documents agreed to and signed by the Renter, including, but not limited to, this Memorandum of Understanding, the Rental Agreement, Rental Policy, and Cleaning Procedures.
4. Maximum attendance allowable in the Center is governed by the posted Fire Code. Standing room only: 500. With tables and chairs: 350.
5. Renter shall provide a minimum of one (1) adult per each ten (10) children for youth activities.
6. The Center facilities are entered upon by Renter in good condition. Renter shall leave the Center facilities in the same (or better) condition as upon arrival. Any damages will be charged to Renter according to the Rental Policy.
7. Renter shall not use the Center facilities unlawfully. **DRUGS AND EXPLOSIVES ARE STRICTLY PROHIBITED.**
8. If alcohol is to be present, **a police officer must be on duty for the duration of the event.** The City of Kaufman requires four (4) officers for the first 100 guests and an additional officer for every 50 guests.
9. Renter will be responsible for insurance coverage for all events, as well as any additional services required for damages incurred by their event.

*The Kaufman Civic Center is part of our community. It was built for the people of Kaufman, by the people of Kaufman. Please take excellent care of it for future renters.*

## EMERGENCY CONTACTS

True Emergencies – Call 911

For facility emergencies, please call (214) 802-4933



## KAUFMAN CIVIC CENTER RENTAL POLICY

It is the responsibility of Renter to notify all related persons, including all persons in Renter's group and attending Renter's event at the Kaufman Civic Center ("Center"), of this Rental Policy and Cleaning Procedures as follows:

1. Smoking is strictly prohibited inside the Center and within fifty (50) feet of any entrance to the Center. All tobacco and related products are prohibited, including, but not limited to: cigarettes, e-cigarettes, vapor sticks, cigars, pipe tobacco, chewing tobacco, and snuff.

2. Drugs and explosives are **NOT** permitted on Center property. Failure to comply shall result in police action and enforcement.

3. Alcoholic beverages are **NOT** permitted on Center property without the City Manager's approval. There must be a licensed police officer on duty for the duration of the event. Renters may use the Kaufman Police Department or Kaufman County Sheriff's Department to provide security. If using KSO, Renter must provide Civic Center Staff with a signed agreement with the agency at least 14 days prior to the event.

- a. Renter and/or provider of alcohol assumes all liability and responsibility associated with the use, consumption, and dispensing of alcohol. Commercial Renters must provide a copy of Insurance for Alcohol.
- b. Renters shall be responsible for hiring a TABC certified bartender to serve alcohol and provide the licenses of the individual to the Civic Center staff prior to the event.
- c. Alcohol must be served in plastic glasses. No glass is allowed.
- d. Renter shall be responsible for monitoring alcohol entering and leaving the Center for the event. No guest shall be allowed to enter or leave the Center with open containers of alcohol at any time.
- e. Alcohol consumption is not permitted in nearby vehicles or parking lots.
- f. All state and federal laws relating to alcohol use apply. No one under the legal age of 21 may consume alcohol on Center property.
- g. Failure to comply with the Center's alcohol policy shall result in police action and enforcement.

4. If Renter plans on selling or auctioning firearms on-premise, the renter must comply with the Bureau of Alcohol, Tobacco, Firearms, and Explosives Gun Show Guidelines.



3. Upon arrival, Renter shall take and send pictures of any issues with the Center facilities to [civiccenter@kaufmantx.org](mailto:civiccenter@kaufmantx.org) so that the Kaufman Civic Center representative may address such issues with previous renters.

4. Renter and all related persons, including guests, shall respect all furniture and fixtures that the Center provides. No marking, etching, or destroying of the tables, chairs, and/or other surfaces provided is permissible. Renter shall pay for repair and/or replacement of any furniture or surface left in an unsatisfactory condition to the Kaufman Civic Center, and for any other damage done to City property. If any damage to City property occurs, Renter shall forfeit all rights to their rental deposit.

5. No animals are permitted in the Center, except for service animals.

6. Vehicles shall be parked on paved areas only. Parking is not permitted on the grass at any time, including loading or unloading.

7. All event decorations shall be free-standing. Nothing may be affixed to the walls, windows, and/or other inside or outside building surfaces, except for items temporarily hung from curtain rods installed inside above the hallway door frame. No nails, pins, tape, glue, adhesive, confetti, sparklers, rice, sawdust, or glitter are permitted. No candle frames are allowed. The use of flameless candles is permitted.

8. Renter shall vacate the premises by **MIDNIGHT** unless other arrangements have been made with a representative of the Kaufman Civic Center. Residential neighbors in the area reserve the right to pursue police action against violators.

9. Renter shall clean the premises, according to the Cleaning Procedures, before the rental term is up, or Renter may be charged an additional cleaning fee and forfeit their rights to their deposit. All property owned by Renter and guests shall be removed from Center property upon vacation of the premises. No property may be stored or remain on site unless prior approval is given by the Kaufman Civic Center Coordinator.

**I, the above-stated Renter, understand the Kaufman Civic Center Rental Policy in its entirety and agree to abide by the aforementioned terms and conditions.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Civic Center Representative: \_\_\_\_\_ Date: \_\_\_\_\_



## KAUFMAN CIVIC CENTER CLEANING PROCEDURES

The following cleaning procedures **MUST** be completed before Renter vacates the Civic Center or Renter may forfeit their deposit, may incur additional charges for cleaning, and may face prosecution.

*The following checklist is provided for Renter's convenience in securing deposit return.*

**Cleaning Supplies:** Center will provide cleaning supplies, and trash bags for convenience, which will be located in the janitor's closet in the foyer.

### **Tables and Chairs:**

1. Clean all tables and chairs. Wipe down all tabletops prior to putting them away.
2. Follow posted instructions for storing tables and chairs inside the storage closet.
3. If any chairs are dirty beyond cleaning, please place them separately from other chairs in the closet.

### **Trash:**

1. Securely bag and remove all trash from the kitchen, bathrooms, and main room. There is a dumpster located to the left of the building when exiting the front door.
2. Any litter outside of the Center must be picked up and disposed of properly inside a secure bag and placed in the dumpster.

**Decor:** All décor, including balloons (air-filled or helium), must be removed upon vacation from the premise. If balloons float into the rafters, Civic Center staff must be notified.

**Air/Heat:** All thermostats should be set to a reasonable temperature upon departure. If it is hot outside, leave the AC temperature at 75 degrees. If it is cold outside, leave the heat temperature at 60 degrees.

**Lights:** Turn off all lights, including in the bathrooms and main room.

**Doors:** Check and lock ALL doors: Two (2) front doors and one (1) back door. Kitchen and Dining Room exterior doors, if applicable.



**Key:** Place the electronic keycard in the mailbox located outside the front door. Place the physical storage room keys in the first drawer of the credenza in the lobby. If Renter fails to return the key, Renter shall pay an additional \$75.00 key fee.

I, \_\_\_\_\_, understand the Kaufman Civic Center's Cleaning Procedures and agree to abide by such terms and conditions.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Rates

| <u>Type of Fee</u>              | <u>Amount</u> |
|---------------------------------|---------------|
| Deposit (no Alcohol)            | \$250.00      |
| Deposit (Alcohol)               | \$500.00      |
| Quarter Day Rental              | \$250.00      |
| Half Day Rental                 | \$500.00      |
| Full Day Rental                 | \$1,000.00    |
| Quarter Day Rental (Non-Profit) | \$125.00      |
| Half Day Rental (Non-Profit)    | \$250.00      |
| Full Day Rental (Non-Profit)    | \$500.00      |
| Kitchen Use Fee                 | \$250.00      |
| Dining Room Use Fee             | \$250.00      |
| Lost Key Fee                    | \$75.00       |

**Quarter Day = 2 hours**

**Half Day = 4 hours**

**Full Day = 8 hours**

## ***Regular Session Agenda Item: 24***

**Meeting Date: September 18, 2023**

### **ITEM DESCRIPTION:**

Discuss and consider approving an Ordinance of the City of Seagoville, Texas, amending the Code or Ordinances of the City of Seagoville, by adding a new Article 7.11 “Mass Gatherings” to Chapter 7 “Business Regulations”; providing for a penalty of fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense; providing a repealing clause; providing a severability clause; and providing for an effective date.

### **BACKGROUND OF ISSUE:**

The proposed ordinance will require establishing regulations and permit requirements on some events, activities, or gatherings in the city due to their size or special requirements. In order to address these concerns and foster a vibrant, active and safe community, the City Council finds that it may be in the best interest of the citizens of the City of Seagoville to establish these regulations and permit requirements for the governance of various events, gatherings, or activities held in the City limits that may have a detrimental impact on public resources or pose a danger to public health, safety and welfare.

### **FINANCIAL IMPACT:**

NA

### **RECOMMENDATION:**

Staff recommends approval of the ordinance.

### **EXHIBITS:**

Ordinance

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS AMENDING THE CODE OR ORDINANCES OF THE CITY OF SEAGOVILLE, BY ADDING A NEW ARTICLE 7.11 "MASS GATHERINGS" TO CHAPTER 7 "BUSINESS REGULATIONS"; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council desires to encourage special events and activities that benefit the city, stimulate economic growth and provide a vibrant, active community for all citizens; and

**WHEREAS**, the City Council desires that such events and activities be conducted in a manner that provides for the protection, preservation, and promotion of the physical health and safety of the public; and

**WHEREAS**, the City Council has determined that some events, activities or gatherings, due to their size or special requirements, may place unique demands on public resources or pose a danger to public health, safety and welfare; and

**WHEREAS**, in order to address these concerns and foster a vibrant, active and safe community, the City Council finds that it is in the best interest of the citizens of the City of Seagoville to establish regulations and permit requirements for the governance of various events, gatherings, or activities held in the City limits that may have a detrimental impact on public resources or pose a danger to public health, safety and welfare;

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

**SECTION 1.** The findings and facts recited above are found to be true and correct and are incorporated by this reference herein.

**SECTION 2.** The Code of Ordinances of the City of Seagoville, Texas is hereby amended by adding a new Article 7.11 "Mass Gatherings" to Chapter 7 "Business Regulations" to read in its entirety as follows:

**"CHAPTER 7 BUSINESS REGULATIONS**

**...**

**ARTICLE 7.11 MASS GATHERINGS**



## **Division 1. General Provisions**

### **Sec. 7.11.001 Purpose**

Some gatherings, due to their size and/or special requirements, may place unique demands on public resources or pose a danger to public health, safety and welfare. The purpose of this Article is to make provision for and address these demands on public resources and to ensure that the public health, safety and welfare are protected. The provisions of this Article are not intended to place an unnecessary burden on any individual's right to association or freedom of expression.

### **Sec. 7.11.002 Definitions**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City Manager.* Means the City Manager of the City or his/her designee.

*Concert.* Means a live musical performance held inside the city limits of the City of Seagoville that attracts or is expected to attract more than 3,000 persons and at which the persons will remain for more than four (4) continuous hours or for any amount of time during the period beginning at 10:00 p.m. and ending at 4:00 a.m.

*Director.* Means the Director of Community Development for the City or his/her designee.

*Demonstration.* Means a gathering, including a protest or rally, the sole or principal purpose of which is the expression, dissemination, or communication, by verbal, visual, literary, or auditory means of opinion, views or ideas and/or public display of the attitude of assembled persons toward a person, cause, issue or other matter.

*Expected Total Attendance.* Means the estimated attendance at a mass gathering estimated by the applicant on the application. Expected total attendance includes all event staff, vendors, operators, spectators, participants, entertainers, performers, and attendees.

*Mass gathering.* Means a Concert or Non-Concert event, as defined herein and includes recurring mass gatherings.

*Non-Concert event.* Means any gathering, activity, or event, other than a Concert, held inside the city limits of the City of Seagoville that:

- (1) attracts or is expected to attract:
  - a. more than 500 persons or
  - b. more than 300 persons if it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering; and
- (2) at which the persons will remain for more than four (4) continuous hours

or for any an amount of time during the period beginning at 10:00 p.m. and ending at 4:00 a.m.

*Permit.* Means written approval of the Director to hold a mass gathering or recurring mass gathering and providing the conditions, if any, attached to such approval.

*Person.* Means an individual, group of individuals, firm, corporation, partnership, association, company, or other business or organizational entity.

*Promote.* Means to organize, manage, finance, conduct, provide the venue for, or hold.

*Promoter.* Means a person who promotes a mass gathering.

*Recurring mass gathering.* Means any mass gathering, as defined herein, that will be repeated on a regular basis (*e.g.* weekly, monthly, etc.), to occur more than once in a one-year period from the date of permit issuance.

#### **Sec. 7.11.003 Application of Article; exemptions**

All mass gatherings, except for the following must conform to the applicable provisions of this Article:

- (a) a mass gathering sponsored, in whole or in part, by the City;
- (b) a mass gathering sponsored by Dallas County, Kaufman County, the State of Texas, or the United States federal government;
- (c) a mass gathering held or conducted, with City permission, on City-owned, public property;
- (d) a mass gathering held or conducted by the Armed Forces of the United States of America or the military forces of the State of Texas;
- (e) a lawful, peaceful protest, demonstration or rally (organizers of such lawful protest, demonstration or rally shall contact the City Manager's office to verify that no events are scheduled in the areas where the protests, demonstrations or rallies are planned and to ensure public safety precautions are in place);
- (f) Educational or school activities and youth athletic and/or sporting events; and
- (g) a mass gathering exempted by City Council resolution.

#### **Sec. 7.11.004 General Authority**

- (a) The Director shall implement, administer and enforce the provisions of this Article. The Director has the authority to issue a mass gathering permit that authorizes one or more mass gatherings described in this Article when the requirements of this Article have been met.
- (b) The provisions of this Article are cumulative of all city ordinances. Building permits, food establishment permits, alcoholic beverage licenses, and all other

permits and licenses required by city ordinance or other local, state, or federal law for the event(s) or activity(s) planned to be conducted in conjunction with or as a part of a mass gathering event must be applied for and obtained separately and in accordance with the applicable city ordinance or other governing law. The Director shall coordinate applications for any city-issued permit(s) or license(s) required in addition to the mass gathering permit.

- (c) The Director is authorized to install or direct the installation of temporary traffic control signs, devices, and/or markings relating to the control of the speed, movement, and parking of motor vehicles in association with traffic anticipated to be generated by a mass gathering for which a permit has been or will be granted. A temporary traffic control sign, device, or marking shall have the same effect as a traffic control sign, device or marking authorized to be placed by the traffic engineer pursuant to this Code of Ordinances.

#### **Sec. 7.11.005 - 7.11.010 Reserved**

### **Division 2. Permits**

#### **Sec. 7.11.011 Permit requirement**

Except as specifically exempted pursuant to section 7.11.003 of this Article, it shall be unlawful for any person to promote a mass gathering or recurring mass gathering without having first obtained a mass gathering permit or recurring mass gathering permit issued under this Article by filing a written application and paying the applicable fee. A mass gathering permit shall allow the permit holder to conduct one mass gathering event on the date and at the times stated on the permit, not to exceed a duration of fourteen (14) consecutive days. A recurring mass gathering permit shall allow the permit holder to conduct repeated instances of a mass gathering on a recurring basis for a period of one year. The permit fee shall be set, from time to time, by the City Council and shall be included in the City's Master Fee Schedule.

#### **Sec. 7.11.012 Application Procedure**

- (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the Director. The Director may, but is not required to, accept an application filed at least 30 days prior to the date upon which the mass gathering will be held; however, in that situation, the applicant acknowledges that the required inspections and review process may not be completed in time to allow for authorization and permitting.
- (b) The mass gathering permit application must contain the following items:
  - (1) The promoter's name, address, e-mail address, and telephone number;
  - (2) The location, address, and description of the property on which the mass gathering will be held;

- (3) The name, address, e-mail address, and telephone number of the owner of the property on which the mass gathering will be held;
- (4) If the promoter is not the property owner, a notarized, signed agreement between the Promoter and the property owner authorizing the promoter to conduct the mass gathering on the property;
- (5) a copy of the current, valid certificate of occupancy for the location at which the mass gathering will be held;
- (6) The name, type and purpose of the mass gathering event;
- (7) The dates and times that the mass gathering will be held;
- (8) The expected total attendance for the mass gathering;
- (9) The maximum number of persons the Promoter will allow to attend the mass gathering and the plan the Promoter intends to use to limit attendance to that number;
- (10) The name, address, e-mail address, and telephone number of each entertainer or other performer who has agreed to appear at the mass gathering and the name, address, e-mail address, and telephone number of each entertainer or performer's agent;
- (11) A copy or summary description of each agreement between the promoter and an entertainer or performer;
- (12) A site plan of the proposed location for the mass gathering upon which is indicated all permanent and temporary structures, tents, awnings, canopies, food service booths, stages, fences, barricades, restroom facilities (including restroom facilities that are compliant with the Americans with Disabilities Act of 1990), loudspeakers (including orientation of loudspeakers), and lighting for outdoor activities or functions to be utilized for the mass gathering;
- (13) Details of the proposed location, number and size of any signage for the mass gathering;
- (14) A description of any live animals that will be present at the mass gathering and the plan for the care of the animals, including sanitation and waste removal;
- (15) A written public safety plan to be put into effect by the promoter for the mass gathering to ensure public safety at the mass gathering and to address the following:
  - a. Security/police plan for the mass gathering location, to include identification of the sufficient number of security and/or police

personnel that will be provide by Promoter to properly secure and police the event and to prevent interruption of normal police protection for the City, to provide security, traffic and crowd control in connection with the mass gathering, in accordance with the following:

| <b>Number of Expected Participants</b> | <b>Minimum Number of Officers or Security Required</b>                         |
|----------------------------------------|--------------------------------------------------------------------------------|
| 0 to 250                               | 0-2                                                                            |
| 251 to 1,500                           | 2                                                                              |
| 1,501 to 3,000                         | 4                                                                              |
| 3,001 to 5,000                         | 6                                                                              |
| Over 5,000                             | 6 plus 1 police officer for every 1,000 participants and spectators over 5,000 |

The Promoter, upon recommendation of the Chief of the Seagoville Police Department, may be required to provide a number of police officers or licensed security personnel, in addition to those otherwise required in this section if:

- (1) Any alcoholic beverage is sold, served, or otherwise made available at the mass gathering;
  - (2) Special needs for increased security, crowd control, or traffic control are created by:
    - (A) The topography or size of the mass gathering location;
    - (B) Weather conditions at the mass gathering; or
    - (C) The date and/or time of day during which the mass gathering is conducted;
  - (3) The mass gathering requires street closures or rerouting of vehicular or pedestrian traffic; or
  - (4) The history of the particular mass gathering indicates that a greater number of police officers or licensed security personnel are required to protect the public health, safety, and welfare.
- b. The police officers or licensed security personnel required to be provided at a mass gathering by this section must be sworn peace officers or licensed security personnel;

- c. Fire protection plan for the mass gathering location, including a plan for prevention of fires and adequate protection of persons and property in the event of fire, including without limitation, adequate exists, fire extinguishers, adequate access for fire trucks and emergency vehicles, and the location of all fire-hydrants;
  - d. Emergency medical services plan for the mass gathering location to provide adequate emergency medical services at the mass gathering;
  - e. Identification of public assembly areas;
  - f. Concession services plan including, at a minimum, including the plan for vendor and food and/or beverage concession distribution in compliance with health and safety requirements,
  - g. Sanitation plan to ensure the highest standards of cleanliness and sanitation are maintained at the mass gathering, including adequate restroom facilities, a plan to empty refuse containers frequently to prevent overflow, and identification of measures for reduction of spread or incidence of communicable diseases and reduction of hazards and pollution of the environment;
  - h. Severe weather or emergency evacuation or shelter plans; and
  - i. the need for the presence of law enforcement, fire protection, and emergency services personnel at the event.
- (16) A written traffic control plan to be put into effect by the promoter for the mass gathering to provide for the safe and orderly movement of traffic at and near the location of the mass gathering. The traffic control plan must include:
- (a) the number of motor vehicles anticipated at the mass gathering;
  - (b) identification (on a site plan or otherwise) of all streets, alleys, or other thoroughfares and pedestrian ways that will be impacted by anticipated vehicular traffic,
  - (c) all points of ingress and egress into the mass gathering,
  - (d) procedures that promoter will employ to avoid traffic entering or leaving the mass gathering impacting other streets, alleys, roadways, or thoroughfares;
  - (e) parking plan, indicating that sufficient parking has been provided to accommodate the projected number of users with a ten (10%) percent surplus. If parking is to be on private property adjacent to the event location, written evidence that the promoter has a right of possession of the property through ownership, lease, license or other agreement

must be provided. When the location designated for parking of motor vehicles is not an established parking area, a plan shall also be submitted which shows how the needed parking will be achieved and arranged. The number of parking spaces and layout of the parking area, including aisle widths and size of parking spaces, shall be included in the submittal. If parking is provided off-site, details for transport of persons from the off-site parking to the mass gathering location must be included.;

- (f) a site plan showing where “No Parking” signs will be posted and additionally showing all fire lanes and describing the measures that will be employed to maintain the fire lanes free and clear of obstructions, including but not limited to parked motor vehicles;
  - (g) the plan for directing of both attendees and motor vehicles safely entering, leaving, or upon the location of the mass gathering;
  - (h) all equipment that will be used to control traffic and procedures that will be employed to avoid back-up of traffic affecting city or state streets, highways, or other thoroughfares;
  - (i) identification of procedures that will be employed by promoter to provide adequate and prompt ingress and egress at the location of the mass gathering for emergency vehicles, including police, fire protection, and emergency medical services; and
  - (j) the plan for movement of firefighting equipment, police response vehicles, and/or emergency medical services vehicles in route to an emergency such that the concentration of people, animals or vehicles at the mass gathering will not unduly interfere with proper fire and police protection or ambulance service to areas near the mass gathering location;
- (17) Copies of all agreements for provision of police, security, emergency services, barricade, traffic control, litter collection, and/or trash removal services for the mass gathering.
- (c) Upon receipt of a complete permit application, the Director shall forward a copy of the application to the building official, fire marshal, fire chief, police chief, public works director, health and safety director, and code enforcement director and any other applicable city departments. Each official and any other applicable department shall review the application and return it, with any comments, to the Director within 10 working days of receipt. The Director and city department heads may prescribe licenses, permits and authorizations required by other city ordinances or applicable law, restrictions, regulations, safeguards, and other conditions necessary for the safe and orderly conduct of a mass gathering to be incorporated into the permit before issuance.
- (d) After reviewing the application and comments, the Director shall determine whether the application and plans meet City safety and other requirements. The applicant may be requested to modify an application to meet the requirements of this Article. Should any of the submitted plans fail to give, and, after notice, the applicant is unable to provide adequate assurances that the plans will be

implemented and carried out, the permit application may be denied.

- (e) After review, unless denial is required by this Article, a mass gathering permit will be issued in conformance with the requirements of this Article and for a period not to exceed four consecutive days and shall be valid only on the dates stated on the permit.

**Sec. 7.11.013 Recurring Mass Gathering Application and Plans**

For a recurring mass gathering, the promoter will be required to submit an application for a recurring mass gathering permit and to file with the Director a General Site Plan, a General Public Safety Plan, and a General Traffic Control Plan meeting the requirements of this Article and indicate thereon that the Promoter is submitting the plans as “General” plans to be utilized for each instance of the recurring mass gathering for the one-year period to be covered by the applicable permit. Should the nature or character of the recurring mass gathering change (for instance, by the addition of an entertainment activity) and significantly (by more than 25%) increases the expected total attendance for the particular instance of the recurring mass gathering, the Promoter will be required to submit revised event-specific plans for each such substantially changed mass gathering event.

**Sec. 7.11.014 Standards for Issuance of Permit**

A promoter shall submit a complete application in conformance with this Article and shall submit plans and conduct a mass gathering in such a way that it:

- a. Will plan for and facilitate the safe and orderly movement of traffic at and near its location;
- b. Will plan for and provide sufficient number of security and police personnel to properly secure and police the mass gathering location and adjacent areas to prevent disruption of normal police protection within the City;
- c. Will plan for and provide sufficient ambulance service to the event and the adjacent areas to prevent interruption of normal ambulance service to the rest of the city;
- d. Will plan for and provide the movement of firefighting equipment in route to an emergency on the mass gathering location site or otherwise, so as to not unduly interfere with proper fire and police protection to areas near such mass gathering; and
- e. Will plan and provide for the overall health, safety and security of patrons and participants.

**Sec. 7.11.015 Denial or revocation of Permit**

- (a) The Director may deny a mass gathering permit if:
  - a. The event will conflict in time and/or location with another event for which a permit has already been issued;
  - b. The event will conflict in time and location with a planned city event or planned city co-sponsored event;
  - c. The promoter does not submit a complete application with satisfactory plans and supporting information as required under this Article;
  - d. The promoter fails to comply with or the event will violate an ordinance



- of the city or any other applicable law;
  - e. The promoter makes or permits the making of a false or misleading statement or omission of material fact on any application for a mass gathering;
  - f. The promoter has been issued a citation for violating this ordinance or has had a permit revoked within the preceding 12 months;
  - g. The promoter fails to provide proof of a license or permit required by this or any other city ordinance or by state or federal law;
  - h. The mass gathering event, in the opinion of one or more city department directors, would severely hinder the delivery of normal or emergency services or constitutes a threat to the public health, safety and/or welfare; or
  - i. Insurance requirements have not been met by the promoter.
- (b) A mass gathering permit shall be revoked by the Director upon occurrence of the following:
- a. The Director or a city department director (i) finds that any of the provisions of this Article, any city ordinance, state law, or federal law is being violated; or (ii) deems any part of the mass gathering event unsafe or a threat to public health, safety and/or general welfare.
  - b. In the judgment of the Director or a city department director a violation exists which requires immediate abatement to protect the health, safety and/or general welfare of the public; or
  - c. The promoter made or permitted to be made a false or misleading statement or omission of material fact on any application for any city permit.
- (c) Prior to denial of a permit, the Director shall consider alternatives to the time, place, or manner of the event that will allow the event to occur without posing a threat to health, safety, or general welfare of the public or otherwise violating local, state or federal law.

#### **Sec. 7.11.016 Appeals**

Decisions of the Director regarding issuance, denial, or revocation of a permit or the imposition of costs, additional restrictions or conditions upon the granting of a permit may be appealed to the City Manager or his or her designee. Such appeal shall be in writing and shall be filed with the City Secretary's Office within five (5) business days after the issuance of the decision from which the appeal is taken. When making a determination regarding the appeal, the City Manager shall consider the application under the standards provided in this Article and may sustain, overrule, or modify the decision. The decision of the City Manager shall be issued within five (5) business days and shall be final.

#### **Sec. 7.11.017 – 7.11.020 Reserved**

### **Division 3. Special Provisions**

#### **Sec. 7.11.021 City authority over parking**

The city shall have authority, when reasonably necessary as determined by the fire marshal, chief of police, or director of public works, to establish temporary fire lanes

or no parking zones and prohibit or restrict the parking of vehicles along a street or highway or part thereof adjacent to the site of the mass gathering. The City shall post signs to such effect and it shall be unlawful for any person to stop, stand, park, or leave unattended any vehicle in violation thereof.

**Sec. 7.11.022 Amusement rides**

Rides and/or attractions associated with mass gatherings shall conform to the statutory rules and regulations set forth in Chapter 2151 of the Texas Occupations Code, as amended (the “Amusement Ride Safety Inspection and Insurance Act”). Copies of inspection reports shall be required. Amusement rides in enclosed areas greater than one thousand (1,000) square feet are required to be fire sprinkler protected. Amusement rides shall conform to the statutory rules and regulations set forth in applicable state law.

**Sec. 7.11.023 Hours of operation**

The City will establish the hours of operation of a mass gathering upon review of the location, the promoter’s desired time of operation, type of event, safety of the event and proximity to residential properties.

**Sec. 7.11.024 Tents, canopies and temporary structures**

Any mass gathering which includes the use of a tent, canopy, or temporary structure shall meet the requirements of the Fire Code and a separate permit may be required along with a mass gathering permit. Fire lanes for emergency equipment must be provided and the site prepared in a manner so as not to be a fire hazard as determined by the fire department.

**Sec. 7.11.025 Food and/or Beverage service**

If food and/or beverage service is provided, said operation(s) shall be in compliance with all provisions of the food preparation and food establishment ordinances of the City as well as with all other applicable local, state, and federal laws.

**Sec. 7.11.026 Sanitary facilities**

A sufficient number of permanent and/or portable sanitary restroom facilities must be provided on the premises of the mass gathering as determined necessary by the City. Portable sanitary facilities shall be maintained in a sanitary manner at all times.

**Sec. 7.11.027 Animal waste**

Waste from animals used in any mass gathering event shall be removed daily from the grounds. Should animals be kept within the city limits at night, they shall be kept not less than 300 feet from any developed residential or commercial districts. Management of animal waste shall comply with all local, state and federal storm water regulations.

**Sec. 7.11.028 Trash disposal**

Trash disposal containers must be provided on-site for all outdoor mass gathering events and shall be maintained to prevent trash from being dispersed by wind or rain to storm drains, streams, or other properties.

**Sec. 7.11.029 Loudspeakers; noise**

When loudspeakers or any sound amplifying device is used in conjunction with a mass gathering event, the location and orientation of these devices, the planned hours of use, shall be indicated on the site plan required under this Article. Only devices that do not adversely affect any residential district may be considered. Permit holders, loudspeaker operators, performers and participants shall comply with all city noise ordinances.

**Sec. 7.11.030 Public safety personnel and equipment**

- (a) Promoter shall be responsible for provision of and for the cost of providing all required public safety personnel and equipment deemed necessary for the mass gathering by the Director.
- (b) The objective standards used to determine the number of law enforcement officers and fire/EMS operation personnel required for a mass gathering shall be as follows:
  - 1. General traffic conditions in the area of the event, both vehicular and pedestrian;
  - 2. Duration of the event;
  - 3. Expected total attendance;
  - 4. Whether any or all of a public right-of-way will be closed;
  - 5. Uses adjacent to the event, such as residential or commercial areas;
  - 6. Day and time of the event (including weather conditions);
  - 7. Availability of alcoholic beverages for consumption at the event;
  - 8. Fireworks at the event;
  - 9. Wild or undomesticated animals at the event;
  - 10. Need for safety zones (such as for fireworks launch, balloon or helicopter landing etc.);
  - 11. Emergency evacuation management;
  - 12. Parking; and
  - 13. Crime prevention.

**Sec. 7.11.031 Indemnification**

The promoter shall sign an agreement to indemnify and hold harmless the city, its officers, officials, employees, agents, and representatives against all claims of liability and causes of action for injury or damage to persons or property arising out of the mass gathering event.

**Sec. 7.11.032 Permit fees and costs**

Permit fees established by the City Council under this Article do not include any costs for police, fire and/or emergency medical services operation or other city services required for the mass gathering event. The permit fee for a mass gathering event permit shall be \$250.00 per application and the permit fee for a recurring mass gathering permit shall be \$500.00 per application. These fees shall be set forth in the

City's Master Fee Schedule and may be amended from time to time by the City Council by ordinance.

**Sec. 7.11.032 – 7.11.040 Reserved**

**Division 4. Offenses and Penalties**

**Sec. 7.11.041 Offenses; Penalty for violation of article**

- (a) A person commits an offense if he:
  - 1. Knowingly commences or holds a mass gathering without a permit or with a permit that has expired or been revoked; or
  - 2. Knowingly violates any terms or provisions of this Article.
- (b) A person who violates a provision of this Article or a requirement of a mass gathering permit is guilty of a separate offense for each day during which the separate violation is committed or continued.
- (c) Each offense is punishable by a fine not to exceed:
  - a. \$2,000 for a violation of a provision of this Article or requirement of a mass gathering permit governing fire safety, zoning, or public safety, health or sanitation, including the dumping of refuse; or
  - b. \$500 for all other violations of this Article or requirements of a mass gathering permit; or
  - c. The fine established pursuant to other applicable ordinance or state law if the violation relates to failure to comply with a temporary traffic control sign, device, or marking installed or placed pursuant to this Article.”

**SECTION 3.** Any person, firm, or corporation violating any provision of this Ordinance shall be subject, upon conviction, to the same penalty as provided for in the Code of Ordinances, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand (\$2,000.00) dollars for each offense.

**SECTION 4.** All ordinances of the City of Seagoville in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

**SECTION 5.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 6.** This ordinance shall take effect 120 days after its passage and publication of the caption as required by law.

**DULY PASSED** by the City Council of the City of Seagoville, Texas, on the 18<sup>th</sup> day of September 2023.

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**LACKEY STEPPER SEBASTIAN, MAYOR**

**ATTEST:**

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Sara Egan, City Secretary

**APPROVED AS TO FORM:**

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Victoria W. Thomas, City Attorney  
4857-6859-3775, v. 2