

RESOLUTION NO. 15-151

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO AWARD A BID AND ENTER INTO A CONTRACT WITH ALLCO, INC. FOR SITE GRADING AND REMOVAL OF DIRT IN THE SPUR 93 BUSINESS PARK IN AN AMOUNT NOT TO EXCEED \$291,615.60

WHEREAS, on April 1, 2015, the City of Port Arthur received four (4) sealed bids for site grading for the City of Port Arthur Section 4A Economic Development Corporation's (the "PAEDC") Spur 93 Business Park; and

WHEREAS, the bids were opened, checked for errors and tabulated, and it was determined that ALLCO, Inc. of Beaumont, Texas submitted the lowest responsive bid for Schedule A in the amount of \$291,615.60, as denoted in "**Exhibit A**"; and

WHEREAS, on April 6, 2015, the PAEDC Board of Directors approved awarding a bid to ALLCO, Inc. for site grading and removal of dirt in the Spur 93 Business Park; and

WHEREAS, ALLCO, Inc. will remove the entire amount of existing material and spread the material over four (4) selected areas within the Business Park, as denoted in Schedule A of the bid.

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

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the PAEDC is herein authorized to award a bid to ALLCO and enter into a contract for site grading and dirt removal in the Spur 93 Business Park as denoted in hereto as **Exhibit "A"**.

Section 3. That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 14th day of April A.D., 2015, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor

Councilmembers

Prince; Mayor Pro Tem Freeman
Scott, Hamilton, Msseley
Lewis & Williamson

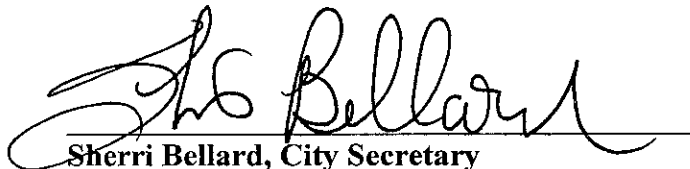
NOES:

None

ATTEST:



Deloris "Bobbie" Prince, Mayor



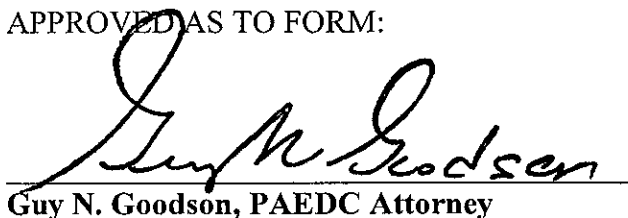
Sherri Bellard, City Secretary

APPROVED:



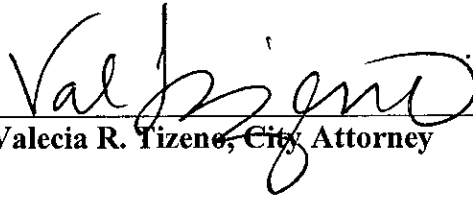
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:




Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Deborah Echols, Finance Director

EXHIBIT “A”



ARCENEUX WILSON & COLE LLC

Engineering • Surveying • Planning

April 2, 2015

Mr. Floyd Batiste, CEO
Port Arthur Economic Development Corporation
4173 39th Street
Port Arthur, Texas 77642

RE: RECOMMENDATION OF AWARD OF CONTRACT
Site Grading to serve the Port Arthur Business Park
AWC Job No. EDC-220

Dear Mr. Batiste:

On April 1, 2015 the City of Port Arthur received four (4) sealed bids for **Site Grading to serve the Port Arthur Business Park** project. The bids were opened at 3:15 pm and the results read aloud in the public bid opening.

The bids were checked for errors and tabulated. All Bidders acknowledged receipt of Addendum No. 1. All Bidders submitted proof of Bid Surety. All Bidders, except S & H Construction submitted proof of Statements of Bidders Qualifications with their bids as required. No substitutions were submitted. It was found that **ALLCO** of Beaumont, Texas submitted the lowest responsive Total Amount Bid for Schedule "A" in the amount of **\$291,615.60**. Schedule "A" is to remove the entire amount of existing material and spread the material over four (4) selected areas within the business park. A copy of the certified Bid Tabulation is enclosed for your information.



Page 2
Mr. Floyd Batiste
April 2, 2015

We have worked with **ALLCO** on projects in the past and have been pleased with the quality of work performed by the contractor. Based on our past working history with the contractor and the financial limitations for the project we recommend that the Port Arthur Economic Development Corporation award the contract for **Site Grading to serve the Port Arthur Business Park** project on the basis the lowest responsive Total Amount Bid Schedule "A" in the amount of **\$291,615.60**. Should you have any questions or require additional information, please contact our office.

Very truly yours,

ARCENEUX WILSON & COLE LLC
TEXAS REGISTERED ENGINEERING FIRM F-16194

A handwritten signature in black ink, appearing to read 'Keestan X. Cole', is written over a horizontal line.

Keestan X. Cole, PE
Vice President

Attached: Bid Tabulation

CC: Sue Polka, PE-City of Port Arthur
Shawna Tubbs, CPPO, CPPB-City of Port Arthur
Allco



BID TABULATION "A"

For The
SITE GRADING
To Serve

The Port Arthur Business Park
Job No.: EDC-220

BIDS OPENED: April 1, 2015 at 3:15 P.M.

			ALLCO, INC. BEAUMONT, TX		S&H CONSTRUCTORS PORT ARTHUR, TX		APAC-TEXAS, INC. BEAUMONT, TX		MK CONSTRUCTORS BEAUMONT, TX	
Base Bid Items	QTY.		Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1 Mobilization	1	L.S.	\$ 13,500.00	\$ 13,500.00	\$ 2,600.00	\$ 2,600.00	\$ 42,300.00	\$ 42,300.00	\$ 500.00	\$ 500.00
2 Silt Control Fencing and Inlet Protection	1	L.S.	\$ 25,000.00	\$ 25,000.00	\$ 1,200.00	\$ 1,200.00	\$ 51,000.00	\$ 51,000.00	\$ 100.00	\$ 100.00
3 Remove Silt Control Fencing and Inlet Protection	1	L.S.	\$ 4,415.92	\$ 4,415.92	\$ 3,000.00	\$ 3,000.00	\$ 12,800.00	\$ 12,800.00	\$ 100.00	\$ 100.00
4 Area "A" Scarifying, Grading and Seeding	1	L.S.	\$ 75,215.67	\$ 75,215.67	\$ 94,200.00	\$ 94,200.00	\$ 201,800.00	\$ 201,800.00	\$ 334,000.00	\$ 334,000.00
5 Area "B" Scarifying, Grading and Seeding	1	L.S.	\$ 19,872.33	\$ 19,872.33	\$ 109,000.00	\$ 109,000.00	\$ 35,700.00	\$ 35,700.00	\$ 64,400.00	\$ 64,400.00
6 Area "C" Scarifying, Grading and Seeding	1	L.S.	\$ 60,199.19	\$ 60,199.19	\$ 127,000.00	\$ 127,000.00	\$ 121,200.00	\$ 121,200.00	\$ 13,800.00	\$ 13,800.00
7 Area "D" Scarifying, Grading and Seeding	1	L.S.	\$ 83,373.35	\$ 83,373.35	\$ 134,000.00	\$ 134,000.00	\$ 235,400.00	\$ 235,400.00	\$ 204,500.00	\$ 204,500.00
8 Vegetative Watering Complete in Place	22	1000/gal	\$ 167.00	\$ 3,674.00	\$ 300.00	\$ 6,600.00	\$ 105.00	\$ 2,310.00	\$ 100.00	\$ 2,200.00
9 Rock Filter Dams, Complete in Place	1	L.S.	\$ 1,500.00	\$ 1,500.00	\$ 6,000.00	\$ 6,000.00	\$ 11,500.00	\$ 11,500.00	\$ 100.00	\$ 100.00
Subtotal Base Bid Items				\$ 289,772.00		\$ 517,800.00		\$ 687,410.00		\$ 619,700.00
Supplemental Items	QTY.		Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
10 Vegetative Watering Complete in Place	11	1000/gal	\$ 1,843.60	\$ 1,843.60	\$ 300.00	\$ 3,300.00	\$ 105.00	\$ 1,155.00	\$ 105.00	\$ 1,155.00
Subtotal Supplemental Items				\$ 1,843.60		\$ 3,300.00		\$ 1,155.00		\$ 1,155.00
TOTAL AMOUNT BID				\$ 291,615.60		\$ 521,100.00		\$ 688,565.00		\$ 620,855.00

ARCENEUX WILSON & COLE LLC

TEXAS REGISTERED ENGINEERING FIRM

★ 16194 ★

Keeston Cole
Keeston Cole, PE



CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

SITE GRADING

To Serve The

PORT ARTHUR BUSINESS PARK

CITY OF PORT ARTHUR
PORT ARTHUR, TEXAS

Project No. EDC-220
Contract No. 1
City of Port Arthur's Bid No. 15-042

CITY OF PORT ARTHUR
JEFFERSON COUNTY, TEXAS

MARCH 2015

TEXAS REGISTERED



ENGINEERING FIRM

F-16194

ARCENEUX WILSON & COLE LLC
Engineers * Surveyors * Planners
PORT ARTHUR, TEXAS

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

SITE GRADING

To Serve The

PORT ARTHUR BUSINESS PARK

**CITY OF PORT ARTHUR
PORT ARTHUR, TEXAS**

Project No. EDC-220
Contract No. 1
City of Port Arthur's Bid No. 15-042

**CITY OF PORT ARTHUR
JEFFERSON COUNTY, TEXAS**

MARCH 2015



3-13-15

TEXAS REGISTERED



ENGINEERING FIRM

F-16194

ARCENEUX WILSON & COLE LLC
Engineers * Surveyors * Planners
PORT ARTHUR, TEXAS

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
For Construction of

SITE GRADING

To Serve The

PORT ARTHUR BUSINESS PARK

CITY OF PORT ARTHUR
PORT ARTHUR, TEXAS

Project No. EDC-220
Contract No. 1

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SECTION A
CONSTRUCTION CONTRACT AGREEMENT

**CONSTRUCTION CONTRACT
AGREEMENT**

[Non-Federally Funded Projects]

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the Port Arthur Economic Development Corporation, a municipal corporation organized under the laws of the State of Texas, hereinafter called "OWNER" or "PAEDC" and _____ herein acting by and through _____, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments, terms, conditions and agreements set forth herein, OWNER and CONTRACTOR agree as follows:

1. The CONTRACTOR will commence and complete the construction of **SITE GRADING to Serve the PORT ARTHUR BUSINESS PARK, CONTRACT No. 1.**
2. The CONTRACTOR will furnish at his own expense all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The CONTRACTOR will commence the work required by the Contract Documents on a date to be specified in the *Notice to Proceed* and will complete the same within **90** consecutive calendar days as specified in the *Notice to Proceed*, including, but not limited to, all Saturdays, Sundays and Federal, State, and City holidays unless the period for completion is extended otherwise by the Contract Documents.
4. The CONTRACTOR agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$ _____, or as shown in the Bid Schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - (A) Agreement
 - (B) Advertisement for BIDS
 - (C) Information for BIDDERS
 - (D) BID
 - (E) BID BOND
 - (F) General Conditions
 - (G) Wage Decision
 - (H) Supplemental General Conditions
 - (I) Payment Bond
 - (J) Performance Bond
 - (K) Notice of Award
 - (L) Notice to Proceed
 - (M) Change Order
 - (N) Drawings prepared by Arceneaux Wilson & Cole LLC numbered 1 through 12 dated March 2015.
 - (O) Specifications prepared or issued by Arceneaux Wilson & Cole LLC numbered 1 through 12 dated March 2015.

(P) Addenda:

No. _____, dated _____, 2015.

No. _____, dated _____, 2015.

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two (2) copies, each of which shall be deemed an original on the date first above written.

APPROVED IN FORM:

CITY ATTORNEY

OWNER:

Port Arthur Economic Development Corporation

NAME _____

TITLE _____

CONTRACTOR:

BY _____

NAME _____

ADDRESS _____

[SEAL]

ATTEST:

NAME _____

TITLE _____

[CORPORATE SEAL]

ATTEST: _____

NAME: _____

SECTION B
ADVERTISEMENT FOR BIDS

CITY OF PORT ARTHUR, TEXAS

ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN THAT sealed proposals, addressed to the City of Port Arthur, will be received at the office of the City Secretary, City Hall, until: **3:00 p.m. on Wednesday, April 1, 2015 and all bids received will thereafter be opened and read aloud at: 3:15 p.m. on Wednesday, April 1, 2015 at: City Council Chambers, City Hall, 444 4th Street, Port Arthur, Texas 77642.** for the construction of certain public works or furnishings of certain services briefly described as: **SITE GRADING to serve the Port Arthur Economic Development Corporation Business Park Contract No. 1.** Any bid received after closing time will be returned unopened.

A Cashier's check, or Certified Check, payable without recourse to the order of the City of Port Arthur, or a bid bond with corporate surety authorized to conduct business in Texas, in an amount not less than five percent (5%) guarantee that, if awarded the Contract, the bidder will promptly enter into a Contract and execute Bond in the forms provided as outlined in the Specifications and instructions to Bidders.

Copies of the PLANS AND SPECIFICATIONS and other CONTRACT DOCUMENTS are on file at the following locations:

CITY OF PORT ARTHUR
Shawna Tubbs, CPPO, CPPB, Purchasing Manager
444 4TH Street
Port Arthur, Texas 77640

ARCENEUX WILSON & COLE LLC
2901 Turtle Creek Drive, Suite 320
Port Arthur, Texas 77642

THE ASSOCIATED GENERAL CONTRACTORS
5458 Ave. A
Beaumont, Texas 77705

Please contact the office of Arceneaux Wilson & Cole LLC for instructions on how to obtain copies of the Bid/Contract Documents at: (409)724-7888.

The following bonds, each in the amount of one hundred percent (100%) of the Contract price, will be required in accordance with State law as follows: (1) a payment bond for any contract in excess of Fifty Thousand Dollars (\$50,000.00); (2) a performance bond for any contract in excess of One Hundred Thousand Dollars (\$100,000.00).

Attention is called to the fact that this is a Contract for construction of public works and that there must be paid on same not less than the general prevailing wage rates which have been established by the Port Arthur Economic Development Corporation, pursuant to Chapter 2258 of the Texas Government Code, as amended and which are set out in detail in the Contract Documents. The CONTRACTOR shall forfeit as a penalty, to the Port Arthur Economic Development Corporation, Sixty Dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, if such laborer, workman or mechanic is

paid less than the said stipulated rates for any work done under this Contract. The Davis-Bacon Act* is applicable to this Contract, and the prevailing wage rates established pursuant to said Act are made a part of this Contract. A copy of such current wage schedule is included in the Contract Documents and any applicable change in such wage schedule shall be furnished and Equal Employment Opportunity requirements must be met.

CONTRACTOR'S attention is also directed to the equal opportunity requirements of this Contract: Title VI, Sec. 3 and E.O. 11246.

This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act as codified in Chapter 151 of the Texas Tax Code. Because of the Amendments to Section 151.311 of the Tax Code made by Section 14.07 of Chapter 5 (House Bill No. 11), 72nd Leg., 1st C.S., Acts 1991 at 188, in order for non-consumable materials and equipment to qualify for resale to the City of Port Arthur, and be exempt from sales tax, the contract and bids must comply with the following requirements.

The bid and contract must separately identify: (1) the charges for non-consumable materials and equipment that are permanently incorporated into the project, and (2) charges for skill, labor and consumable materials, tools and equipment that are permanently incorporated into the project. Bidders are required to have a sales tax permit issued by the Comptroller of the State of Texas in order to qualify under the separated contract procedure.

The Port Arthur Economic Development Corporation, will issue to the CONTRACTOR a specific exemption certificate for this Contract in order that he does not have to pay taxes on qualifying materials, equipment, or other tangible personal property purchased for and permanently incorporated into Port Arthur Economic Development Corporation, realty in performing this Contract. The CONTRACTOR performing this contract must issue to his suppliers an exemption certificate complying with all applicable State Comptroller's rulings, along with a copy of the certificate issued to him by the Port Arthur Economic Development Corporation

Lump-sum contracts, in which the above referenced charges are not separated, do not qualify for the sales and use tax exemption.

Attention is directed to the *Liquidated Damages* provision of this Contract (Paragraph No. 54 of the General Conditions) and the fact that rainy weather shall constitute justification for any delay in the time for completion only under certain conditions.

This Contract is for a Site Grading project. Each project will be specified by the Port Arthur Economic Development Corporation, in a notice to proceed. Successful Bidder shall be required to attend Pre-Construction Conference.

BIDDER IS CAUTIONED TO READ ALL CONTRACT DOCUMENTS BEFORE SUBMITTING BID, ESPECIALLY ITEM 18 (PRE-BID CONFERENCE) OF THE INFORMATION TO BIDDERS. **ALL BIDDERS SHALL BE REQUIRED TO ATTEND THE MANDATORY PRE-BID CONFERENCE ON: Thursday, March 26, 2015 at 10:00 a.m. on the 5th Floor Council Chambers of the Port Arthur City Hall: 444 4th Street, Port Arthur, Tx.**

The Port Arthur Economic Development Corporation, reserves the right to reject any and all bids and to waive informalities. Per Article VI, Section 2-262(c) of the City's Code of Ordinance, the City Council shall not award a contract to a company that is in arrears in its obligations to the City.

CITY OF PORT ARTHUR

BY: /s/ SHAWNA TUBBS
Shawna Tubbs, CPPO, CPPB
Purchasing Manager

*Davis-Bacon Act is found at 40 U.S.C., § 276a et. seq.

1st Advertisement - March 15, 2015
2nd Advertisement - March 22, 2015

SECTION C
INFORMATION TO BIDDERS

INFORMATION TO BIDDERS

The following instructions are applicable to the Contract, in addition to the requirements set forth in the ADVERTISEMENT FOR BIDS.

1. BID PROCEDURE

Bids must be submitted in DUPLICATE upon the prescribed forms, or copies thereof, in sealed envelopes plainly marked. Bids shall be prepared in compliance with the requirements of the ADVERTISEMENT FOR BIDS, these instructions and the instructions printed on the prescribed forms. All blank places on the Proposal form must be filled in as noted, in ink, in both words and figures, with amounts extended and totaled, and no changes shall be made in the phraseology of the forms or of the items mentioned therein. In case of any discrepancy between the written amounts and the figures, the written amounts shall govern. If the Bidder does not bid on optional items (if shown in the Proposal form), "No Bid" shall be entered in the blank spaces therefore. Any bid may be deemed irregular which contains any omission, erasure, alteration, addition, irregularity of any kind or item not called for, or which does not contain prices set opposite to each of the several items in the Proposal form, or in which any of the prices are obviously unbalanced, or which shall in any manner fail to conform to the conditions of the published ADVERTISEMENT FOR BID. The Bidder shall sign his Proposal in the blank area provided therefore. If the bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the name and address of the partners or officers. If the bid is made by a partnership, it must be acknowledged by one of the partners; if made by a corporation, by one of the officers thereof accompanied by Corporate Seal. In order to ensure consideration, the Proposal must be enclosed in a sealed envelope plainly identified by the name of the project and the Contract number, and addressed to the OWNER as prescribed in the Invitation to Bidders.

Withdrawal or modifications to bids are effective only if written notice thereof is filed prior to time of bid opening and at the place specified in the Notice to Bidders. A notice of withdrawal or modifications to a bid must be signed by the CONTRACTOR or his designated representative. No withdrawal or modifications shall be accepted after the time for opening of proposals.

2. BID SECURITY AND LIQUIDATED DAMAGES

Bids shall be accompanied by a bid guarantee of not less than five percent (5%) Check or Cashier's Check payable without recourse to the City of Port Arthur, or a bid bond with corporate surety authorized to conduct business in Texas. Said security shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw his bid within sixty (60) days after the date of the opening of the bids; that if a bid is accepted, the Bidder will enter into a formal Contract with the OWNER, furnish bonds and insurance as may be required and commence work at the specified time, and that in the event of the withdrawal of said bid within said period, or the failure to enter into said Contract, furnish said bonds and insurance and commence work within the time specified, the Bidder shall be liable to the OWNER for the difference between the amount

specified in the bid in the amount for which the OWNER may otherwise procure the required work. Checks of all except the three lowest responsible Bidders will be returned when award is made; when the Contract is executed, the checks of the two (2) remaining unsuccessful Bidders will be returned; that of the successful Bidder will be returned when formal Contract, bonds and insurance are approved, and work has commenced within the time specified.

The Bidder to whom the award is made shall execute and return the formal Contract with the OWNER and furnish Performance and Payment Bonds and required insurance Documents within ten (10) days after the prescribed forms are presented to him for signature. Said period will be extended only upon written presentation to the OWNER, within said period, of reasons which, in the sole discretion of the OWNER, justify an extension. If said Contract, bonds and insurance Documents are not received by the OWNER within said period or if work has not been commenced within the time specified, the OWNER may proceed to have the work required by the Plans and Specifications performed by any means at its command, and the Bidder shall be liable to the City of Port Arthur, for any excess cost to the OWNER over his bid amount. Further, the bid guarantee shall be forfeited to the City of Port Arthur, as liquidated damages and Bidder shall be liable to the City of Port Arthur, for an additional amount of five percent (5%) of the bid amount as liquidated damages without limitation.

The OWNER, within ten (10) days of receipt of acceptable Performance and Payment Bonds, Insurance Documents and Contract signed by Bidder to whom Contract was awarded, shall sign and return executed duplicate of the Contract to said party. Should OWNER not execute the Contract within such period, the Bidder may, by written Notice to OWNER, withdraw his signed Agreement.

3. **BONDS**

The following bonds, each in the amount of one hundred percent (100%) of the Contract price, will be required in accordance with State law as follows: a (1) PAYMENT BOND for any contract in excess of Fifty Thousand Dollars (\$50,000.00); and, (2) a PERFORMANCE BOND for any contract in excess of One Hundred Thousand Dollars (\$100,000.00).

4. **NOTICE TO PROCEED**

Notice to Proceed shall be issued within ten (10) days of the execution of the Contract by OWNER. Should there be any reason(s) why Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between OWNER and CONTRACTOR. If Notice to Proceed has not been issued within the ten (10) day period or a period mutually agreed upon, CONTRACTOR may terminate the Contract without liability on the part of either party.

5. INSURANCE

All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by OWNER. The CONTRACTOR shall, at his own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of or result from operations under this Contract, whether the operations be himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable of the following types and limits (No insurance policy or Certificate of Insurance required below shall contain any aggregate policy year limit unless a specific dollar amount[or specific formula for determining a specific dollar amount] aggregate policy year limit is expressly provided in the specification below which covers the particular insurance policy or Certificate of Insurance).

1. *Standard Worker's Compensation Insurance* (with waiver of subrogation in favor of the City of Port Arthur, Arceneaux Wilson & Cole LLC, its Officers, Agents & Employees). (City and Contractor and all persons providing services shall comply with the workers compensation insurance requirements of Section 406.096 of the Texas Labor Code and 28 TAC Section 110.110, a copy of which is attached hereto and is hereby incorporated by reference.)
2. *Commercial General Liability* occurrence type insurance. No. "XCU" RESTRICTIONS SHALL BE APPLICABLE. Products/completed operations coverage must be included, and City of Port Arthur, its Officers, Agents, and Employees must be named as an additional Insured.
 - a. Bodily Injury \$500,000 single limit per occurrence, or \$500,000 each person/\$500,000 per occurrence for contracts of \$100,000 or less; or,
 - b. Bodily Injury \$1,000,000 single limit per occurrence or \$1,000,000 each person/\$1,000,000 per occurrence for contracts in excess of \$100,000; and,
 - c. Property Damage \$100,000 per occurrence regardless of Contract amount; and,
 - d. Minimum aggregate policy year limit of \$1,000,000 for contracts of \$100,000 or less; or,
 - e. Minimum aggregate policy year limit of \$2,000,000 for contracts in excess of \$100,000.
3. *Comprehensive Automobile Liability* (including owned, non-owned and hired vehicles coverage).
 - a. Minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage.
 - b. If individual limits are provided, minimum limits are \$300,000 per person, \$500,000 per occurrence for bodily injury, and \$100,000 per occurrence for property damage.

PREAMBLE TO RULE 110.110

The Texas Worker's Compensation Commission adopts new § 110.10, concerning requirements for governmental entities awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity. The new rule is adopted with changes to the proposed text published in the April 26, 1994 issue of the Texas Register (19 TexReg 3131). Subsection (a)(7) and (c)(7) were amended by adding language to further clarify who is covered by the rule. Subsections (c)(7)(F) and (c)(3) were added to clarify that a contractor or subcontractor is representing to the governmental entity that workers' compensation coverage is provided. Subsections (d)(8)(C) and (c)(8)(C) were added to require specific language regarding representations of coverage to be added to contracts to provide services on the project. Subsections (c)(7)(F), and (c)(7)(I)(5), (d)(5), (d)(8)(F), (c)(6), and (c)(8)(F) were amended to reduce the retention period for contractors and other persons providing services on the project from three years to one year. Subsection (g) was changed to state that this rule applies to contract advertised for bid after September 1, 1994, rather than awarded after September 1, 1994.

The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The commission is aware that this statutory requirement is not being met, and this rule is designed to achieve compliance and to implement a record keeping process which will enable oversight of compliance. The rule does this by placing requirements on the governmental entity and on contractors and other persons providing services on a project. These requirements include coverage, certificates of coverage, posted notices of coverage, and notification of changes in coverage status. The rule does not create any duty or burden on anyone which the law does not establish.

The rules defines terms which apply to governmental entity building or construction projects and sets up a clear procedure for governmental entities and contractors that bid for building land construction projects to follow in complying with the requirements of the Texas Labor Code, §406.096. It also defines persons who provide services on a project who are subject to the statutory requirement of coverage, and sets forth their requirements to comply with the statute and the rule. It specifically excludes persons such as food/beverage vendors whose deliveries and labor are not permanently incorporated into the project. The rule puts persons on notice that providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other persons providing services on the project to administrative penalties, civil penalties, or other civil actions.

The rule requires a governmental entity to timely obtain certificates of coverage, retain them for the duration of the project plus three years, and provide them to the commission upon request and to others entitled to them by law. It also requires the governmental entity as a prerequisite to awarding a contract, and as part of the contract, to require that the contractor provide coverage and certificates of coverage for the contractor's employees; timely obtain and provide the governmental entity all required certificates of coverage for all persons providing services on the project; retain certificates of coverage on file for the duration of the project and for one year thereafter; notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of

coverage of any person providing services on the project; post notices on each project site; and contractually require persons with whom it contracts to do the same, with the certificates of coverage to be provided to the person for whom they are providing services. The rule also sets out the language to be included in bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. It further establishes a method for obtaining the certificates from persons providing services on the project and providing them to the governmental entity.

It requires a contractor awarded a building or construction contract to provide workers' compensation coverage to the contractor's employees for the duration of the project; file a certificate of coverage of the contractor's employees with the governmental entity prior to being awarded a contract; obtain and provide to the governmental entity, certificates of coverage from each other person with whom it has contract to provide services on the project, prior to that person beginning work on the project; obtain and provide new certificates of coverage shown on the current certificate ends during the duration of the project; retain all certificates of coverage for the duration of the project and for one year thereafter, notify the governmental entity of material changes in coverage; contractually require each other person with whom it contracts to provide a certificate of coverage; and post notices on each project site.

All other persons providing services on a project have the same requirements as a contractor, with the exception of posting notices and with the exception that the certificate of coverage is given to the person for whom they contracted to provide services on the project. The rule uses the term "persons providing services on the project; in lieu of the statutory term "subcontractor because the term "subcontractor" as used in the statute (§406.096) and in this rule is broader than standard industry usage. The use of the different terminology will prevent confusion.

The rule does not create any duty or burden on anyone which the law does not establish.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and Texas Labor Code, §406.096, which establishes requirements for governmental entities, contractors, and subcontractors ("persons providing services on the project") regarding workers' compensation coverage for workers on public building or construction projects.

Rule 110.110 Reporting Requirements for Building or Construction Projects for Governmental Entities.

- (a) The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined the Texas Labor Code, if so defined.
 - (1) Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
 - (2) Building or construction - has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor - A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage - Worker's compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement - A written agreement on form TWCC-81, form TWCC-82, form TWCC083, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project - Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" in §406.096 of the Act) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(8) Project - Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the Insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (c) A governmental entity that enters into a building or construction contract on a project shall:
- (1) Include in the bid specifications, all the provisions of subsection (d) of this rule, using the language required by paragraph (7) of this subsection;
 - (2) As part of the contracts, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this rule;
 - (3) Obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;
 - (4) Obtain from the contractor a new certificate of coverage showing extension of coverage;
 - (A) Before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project, and
 - (B) No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;
 - (5) Retain certificates of coverage on file for the duration of the project and for three years thereafter;
 - (6) Provide a copy of the certificates of coverage to the commission upon request and to any person entitle to them by law; and,
 - (7) Use the following language for bid specifications and contracts, without any additional works or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation in Figure 1:

(Figures 1)

Article _____. *Worker's Compensation Insurance Coverage.*

A. *Definitions:*

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

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.095) includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and,*
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage (if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*

- G. *The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.*
- H. *The contractor shall post on each project site a notice, in the text form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. *The contractor shall contractually required each person with whom it contracts to provide services on a project, to:*
- (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filling of any coverage agreements, which means the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for they duration of the project;*
 - (3) Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage,(if the coverage period shown on the current certificate of coverage and during the duration of the project:*
 - (4) Obtain from each other person with whom it contracts, and provide to the contractor:*
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*

(7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) – (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

(d) A contractor shall:

- (1) Provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) Provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) Provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) Obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and,
 - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage code during the duration of the project;

- (5) *Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) *Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;*
- (7) *Post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2 provided by the commission on the sample notice, without any additional works or changes:*

(Figure 2)

REQUIRED WORKER'S COMPENSATION COVERAGE

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

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

- (8) *Contractually require each person with whom it contracts to provide services on a project, to:*
 - (A) *Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;*
 - (B) *Provide a certificate of coverage to the contractor prior to that person beginning work on the project;*
 - (C) *Include in all contracts to provide services on the project the language in subsection (o) (3) of this rule;*
 - (D) *Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage*

period shown on the current certificate of coverage ends during the duration of the project;

- (E) *Obtain from each other person with whom it contracts, and provide to the contractor;*

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

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

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

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

- (H) *Contractually require each person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to be provided to the person for whom they are providing services.*

(e) *A person providing services on a project, other than a contractor, shall:*

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

- (2) *Provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;*

- (3) *Have the following language in its contract to provide services on the project:*

"By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(4) Provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project:

(5) *Obtain from each person providing services on a project under contract to it, and provide as required by its contract:*

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

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

(6) *Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*

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

(8) *Contractually require each other person with whom it contracts to:*

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

(B) *Provide a certificate of coverage to it prior to that other person beginning work on the project;*

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

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

(E) *Obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:*

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

(ii) *prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage*

period shown on the current certificate of coverage ends during the duration of the contract;

- (F) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (G) Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
 - (H) Contractually require each person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to the provided to the person for whom they are providing services.*
- (f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.*
- (g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994.*

Effective Date: September 1, 1994

4. *Contractual Liability Insurance* covering the indemnity provision of this Contract in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, job number and location;
5. *All-Risk Builder's Risk of the non-reporting type (NOT REQUIRED for paving projects, water and sewer line projects or projects involving lump sum payments).*

CONTRACTOR shall cause CONTRACTOR'S insurance company or insurance agent to fill in all information required (including names of insurance agency, CONTRACTOR and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into a valid Certificate of Insurance the CERTIFICATE OF INSURANCE form attached to and made a part of the Information To Bidders, and pertaining to the above listed Items 1, 2, 3 and 4; and before commencing any of the work and within the time otherwise specified. CONTRACTOR shall file said completed form with the OWNER. None of the provisions in said Form shall be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form contains a provision that coverages afforded under the policies will not be altered, modified or cancelled unless at least fifteen (15) days prior written notice has been given to the OWNER. CONTRACTOR shall also file with the OWNER valid CERTIFICATE(s) OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor(s) as the Insured. Said completed CERTIFICATE OF INSURANCE Form(s) shall in any event be filed with OWNER not more than ten (10) days after execution of this Contract.

The original Builder's Risk policy (if required) shall provide for fifteen (15) days written notice of alteration, modification or cancellation and shall be furnished to OWNER. Provided, however, until the Original Policy is issued and furnished to the OWNER a Certified Insurance Binder with the identical notice will be acceptable in place of the original policy, which original policy must be received by the OWNER not later than thirty (30) days after issuance of the Notice to Proceed for the project. Notwithstanding any other provision in the Contract Documents, it is further mutually understood and agreed that no payment will be due and owing or made to the CONTRACTOR for any work performed under the Contract until all of the required insurance documentation, including the original policy specified above, are received by the OWNER.

6. **JOB EXAMINATION**

Bidder should carefully examine and be familiar with the Plans, Specifications and other Documents and other conditions and matters which can in any way affect the work or the cost thereof. By submitting a bid, the CONTRACTOR acknowledges that he or his qualified representative has visited the job site and investigated and satisfied himself as to: (a) the conditions affecting the work including but not limited of the physical conditions of the site which may bear upon site access, handling and storage of tools and materials, access to water, electric or other utilities or otherwise affect performance of

required activities; (b) the character and quantity of all surface and subsurface materials or obstacles to be encountered in so far as this information is reasonably ascertainable from inspection of the site, including exploratory work done by the OWNER or a designated consultant. Failure to do all of the above will not relieve a successful Bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the Contract Documents and to complete the contemplated work for the considerations set forth in the bid. Any information shown in the specifications or on the Plans in regard to subsurface data, test borings and similar conditions is to be considered approximate and does not relieve the Bidder of the responsibility for its verification. OWNER is not responsible for any failure by the CONTRACTOR to acquaint himself with available information for estimating properly the difficulty or cost of successfully performing the work. The OWNER is not responsible for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available by the OWNER. In conformity with applicable statutes, the OWNER has adopted a labor classification and a minimum wage scale, which is included preceding the Specifications.

7. **SALES TAX**

This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Section 151.209 of the Texas Limited Sales, Excise and Use Tax Act as codified in Chapter 151 of the Texas Tax Code.

The CONTRACTOR'S attention is directed to the State of Texas Comptroller of Public Accounts Limited Sales, Excise and Use Tax rules and regulations Rulings regarding Repairmen and Contractors - Reference: Section 151.056 Texas Tax Code which, upon compliance with certain conditions, provides for exemption from this tax of non-consumable materials and equipment permanently incorporated into work done for an exempt organization, and to House Bill 11 amendments to Section 151.311 of the Tax Code (Vernon Supp. 1992) as they relate to separated contracts/bids in order for non-consumable materials and equipment to qualify for resale to the City of Port Arthur, and be exempt from sales tax.

Any Bidder may elect to exclude this sales tax from his bid. The bid and contract, however, must separately identify the charges for: (1) non-consumable materials and equipment that are permanently incorporated into the project; and, (2) charges for skill, labor and consumable materials, tools and equipment which are not permanently incorporated into the project. This statement shall be included in and made part of the Contract. CONTRACTORS are required to have a sales tax permit issued by the Comptroller of the State of Texas in order to qualify under the exemption provisions and the separated Contract procedure.

The City will issue a specific exemption certificate for a separated Contract to the CONTRACTOR in order that he does not have to pay taxes on qualifying materials and equipment purchased for and permanently incorporated into the City of Port Arthur, project. The CONTRACTOR performing this Contract must issue to his suppliers an exemption certificate in lieu of the tax, said exemption certificate complying with all applicable State Comptroller's rulings, along with a copy of the certificate issued to him by the City of Port Arthur.

The OWNER will make no further allowance for and will make no price adjustment above or below the originally bid unit prices on account of this tax. It shall be the CONTRACTOR'S sole responsibility, if CONTRACTOR has elected to exclude the sales tax from the bid, to comply with the aforementioned Rulings and with any other applicable rules, regulations or laws pertaining to the Texas Limited Sales, Excise and Use Tax which may now or at any time during the performance of this Contract be in effect, and the OWNER shall have no responsibility for any sales or use tax which the CONTRACTOR may be required to pay as a result of CONTRACTOR'S failure or the OWNER'S failure to comply with said rules, regulations or laws, or as the result of the performance of the Contract or any part hereof by the CONTRACTOR.

Bidders are cautioned that materials which are not permanently incorporated into the work (Example: Fuel, lubricants, tools, forming materials, etc.) are not eligible for exemption and are not to be included in the statement as "Non-Consumable Materials and Equipment".

8. **FINANCIAL STATEMENT AND EXPERIENCE RECORD**

The Bidder will, upon request by the OWNER, furnish such information and data as OWNER may request to determine ability of the Bidder to perform the work, including, without limitation, a list of all jobs completed in the last 24 months giving name of OWNER, amount of Contract, description of the job, and name of OWNER'S representative who is familiar with the work performed by the CONTRACTOR.

9. **INTERPRETATION OF PLANS AND SPECIFICATIONS**

Bidders desiring further information, or further interpretation of the Plans and Specifications must make request for such information in writing to the Architect/Engineer, not later than 96 hours before the bid opening. Answers to all such requests will be given in writing to all qualified Bidders, in Addendum form, and all addenda will be bound and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a Bidder find discrepancies in, or omissions from, the Plans, Specifications or other Contract Documents, or should a Bidder be in doubt as to their meaning, the Bidder should, no later than 96 hours prior to the bid opening, notify the Architect/Engineer in order that a written Addendum if necessary, may be sent to all Bidders prior to submission of the bids. Failure to request such clarification is a waiver to any claim by the Bidder for expense made necessary by reason of later interpretation of the Contract Documents by the OWNER.

10. **AWARD OF CONTRACT**

Unless it elects to reject all bids, the OWNER will award the Contract as promptly as possible consistent with the time required for a thorough analysis of bids submitted. Award will be made on the basis of the greatest advantage to the OWNER, considering all elements of the bid. The right is reserved to reject any or all Proposals and to waive technical defects, as the interest of the OWNER may require. The OWNER can award the

contract to a Bidder whose principal place of business is located in the City of Port Arthur and whose bid is within 5% of the lowest bid price.

A Bidder may withdraw his Proposal before the expiration of the time during which a Proposal may be submitted, without prejudice to himself, by submitting a written request for its withdrawal to the officer who holds it.

11. **TIME OF COMPLETION**

Attention is directed to the requirement that each Bidder specify in his Proposal the time in which he will agree to complete the work. The time required for completion of the work will be a consideration in the determination of the successful Bidder. Unless otherwise specified, Bidder must state time in consecutive calendar days, including, but not limited to, all Saturdays, Sundays, and Federal, State and City holidays.

12. **SUBSTITUTIONS**

Where materials or equipment are specified by a trade or brand name, it is not the intention of the OWNER to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance, and to establish an equal basis for the evaluation of bids.

13. **LAWS**

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout.

14. **EQUAL OPPORTUNITY**

Bidder agrees to abide by the requirement under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the General Conditions.

15. **MATERIAL SUPPLIERS AND SUBCONTRACTORS**

Low bidder shall supply the names and addresses of major material suppliers and Subcontractors when requested to do so by OWNER.

16. **RETAINAGE**

Ten percent (10%) {five percent (5%) if the total contract exceeds Twenty-five Thousand Dollars [\$25,000]} of the amount of each periodic progress payment shall be retained by OWNER until final completion and acceptance of all work under the CONTRACT.

17. **UNIT PRICES**

If the Contract may be let on a unit price basis, the Specifications furnished to bidders shall contain approximate quantities estimated upon the best available information, but

the compensation to be paid to the CONTRACTOR shall be based upon the actual quantities constructed or supplied.

18. **PRE-BID CONFERENCE**

A **MANDATORY PRE-BID CONFERENCE** between the Engineer, Representatives of the City of Port Arthur, and prospective bidders will be held at: **10:00 a.m., March 26, 2015** on the **5th Floor Council Chambers of the Port Arthur City Hall: 444 4th Street, Port Arthur, Tx .**

The purpose of the **MANDATORY PRE-BID CONFERENCE** is to make certain that the scope of work is fully understood, to answer any questions, to clarify the intent of the Contract Documents, and to resolve any problems that may affect the project construction. No addendum will be issued at this meeting, but subsequent thereto, the Engineer, if necessary, will issue an addendum(s) to clarify the intent of the Contract Documents.

Bids received from firms or individuals not listed on the roll of attendees of the **MANDATORY PRE-BID CONFERENCE** will be rejected and returned unopened to the Bidder.

SECTION D
BID

BID

TO: CITY OF PORT ARTHUR
444 4TH STREET
P.O. BOX 1089
CITY OF PORT ARTHUR, TEXAS 77640

Proposal of _____ (hereinafter called "BIDDER"), organized and existing under the laws of the State of _____, doing business as * _____, and acting by and through _____ to the Port Arthur Economic Development Corporation, (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all work for the construction of **SITE GRADING to Serve the PORT ARTHUR BUSINESS PARK** in strict accordance with the Contract Documents, within the time set forth in the Notice to Proceed and at the prices stated below, and Bidder shall enter into Contract for same within the time specified in Contract Documents.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the PROJECT within 90 consecutive calendar days specified in the Notice to Proceed, including, but not limited to, all Saturdays, Sundays, and Federal, State, and City holidays thereafter. BIDDER further agrees to pay as liquidated damages, the sum of **\$500.00** for each consecutive calendar day thereafter including, but not limited to, all Saturdays, Sundays, and Federal, State and City holidays as provided in Section 51 of the General Conditions.

Enclosed is bid security as required.

BIDDER acknowledges receipt of the following ADDENDUM:

BIDDER agrees to perform all the work described in the Contract Documents for the following unit prices or lump sum:

**Insert "a corporation," "a partnership," or "an individual" as applicable.*

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
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BID SCHEDULE

BASE BID ITEMS

1.	1	L.S.	Mobilization, Bonds, Insurance, Onsite Facilities, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____
2.	1	L.S.	Silt Control Fencing and Inlet Protection, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____
3.	1	L.S.	Remove Silt Control Fencing and Inlet Protection as Instructed by Engineer, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____
4.	1	L.S.	Area "A" Scarifying, Grading and Seeding, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____
5.	1	L.S.	Area "B" Scarifying, Grading and Seeding, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____
6.	1	L.S.	Area "C" Scarifying, Grading and Seeding, Complete in Place. @ _____ _____ Per Lump Sum	\$ _____	\$ _____

Item No.	Approx. Qty.	Unit	Description of Item with Unit Price Written in Words	Unit Price	Amount
7.	1	L.S.	Area "D" Scarifying, Grading and Seeding, Complete in Place. @ _____ Per Lump Sum	\$ _____	\$ _____
8.	22	1000/gal	Vegetative Watering, Complete in Place. @ _____ Per Thousand Gallons	\$ _____	\$ _____
9.	1	L.S.	Rock Filter Dam, Complete in Place. @ _____ Per Lump Sum	\$ _____	\$ _____

SUB-TOTAL BASE BID ITEMS

\$ _____

SUPPLEMENTAL ITEMS

10.	11	1000/gal	Vegetative Watering, Complete in Place. @ _____ Per Thousand Gallons	(\$105.00)* \$ _____	\$ _____
-----	----	----------	--	-------------------------	----------

**Figures in parentheses represent minimum unit prices for Supplemental Items described in Section H, Page H-1A, Paragraph H.*

SUB-TOTAL SUPPLEMENTAL ITEMS \$ _____

SUB-TOTAL BASE BID ITEMS \$ _____

TOTAL AMOUNT BID \$ _____

STATEMENT FOR SEPARATED CONTRACT COMPLIANCE:

BASE BID

TOTAL BASE BID: Non-consumable material and equipment.
(Tax Exempt)

\$ _____

TOTAL BASE BID: Skill, labor and consumable material, tools,
and equipment. (Not Tax Exempt)

\$ _____

Unit prices are to be expressed in both words and figures. In case of a discrepancy, the amount shown in words shall govern. The above unit prices shall include all labor, materials, equipment, bailing, shoring, removal, overhead, profit, insurance, etc. to cover the finished work of the several kinds called for.

BIDDER understands that the OWNER reserves the right to reject any or all bids and to waive any informalities in the bidding. In addition, the OWNER reserves the right to award the Contract on the basis of TOTAL AMOUNT BID or TOTAL AMOUNT BID with Substitution(s) and/or Alternates and TOTAL AMOUNT BID plus any Alternate(s) described above which is most advantageous to the OWNER.

The BIDDER agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

The undersigned BIDDER hereby declares that he agrees to do the work, and that no representations made by the Owner are in any sense a warranty, but are mere estimates for the guidance of the Contractor.

Upon receipt of the notice of acceptance of the bid, the BIDDER will execute the formal Contract attached within ten (10) working days and will deliver a Performance and a Payment Bond to insure payment for all labor and materials. The bid security attached, without endorsement, in the sum of no less than five percent (5%) of the amount bid, is to become the property of Port Arthur Economic Development Corporation, in the event the contract and bonds are not executed within the time above set forth, as liquidated damages without limitation.

Respectfully submitted:

(NAME OF CONTRACTOR)

(ADDRESS)

BY: _____
(SIGNATURE)

(TELEPHONE NUMBER)

TITLE: _____

(LICENSE NUMBER IF APPLICABLE)

DATE: _____

(SEAL, IF BIDDER IS A CORPORATION)

(ATTEST)

**PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION
EXCEPTION / APPROVED EQUAL REQUEST**

[Please submit this form for each exception/approved equal]

VENDOR: _____ TELEFAX: _____

PROJECT: _____

PAGE: _____ of _____ PARAGRAPH: _____

SUBJECT: _____

REQUEST:

Signature

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

APPROVED: _____ DISAPPROVED: _____ CLARIFICATION: _____

REMARKS:

Signature

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

AFFIDAVIT
[RETURN THIS AFFIDAVIT AS PART OF THE BID PROPOSAL]

All pages in offer's bid proposal containing statements, letters, etc., shall be signed by a duly authorized Officer of the company, whose signature is binding on the Bid Proposal.

The Undersigned offers and agrees to one of the following:

_____ I hereby certify that I do not have outstanding debts with the Port Arthur Economic Development Corporation and the City of Port Arthur. Further, I agree to pay succeeding debts as they become due during this agreement.

_____ I hereby certify that I do have outstanding debts with the Port Arthur Economic Development Corporation and the City of Port Arthur and agree to pay said debts prior to execution of this Agreement.

_____ I hereby certify that I do have outstanding debts with the Port Arthur Economic Development Corporation and the City of Port Arthur and agree to enter into an agreement for the payment of said debts. I further agree to pay succeeding debts as they become due.

NAME OF OFFERER: _____

TITLE: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: _____

SIGNATURE: _____

SUBSCRIBED AND SWORN to before me by the above named _____
on this the _____ day of _____, 20____.

Notary Public in and for the State of _____.

Signature

My Commission Expires:

SECTION E
BID BOND

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the Undersigned, _____
_____ as Principal,
and _____ as Surety, are
hereby held and firmly bound unto _____ as OWNER
in the penal sum of _____
for the payment of which, well and truly to be made, we hereby jointly
and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 20____. The
Condition of the above obligation is such that whereas the Principal
has submitted to _____ a
certain BID, attached hereto and hereby made a part hereof to enter
into a Contract in writing, for the _____

_____.

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a Contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as here in stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper Officers, the day and year first set forth above.

____ (L.S.) PRINCIPAL

SURETY

BY: _____

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

SECTION F
GENERAL CONDITIONS

**NUMERICAL INDEX
TO
GENERAL CONDITIONS**

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GENERAL CONDITIONS

1. CONTRACT AND CONTRACT DOCUMENTS

The Plans, Specifications and Addenda, enumerated in the Agreement and Paragraph 1 of the Supplemental General Conditions, shall form part of this Contract, and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The Table of Contents, titles, headings, running headlines and marginal notes contained herein and in said Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer.

2. DEFINITIONS

The following terms, as used in this Contract, are respectively defined as follows:

- a. "CONTRACTOR": A person, firm or corporation with whom the Contract is made with the OWNER or Port Arthur Economic Development Corporation.
- b. "SUBCONTRACTOR": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate Contract or agreement with, the CONTRACTOR.
- c. "WORK ON (AT) THE PROJECT": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the CONTRACTOR and any Subcontractor.
- d. "OWNER": Refers to the Port Arthur Economic Development Corporation.
- e. "PAEDC": Refers to the Port Arthur Economic Development Corporation.
- f. "ENGINEER": Arceneaux Wilson & Cole LLC, Port Arthur, Texas

3. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements or stipulations of this Contract, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION, shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished Documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONTRACTOR under this Contract shall, at the option of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION, become its property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

CONTRACTOR shall not be relieved of liability to the for damages sustained by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION by virtue of any breach of the Contract by the CONTRACTOR, and the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION from the CONTRACTOR is determined.

4. **PERSONNEL**

- a. The CONTRACTOR represents that he has, or will secure at his own expense, all personnel required in performing the work under this Contract. Such personnel shall not be employees of, or have any contractual relationship with, the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.
- b. All of the work required hereunder will be performed by the CONTRACTOR, or under his supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
- c. None of the work covered by this Contract shall be subcontracted without the prior written approval of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

5. **REPORTS AND INFORMATION**

The CONTRACTOR, at such times and in such forms as the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION may require, shall furnish the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

6. **RECORDS AND AUDITS**

The CONTRACTOR shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION to assure proper accounting for all project funds, both federal and non-federal shares.

These records will be made available for audit purposes to the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION or any authorized representative, and will be retained for three (3) years after the expiration of this Contract, unless permission to destroy them is granted by the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.

7. **FINDINGS CONFIDENTIAL**

All of the reports, information, data, etc., prepared or assembled by the CONTRACTOR under this Contract are confidential, and CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of the PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION.

8. **COPYRIGHT**

No report, maps or other Documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONTRACTOR.

9. **COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable laws, ordinances, rules, orders, regulations and codes of the Federal, State and local governments relating to performance of the work herein, the protection of adjacent property and the maintenance of passageways, guard fences or other protective facilities.

10. **INTEREST OF MEMBERS OF CITY**

No member of the governing body of the Port Arthur Economic Development Corporation,, and no other Officer, Employee or Agent of the Port Arthur Economic Development Corporation, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the CONTRACTOR shall take appropriate steps to assure compliance.

11. **INTEREST OF OTHER LOCAL PUBLIC OFFICIALS**

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the CONTRACTOR shall take appropriate steps to assure compliance.

12. **INTEREST OF CONTRACTOR AND EMPLOYEES**

The CONTRACTOR covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed.

13. **INCORPORATION OF PROVISIONS REQUIRED BY LAW**

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion on application by either party.

14. **CERTIFICATES AND PERMITS**

Except for required permits issued by OWNER, which shall be issued at no cost to CONTRACTOR, CONTRACTOR shall secure at his own expense from other public authorities all necessary certificates, licenses, approvals and permits required in connection with the work of this Contract or any part thereof, and shall give all notices required by law, ordinance or regulation. CONTRACTOR shall pay all fees and charges incident to the due and lawful prosecution of the work of this Contract, and any extra work performed by him.

15. **GUARANTEE OF WORK**

- a. Neither the final certificate of payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the OWNER shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the CONTRACTOR of liability in respect to any warranties or responsibility for faulty materials or workmanship. The CONTRACTOR guarantees and warrants that all materials and equipment which are to become part of the work shall be new unless otherwise specified, and that all work will be of good quality and free from faults or defects and in accordance with the Contract Documents and of any inspections, tests or approvals required by the Contract Documents, law, ordinance, rules, regulations or orders of any public authority having jurisdiction. The OWNER will give notice of observed defects with reasonable promptness.
- b. Neither observations by Architect or Engineer nor inspections, tests or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the work in accordance with the requirements of the Contract.
- c. The provisions of this Paragraph shall be cumulative of, and not in limitation of, the responsibility of CONTRACTOR for defects in the work or materials or damages resulting therefrom as otherwise provided by the law of the State of Texas or this Contract, including, without limitation, the implied warranty of fitness of the work and the implied obligation to perform the work in a good and workmanlike manner.

16. **ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

The CONTRACTOR will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the CONTRACTOR will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The CONTRACTOR shall carry out the work in accordance with the additional

detail drawings and instructions. The CONTRACTOR and the Architect/Engineer will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule; and, (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

17. **SHOP OR SETTING DRAWINGS**

The CONTRACTOR shall submit promptly to the Architect/Engineer two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the CONTRACTOR shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two (2) corrected copies. If requested by the Architect/Engineer, the CONTRACTOR must furnish additional copies. Regardless of corrections made in, or approval given to, such drawings by the Architect/Engineer, the CONTRACTOR will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

18. **MATERIALS, SERVICES AND FACILITIES**

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendents, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- b. Any work necessary to be performed after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the OWNER.

19. **CONTRACTOR'S TITLE TO MATERIALS**

No materials or supplies for the work shall be purchased by the CONTRACTOR or by any Subcontractor subject to any chattel mortgage or under a conditional sale Contract or other agreement by which an interest is retained by the seller. The CONTRACTOR warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

20. **INSPECTION AND TESTING OF MATERIALS**

All materials, equipment, etc., used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards and frequency, or as required by the contract documents. The CONTRACTOR shall make all arrangements

for such tests and inspections with a local independent testing laboratory acceptable to the OWNER, and the CONTRACTOR shall bear all related costs of tests and inspections. If such procedures for testing and inspection reveal failure to comply with accepted standards or with requirements established by the contract documents, all re-testing and re-inspection costs made necessary by such failure, including those of related procedures, shall also be at CONTRACTOR'S expense.

If the ENGINEER and/or OWNER determines that portions of the project requires additional testing or inspection not included in CONTRACTOR'S original bid, the ENGINEER shall, upon written authorization from the OWNER, instruct the CONTRACTOR to make arrangements for additional testing and inspection. The costs for such additional testing and inspection shall be at OWNER'S expense.

The CONTRACTOR'S independent testing laboratory shall give timely notice to the CONTRACTOR and the ENGINEER of when and where tests and inspections are to be made so that the CONTRACTOR and the ENGINEER may be present for such procedures. If the ENGINEER is to observe tests and inspections, the ENGINEER will do so promptly and, where practical, at the normal pace of testing. Tests and inspections shall be made promptly to avoid unreasonable delays on the project.

Required certificates and/or reports of all test and inspections shall, unless otherwise required by the contract documents, be promptly delivered by the independent testing laboratory to the CONTRACTOR, the ENGINEER, and the OWNER.

21. **"OR EQUAL" CLAUSE**

Whenever a material, article or piece of equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the CONTRACTOR without the Architect/Engineer's written approval.

22. **PATENTS**

- a. The CONTRACTOR shall hold and save the OWNER and its Officers, Agents, Servants and Employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by the OWNER, unless otherwise specifically stipulated in the Contract Documents.
- b. License or Royalty Fees: License and/or royalty fees for the use of a process which is authorized by the OWNER of the project must be reasonable and paid to the holder of the patent, or his authorized licensee, direct by the OWNER and not by or through the CONTRACTOR.

- c. If the CONTRACTOR uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the OWNER of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work. The CONTRACTOR and/or his Sureties shall indemnify and save harmless the OWNER of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the OWNER for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

23. **SURVEYS**

Unless otherwise expressly provided for in the Specifications, the OWNER will furnish to the CONTRACTOR all surveys necessary for the execution of the work.

24. **CONTRACTOR'S OBLIGATIONS**

The CONTRACTOR shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said Specifications and in accordance with the Plans and drawings covered by this Contract and any and all supplemental Plans and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The CONTRACTOR shall observe, comply with and be subject to all terms, conditions, requirements and limitations of the Contract and Specifications, and shall do, carry on and complete the entire work to the satisfaction of the Architect/Engineer and the OWNER.

25. **INSURANCE**

The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required herein and such insurance has been approved by the OWNER, nor shall the CONTRACTOR allow any Subcontractor to commence work on this Subcontract until the insurance required of the Subcontractor has been so obtained and approved. (See information to Bidders, Paragraph 5.)

26. **SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION**

(a) Danger Signals and Safety Devices (Modify as Required):

The CONTRACTOR shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the CONTRACTOR fails or neglects to take such precautions, the OWNER may have such lights and barricades installed and charge the cost of this work to the CONTRACTOR. Such action by the OWNER does not relieve the CONTRACTOR of any liability incurred under these Specifications or Contract.

(b) Use of Explosives:

When the use of explosives is necessary for the prosecution of the work, the CONTRACTOR shall observe all local, State and Federal laws in purchasing and handling explosives. The CONTRACTOR shall take all necessary precautions to protect completed work, neighboring property, water lines or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The CONTRACTOR shall notify all OWNER'S of public utility property of the intention to use explosives at least eight (8) hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer does not in any way reduce the responsibility of the CONTRACTOR or his Surety for damages that may be caused by such use.

27. **SUSPENSION OF WORK**

Should the OWNER be prevented or enjoined from proceeding with work or from authorizing its prosecution either before or after its prosecution, by reason of any litigation, the CONTRACTOR shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of the work will be extended to such reasonable time as the OWNER may determine will compensate for time lost by such delay with such determination to be set forth in writing.

28. **SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**

In order to protect the lives and health of his Employees under the Contract, the CONTRACTOR shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract.

The CONTRACTOR alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

29. **USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY OWNER**

The CONTRACTOR agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the OWNER, provided the OWNER:

- a. Secures written consent of the CONTRACTOR except in the event, in the opinion of the Architect/Engineer, the CONTRACTOR is chargeable with unwarranted delay in completing the contract requirements;
- b. Secures consent of the Surety;
- c. Secures endorsement from the insurance carrier(s) permitting occupancy of the building or use of the project during the remaining period of construction; or,
- d. When the project consists of more than one (1) building and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit from the insurance carrier to complete construction.

30. **USE OF PREMISES AND REMOVAL OF DEBRIS**

The CONTRACTOR expressly undertakes at his own expense:

- a. To take every precaution against injuries to persons or damage to property;
- b. To store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other CONTRACTOR'S;
- c. To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- d. To clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- e. Before final payment to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;
- f. To effect all cutting, fitting or patching of his work required to make the same to conform to the Plans and Specifications and, except with the consent of the Architect/Engineer, not to cut or otherwise alter the work of any other CONTRACTOR.

31. **QUANTITIES OF ESTIMATE**

Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the OWNER to complete the work contemplated by the Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

32. **LANDS AND RIGHTS-OF-WAY**

Prior to the start of construction, the OWNER shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this CONTRACT.

33. **NOTICE AND SERVICE THEREOF**

Any notice to any CONTRACTOR from the OWNER relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed when said notice is posted, by certified or registered mail, to the said CONTRACTOR at his last given address, or delivered in person to the said CONTRACTOR or his authorized representative on the work.

34. **SEPARATE CONTRACT**

The CONTRACTOR shall coordinate his operations with those of other CONTRACTORS. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The CONTRACTOR, including his Subcontractors, shall keep informed of the progress and the detail work of other CONTRACTORS and shall notify the Architect/Engineer immediately of lack of progress or effective workmanship on the part of other CONTRACTORS.

Failure of a CONTRACTOR to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

35. **SUBCONTRACTING**

- a. The CONTRACTOR may utilize the services of specialty Subcontractors on those parts of work which, under normal contracting practices, are performed by specialty Subcontractors.
- b. The CONTRACTOR shall not award any work to any Subcontractor without prior written approval of the OWNER, which approval will not be given until the CONTRACTOR submits to the OWNER a written statement concerning the proposed

award to the Subcontractor, which statement shall contain such information as the OWNER may require.

- c. The CONTRACTOR shall be as fully responsible to the OWNER for the acts or omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- d. The CONTRACTOR shall cause appropriate provisions to be inserted in all Subcontracts relative to the work to bind Subcontractors to the CONTRACTOR by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of Subcontractors, and to give the CONTRACTOR the same power as regards terminating any Subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the Contract Documents.
- e. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the OWNER.

36. **ARCHITECT / ENGINEER'S AUTHORITY**

The Architect/Engineer shall give all orders and directions contemplated under this Contract and Specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this Contract, and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineers estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or Specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the CONTRACTOR to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

37. **MEANING OF INTENT**

The Architect/Engineer shall decide the meaning and intent of any portion of the Specifications and of any Plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the CONTRACTOR, under this Contract and other CONTRACTOR'S, performing work for the OWNER, shall be adjusted and determined by the Architect/Engineer.

38. **CONTRACT SECURITY**

If the Contract amount exceeds Fifty Thousand Dollars [\$50,000.00], a *Payment Bond* shall be furnished, and if the contract exceeds One Hundred Thousand Dollars [\$100,000.00], a *Performance Bond* also shall be furnished, on prescribed forms in the amount of one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in

connection with this Contract and as security for the faithful performance of this Contract.

39. **ADDITIONAL OR SUBSTITUTE BOND**

If at any time the OWNER, for justifiable cause, shall be or become dissatisfied with any Surety or Sureties for the Performance and/or Payment Bonds, the CONTRACTOR shall, within five (5) days after notice from the OWNER to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the OWNER. The premiums on such bond shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new Surety and Sureties shall have furnished such an acceptable bond to the OWNER.

40. **ASSIGNMENTS**

The CONTRACTOR shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the OWNER. In case the CONTRACTOR assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the CONTRACTOR shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

41. **MUTUAL RESPONSIBILITY OF CONTRACTORS**

If, through acts of neglect on the part of the CONTRACTOR, any other CONTRACTOR or any Subcontractor shall suffer loss or damage on the work, the CONTRACTOR agrees to settle with such other CONTRACTOR or Subcontractor by agreement or arbitration if such other CONTRACTOR or Subcontractor will so settle. If such other CONTRACTOR or Subcontractor shall assert any claim against the OWNER on account of any damage alleged to have been sustained, the OWNER shall notify the CONTRACTOR, who shall indemnify and save harmless the OWNER against any such claim.

42. **ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The Acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR for all things done or furnished in connection with this work and for every act and neglect of the OWNER and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or his Sureties from any obligations under this Contract or the Performance and Payment Bonds.

43. **PAYMENTS BY CONTRACTOR**

The CONTRACTOR shall pay (a) for all transportation and utility services no later than the 30th day of the calendar month following that in which services are rendered; (b) for all materials, tools and other expendable equipment to the extent of ninety percent (90%)

cost thereof, no later than the 20th day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof, no later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and (c) to each of his Subcontractors, no later than the 5th day following each payment to the CONTRACTOR, the respective amounts allowed the CONTRACTOR on account of the work performed by his Subcontractors to the extent of each Subcontractors' interest therein.

44. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the CONTRACTOR shall deliver to the OWNER an estimated construction progress schedule in form satisfactory to the OWNER, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the CONTRACTOR in accordance with the progress schedule. The CONTRACTOR shall also furnish on forms to be supplied by the OWNER: (a) a detailed estimate giving a complete breakdown of the Contract price; and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

45. **PAYMENTS TO CONTRACTOR**

- a. Not later than the thirtieth (30th) day of each calendar month, the OWNER shall make a progress payment to the CONTRACTOR on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of the Contract, the OWNER shall retain ten percent (10%) [five percent {5%} if the total contract price exceeds \$25,000] of the amount of each estimate until final completion and acceptance of all work covered by this Contract; Provided, that the CONTRACTOR shall submit his estimate no later than the fifth (5th) day of the month. *Provided further, that on completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, payment may be made in full, including retained percentages thereon, less authorized deductions. The CONTRACTOR is advised that the payment schedule noted in the paragraph is subject to fluctuation due to the City Council's regular schedule of meeting on every other Tuesday. The CONTRACTOR may alter his estimate period such as to give the Engineer ten (10) working days prior to the next scheduled City Council meeting to prepare an estimate of the work completed and submit said estimate for the OWNER'S action.*
- b. In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration.

- c. All material and work covered by partial payments made shall thereupon become the sole property of the OWNER, but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the OWNER to require the fulfillment of all of the terms of the Contract.
- d. OWNER'S Right to Withhold Certain Amounts and Make Application Thereof: The CONTRACTOR agrees that he will indemnify and save the OWNER harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the CONTRACTOR fails to do so, then the OWNER may, after having served written notice on the said CONTRACTOR, either pay unpaid bills, of which the OWNER has written notice, direct, or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR or his Surety. In paying any unpaid bills of the CONTRACTOR, the OWNER shall be deemed the agent of the CONTRACTOR, and any payment so made by the OWNER shall be considered as a payment made under Contract by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith. This provision shall not be construed to give rise to any third party beneficiary rights in claimants.

46. **CORRECTION OF WORK**

All work, all materials, whether incorporated in the work or not, all processes of manufacture and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture and methods of construction for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the CONTRACTOR at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the CONTRACTOR hereunder shall be reduced by such amount as in the judgement of the Architect/Engineer shall be equitable.

47. **SUBSURFACE CONDITIONS FOUND DIFFERENT**

Should the CONTRACTOR encounter subsurface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions and, if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such changes in the Plans and/or Specifications as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 49 of the General Conditions.

48. **CLAIMS FOR EXTRA COST**

No claim for extra work or cost shall be allowed unless the same was done pursuant to a written order of the Architect/Engineer approved by the OWNER, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of Subparagraph 49(c) of the General Conditions, the CONTRACTOR shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the OWNER, give the OWNER access to accounts relating thereto.

49. **CHANGES IN WORK**

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the OWNER. Charges or credit for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- a. Unit bid prices previously approved.
- b. An agreed lump sum.
- c. The actual cost of:
 - (1) Labor, including foreman;
 - (2) Materials entering permanently into the work;
 - (3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
 - (4) Power and consumable supplies for the operation of power equipment;
 - (5) Insurance;
 - (6) Social Security and old age unemployment contributions.

To the cost under (c.) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

50. **EXTRAS**

Without invalidating the Contract, the OWNER may order extra work or make changes

by altering, adding to or deducting from the work, the Contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the OWNER or its Architect/Engineer, acting officially for the OWNER, and the price is stated in such order.

51. **TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

It is hereby understood and mutually agreed, by and between the CONTRACTOR and the OWNER, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed".

The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the completion of the work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the OWNER, then the CONTRACTOR does hereby agree, as a part consideration for the awarding of this Contract, to pay to the OWNER the amount specified in the Contract, not as a penalty, but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every consecutive calendar day, including, but not limited to, all Saturdays, Sundays, and Federal, State, and City holidays and that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work.

The said amount is fixed and agreed upon by and between the CONTRACTOR and the OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would in such event sustain, and said amount is agreed to be the amount of damages which the OWNER would sustain and said amount shall be retained from time to time by the OWNER from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the CONTRACTOR shall not be charged with any part of liquidated damages or any excess cost when the OWNER determines that any part of liquidated damages was not the fault of the CONTRACTOR and the OWNER determines that the request for extension by the CONTRACTOR is justified and due to:

- a. Any preference, priority or allocation order duly issued by the government;

- b. The following unforeseeable causes, namely: acts of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a Contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, hurricanes and tornadoes; and rainy days claimed by the CONTRACTOR; however, rainy days shall be considered only if the CONTRACTOR notifies the Engineer or OWNER on the day the CONTRACTOR claims he cannot work because of rainy weather that day. Failure to so report will eliminate any claim for time extension because of rainy weather on that day.
- c. Rainy weather when 60 percent of his work force cannot work for seven (7) hours or more that day because of rainy weather and providing that he has complied with the condition under 51(b).
- d. Any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections (a.) and (b.) of this Article.

It is also agreed that for each five (5) regular days of work lost due to any of the foregoing reasons, seven (7) calendar days will be added to the contract time (or 1.4 calendar days added for each one (1) regular day of work lost). Fractional calendar days will be rounded to the nearest whole number of days.

Provided, further, that the CONTRACTOR shall, within ten (10) days from the beginning of such delay, unless the OWNER shall grant a further period of time prior to the date of final settlement of the Contract, notify the OWNER, in writing, of the causes of delay, who shall ascertain the facts and extent of the delay and notify the CONTRACTOR within reasonable time of its decision in the matter.

Provided, that this provision for liquidated damages shall be cumulative of and not in limitation of any other remedy available to OWNER, including, without limitation, the right to terminate as provided in Paragraph 3 and to recover additional damages for any excess cost in otherwise completing the work.

52. **WEATHER CONDITIONS**

In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the CONTRACTOR will, and will cause his Subcontractors to, protect carefully his, and their, work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the CONTRACTOR or any of his Subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the CONTRACTOR.

53. **PROTECTION OF WORK AND PROPERTY - EMERGENCY**

The CONTRACTOR shall at all times safely guard the OWNER'S property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work, and that of adjacent property, from damage. The CONTRACTOR shall

replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract or by the OWNER, or his duly authorized representatives.

In case of an emergency which threatens loss or injury of property and/or safety of life, the CONTRACTOR will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the CONTRACTOR due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

Where the CONTRACTOR has not taken action but has notified the Architect/Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Architect/Engineer.

The amount of reimbursement claimed by the CONTRACTOR on account of any emergency action shall be determined in the manner provided in Paragraph 49 of the General Conditions.

54. **INSPECTION**

The authorized representatives and agents of the OWNER shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

55. **SUPERINTENDENCE BY CONTRACTOR**

At the site of the work, the CONTRACTOR shall employ a construction superintendent or foreman who shall have full authority to act for the CONTRACTOR. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in the capacity for the particular job involved unless he ceases to be on the CONTRACTOR'S payroll.

56. **UNDERPAYMENTS OF WAGES OR SALARIES**

In case of underpayment of wages by the CONTRACTOR or by any Subcontractor to laborers or mechanics employed by the CONTRACTOR or Subcontractor upon the work covered by the Contract, the OWNER, in addition to such other rights as may be afforded it under this Contract, shall withhold from the CONTRACTOR, out of any payments due the CONTRACTOR, so much thereof as the OWNER may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the OWNER for and on account of the CONTRACTOR or the Subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to Plans, funds or programs for any type of fringe benefit prescribed in the applicable wage determination.

57. **EMPLOYMENT OF CERTAIN PERSONS PROHIBITED**

No person under the age of sixteen (16) years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

58. **EMPLOYMENT OF LABORERS OR MECHANICS NOT LISTED IN AFORESAID WAGE DETERMINATION DECISION**

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the OWNER.

59. **FRINGE BENEFITS NOT EXPRESSED AS HOURLY WAGE RATES**

The OWNER shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the CONTRACTOR is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established.

60. **POSTING WAGE DETERMINATION DECISIONS AND AUTHORIZED WAGE DEDUCTIONS**

The applicable wage poster and the applicable wage determination decisions, with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.

61. **COMPLAINTS, PROCEEDINGS OR TESTIMONY BY EMPLOYEES**

No laborer or mechanic to whom the wage, salary or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the CONTRACTOR or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

62. **CLAIMS AND DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the CONTRACTOR in writing to the OWNER for referral by the latter.

63. **PAYROLLS AND BASIC PAYROLL RECORDS OF CONTRACTOR AND SUBCONTRACTORS**

The CONTRACTOR and each Subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the OWNER. The payrolls and basic payroll records of the CONTRACTOR and each Subcontractor

covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of three (3) years thereafter. Such payrolls and basic payroll records shall contain the name and address of each employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1 (b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. The CONTRACTOR and each Subcontractor shall make his employment records, with respect to persons employed by him upon the work covered by this Contract, available for inspection by authorized representatives of the OWNER. Such representative shall be permitted to interview employees of the CONTRACTOR of any Subcontractors during working hours on the job.

64. **SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES**

The transporting of material and supplies to or from the site of the project or program to which the Contract pertains by the employees of the CONTRACTOR or of any Subcontractor and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the project or program to which this Contract pertains by persons employed by the CONTRACTOR or by an Subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, shall be deemed to be work to which the wage provisions of this Contract are applicable.

65. **INELIGIBLE SUBCONTRACTORS**

The CONTRACTOR shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the OWNER'S prior written approval of the Subcontractor.

66. **PROVISIONS TO BE INCLUDED IN CERTAIN SUBCONTRACTS**

The CONTRACTOR shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these wage provisions and also a clause requiring the Subcontractors to include such provisions in any lower tier Subcontractors which they may enter into, together with a clause requiring such insertion in any further Subcontracts that may in turn be made.

67. **BREACH OF FOREGOING WAGE STANDARDS AND RATES PROVISIONS**

In addition to the causes for termination of this Contract as herein elsewhere set forth, the OWNER reserves the right to terminate this Contract if the CONTRACTOR or any Subcontractor, whose Subcontractor covers any of the work covered by this Contract, shall breach any of these wage standards and rates provisions.

68. **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, the CONTRACTOR agrees as follows:

- (a) The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicant for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.
- (c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the labor union or workers representative of the CONTRACTOR'S commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules and regulations and relevant orders of the Secretary of Labor.
- (e) The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and the CONTRACTOR may be declared ineligible for further government Contracts or federally-assisted construction Contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.
- (g) The CONTRACTOR will include the provisions of Paragraphs (a) through (f) in every Subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or purchase order as the Department of Housing and Urban

Development may direct as a means of enforcing such provisions, including sanctions for non-compliance: provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Department of Housing and Urban Development, the CONTRACTOR may request the United States to enter into litigation to protect the interests of the United States.

69. **CIVIL RIGHTS ACT OF 1964**

Under Chapter 106 of the Civil Practice & Remedies Code of the Revised Civil Statutes of Texas, no person shall, on the ground of race, color, national origin, sex, age or handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity of the City.

70. **CONFLICTING CONDITIONS IN CONTRACT DOCUMENTS**

The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all. In case of a conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Agreement (including General Conditions), Performance Bond, Payment Bond, special Bonds (if any), Proposal, Special Conditions (including Information to Bidders), Advertisements for Bids, Detailed Drawings, Technical Specifications, General Drawings (Plans) and Supplemental General Conditions.

71. **INDEMNIFICATION**

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

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

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

72. **A.I.A. GENERAL CONDITIONS**

The General Conditions of the Contract for Construction, A.I.A. Document A201, 1987 Edition, as amended by current edition, of the American Institute of Architects, consisting of fourteen (14) Articles, Pages numbered 1 through 19, is hereby made a part of the Contract Documents of this project.

Such A.I.A. General Conditions are cumulative to these General Conditions, but where any provision of said A.I.A. General Conditions are inconsistent or in conflict with these General Conditions, then these General Conditions shall prevail.

All references to arbitration in said A.I.A. General Conditions are deleted and of no force and effect for purposes of this Contract. Further, Subdivisions 2.2.3 and 2.2.4 of said A.I.A. General Conditions are deleted and of no force and effect for purposes of this Contract.

Article 1.3 (Ownership and Use of Documents) of the A.I.A. General Conditions is hereby deleted.

73. **DELAYS**

The CONTRACTOR shall receive no compensation for delays or hindrances to the work, except when direct and unavoidable extra cost to the CONTRACTOR is caused by the failure of the CITY to provide information or material, if any, which is to be furnished by the Port Arthur Economic Development Corporation. When such extra compensation is claimed, a written statement thereof shall be presented by the CONTRACTOR to the Engineer and, if by him found correct, shall be approved and referred by him to the Council for final approval or disapproval; and the action thereon by the Council shall be final and binding. If delay is caused by specific orders given by the Engineers to stop work, or by the performance of extra work, or by the failure of the Port Arthur Economic Development Corporation, to provide material or necessary instructions for carrying on the work, then such delay will entitle the CONTRACTOR to an equivalent extension of time, his application for which shall, however, be subject to the approval of the Port Arthur Economic Development Corporation; and no such extension of time shall release the CONTRACTOR or the Surety on his performance bond from all his obligations hereunder which shall remain in full force until the discharge of the Contract.

74. **MAINTENANCE OF WORK**

If, after approval of final payment and prior to expiration of one (1) year after date of Substantial Completion or such longer period as may be prescribed by law or by any applicable special guarantee required by the Contract Documents, and work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with the OWNER'S written instructions, correct such defective work. If CONTRACTOR does not promptly comply with such instructions, OWNER may have such defective work corrected and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR. The

provisions of this paragraph shall not limit the obligation of CONTRACTOR under Paragraph 15 (Guarantee of Work) in any respect whatsoever, including the time period of such Guarantee of Work provision in Paragraph 15 as will arise under the laws of the State of Texas and such Paragraph 15 and without regard to the provisions of this Paragraph (Maintenance of Work), nor shall this Paragraph (Maintenance of Work) be construed to establish any period of limitations for any cause of action against CONTRACTOR under the obligations of Paragraph 15.

75. **ANTITRUST**

CONTRACTOR hereby assigns to OWNER any and all claims for overcharges associated with this Contract which arises under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1, et seq. (1973).

76. **FEDERAL LABOR STANDARDS PROVISIONS**

Applicability

The Project or Program to which the construction work covered by his contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act. (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof @ due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR-5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(II) (a) Any class of laborers or mechanics which is

not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The Wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b)

or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contractor in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic

records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contribution or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section (b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates described in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 121500017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

© The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(I) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds. Furthermore failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

(Apprentices and Trainees.

(4) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship

program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress expressed as a percentage of the journeymen hourly rate specified in benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an

apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clauses of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C. "Federal Housing Administration transaction", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.....makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight hours in such work week unless such laborer or mechanic receives compensation at a rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall

insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or owner tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act. (Public Law 91-54, 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

77. DELAY, DISRUPTION OR OTHER CLAIMS

Any claim by the CONTRACTOR for delay, disruption or any other claim shall be based on a written notice delivered to the Port Arthur Economic Development Corporation, and to the ENGINEER promptly (but in no case later than ten [10] calendar days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Within ten (10) calendar days of delivering said notice, the CONTRACTOR shall deliver to the Port Arthur Economic Development Corporation, and to the ENGINEER notice of the amount of the claim and specific and detailed support documentation and data on the impact claimed. Further, the CONTRACTOR shall furnish on a continuing basis all of the documents that in any way are purported to support the damages, costs, expenses and impact of the claim event. The CONTRACTOR'S failure to fully comply with any of these requirements with respect to any claim shall constitute a complete and final waiver of said claim.

SECTION G

LABOR CLASSIFICATION AND MINIMUM WAGE SCALE

LABOR CLASSIFICATION AND MINIMUM WAGE SCALE

- A. **GENERAL.** Article 5159a of the Revised Civil Statutes of Texas, passed by the 43rd Legislature Acts of 1933, Page 91, Chapter 45, provides that any government subdivision shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic and shall specify in the call for bids and in the Contract the prevailing rate of per diem wages which shall be paid for each craft type of workman. This Article further provides that the CONTRACTOR shall forfeit, as a penalty, to the City, County, or State, or other political subdivision, Ten Dollars (\$10.00) per day for each laborer, or workman, or mechanic who is not paid the stipulated wage for the type of work performed by him as set up on the wage scale. The OWNER is authorized to withhold from the CONTRACTOR, after full investigation by the awarding body, the amount of this penalty in any payment that might be claimed by the CONTRACTOR or Subcontractor. The Act makes the CONTRACTOR responsible for the acts of the Subcontractor in this respect.

The Article likewise requires that the CONTRACTOR and Subcontractor keep an accurate record of the names and occupations of all persons employed by him and show the actual per diem wages paid to each worker, and these records are open to the inspection of the OWNER.

- B. **LABOR CLASSIFICATION AND MINIMUM WAGE SCALE:** Attached hereto.

LABOR CLASSIFICATION AND MINIMUM WAGE SCALE

General Decision Number: TX150078 01/02/2015 TX78

Superseded General Decision Number: TX20140078

State: Texas

Construction Type: Heavy

Counties: Jefferson and Orange Counties in Texas.

FLOOD CONTROL, including: Breakwaters, Channels, Channel Cut-offs, Dikes, Drainage Projects, Flood Control Projects, Irrigation Projects, Jetties, Land Drainage (not incidental to other construction), Land Leveling (not incidental to other construction), Land Reclamation, Levees, Pipelines, Ponds Pumping Stations (prefabricated drop-in not building), Revetments.

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* SUTX1990-035 01/31/1990

	Rates	Fringes
CARPENTER.....	\$ 10.965	.90

Heavy Equipment Operator
Heavy duty mechanic, blade grader (self-propelled), bull clam, backfiller, derrick (power operated, all types); dragline, push cat operator; bulldozer & all types of cat tractors; cable-way; backhoe, shovel, crane (power operated, all types), elevating grader (self-propelled), hoist (motor driven 2 drums or more), mix mobile, winch truck,

locomotive crane, mixer
 (14 cubic feet or more),
 paving mixer (all sizes),
 scraper (heavy type over 3
 CY), trench machine (all
 sizes), gradeall, high
 lift, foundation boring
 machine, gasoline or
 diesel driven welding
 machines (7 to 12 machines
 pumpcrete machines & drill
 operator, water well,
 tournapulls, DW-10 euclid,
 asphalt plants, crushing
 machines & batchplants,
 scoopmobiles, fingerlifts,
 open construction.....\$ 7.25

LABORER.....\$ 7.25

Light Equipment Operator
 Air compressor, blade
 grader (towed), flexplane,
 form grader, mixer (less
 than 14 cu. ft.), pumps
 pulsometer, truck crane
 driver, gasoline or diesel
 driven welding machines (3
 to 6 machines), hoist
 (single drum), scrapers (3
 cu. yds. or less).....\$ 7.25

Oiler.....\$ 7.25

Piledriver.....\$ 7.25

PILEDRIVERMAN.....\$ 11.26 .85

TRUCK DRIVER.....\$ 7.25

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

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

The body of each wage determination lists the classification
 and wage rates that have been found to be prevailing for the
 cited type(s) of construction in the area covered by the wage

determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

A UAVG rate will be updated once a year, usually in January of

each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

Washington, DC 20210

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

=====

END OF GENERAL DECISION

SECTION H
SUPPLEMENTAL GENERAL CONDITIONS

SUPPLEMENTAL CONDITIONS OF THE AGREEMENT - PART A

- A. **NAME AND LOCATION OF PROJECT.** Work covered by these TECHNICAL SPECIFICATIONS is entitled Site Grading to Serve the Port Arthur Business Park, Job No. EDC-220, Contract No. 1.

- B. **DESCRIPTION OF WORK.**

Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for the construction of work as described in these TECHNICAL SPECIFICATIONS, and as shown on the PLANS. Work, in general, consists of construction of **SITE GRADING.** The completed installation shall not lack any part which can be reasonably implied as necessary to its proper functioning or any subsidiary item which is customarily furnished, and the Contractor shall deliver the installation to the OWNER in operating condition.

- C. **PLANS.**

<u>Sheet No.</u>	<u>Title</u>
1	Cover Sheet
2	Legend and Construction Notes
3	Project Layout
4	Proposed Grading Site "A"
5	Proposed Grading Site "B"
6	Proposed Grading Site "C"
7	Proposed Grading Site "D"
8	SW3P Site "A"
9	SW3P Site "B"
10	SW3P Site "C"
11	SW3P Site "D"
12	SW3P Index

- D. **BASIS OF PAYMENT.** All work outlined in Paragraph B. above, and shown on PLANS listed in Paragraph C. above, is included in items of BID for which unit prices are shown, and these prices shall be basis of payment.

- E. **OTHER CONTRACTS.** Other construction may be underway concurrently in this area. Contractor shall afford utility companies and other Contractors reasonable opportunity for introduction and storage of their material and execution of their work. All work under this Contract must be properly connected and coordinated with that constructed by others.

- F. **SEQUENCE OF WORK.** City of Port Arthur reserves the right to schedule sequence of construction.

- G. **SPECIAL PROVISIONS.** Basic TECHNICAL SPECIFICATIONS Items which follow describe general requirements. When necessary, Special Provisions are inserted to describe additional requirements applicable to this Contract. Special Provisions are to be used in

conjunction with basic TECHNICAL SPECIFICATION Items. In event of conflict between requirements of the Special Provisions and the basic TECHNICAL SPECIFICATION Item, the requirements as set forth in the Special Provisions shall govern.

- H. **SUPPLEMENTAL PAY ITEMS.** Approximate Quantity and a minimum Unit Price have been established for Supplemental Items shown in SECTION D - BID. The Contractor may not bid a unit price less than the minimum value; however, he may increase the minimum unit price. If no entry is made in the spaces provided, the minimum unit prices shown shall apply. These items are included to facilitate payment for charges and alterations that may be required to complete work. The actual work as provided by the GENERAL and SPECIAL CONDITIONS OF THE AGREEMENT and TECHNICAL SPECIFICATIONS and shown on PLANS is described in PROPOSAL items other than Supplemental Pay Items. When work covered by Supplemental Items is requested by the Contractor and approved by the Engineer, payment will be based on the quantity actually constructed and Unit Prices bid in BID.
- I. **AS-BUILT DIMENSIONS.** Contractor to make daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities. On completion of job, Contractor to furnish Owner with one (1) set of direct prints marked with red pencil to show as-built dimensions and location of all work constructed.
- J. **SURVEY MONUMENTS.** Contractor is to protect existing survey monuments consisting of right-of-way markers and horizontal and vertical control monuments in the vicinity of the project. All monuments destroyed during construction shall be replaced by the Owner and the Contractor shall pay all costs involved in restaking.

SUPPLEMENTAL GENERAL CONDITIONS - PART B

A. TECHNICAL SPECIFICATIONS

1. TECHNICAL SPECIFICATIONS are of the abbreviated, simplified, or streamlined type and include incomplete sentences. The omission of words or phrases such as "Contractor shall", "in conformity therewith", "shall be", "as noted on PLANS", "according to PLANS", "a", "an", "the", and "all", are intentional. Omitted words or phrases shall be supplied by inference in same matter as they are when a "note" occurs on PLANS.
2. The TECHNICAL SPECIFICATIONS are interpreted to require that Contractor shall provide all items, articles, materials, operation or methods listed, mentioned, or scheduled either on PLANS or specified herein, or both, including all labor, materials, equipment, and incidentals necessary or required for their completion.
3. Whenever the words "approved", "satisfactory", "designated", "submitted", "observed", or similar words or phrases are used, it shall be assumed that the word "Engineer" follows the verb as the object of the clause, such as "approved by Engineer".
4. All references to standard TECHNICAL SPECIFICATIONS or manufacturer's installation directions shall mean the latest edition thereof.
5. Referenced to technical society, organization, or body is made in TECHNICAL SPECIFICATIONS in accordance with following abbreviations:

<i>AASHTO</i>	American Association of State Highway and Transportation Officials
<i>ACI</i>	American Concrete Institute
<i>ASTM</i>	American Society for Testing and Materials
<i>AWWA</i>	American Waterworks Association
<i>FS</i>	Federal Specifications
<i>PCA</i>	Portland Cement Association
<i>IEEE</i>	Institute of Electrical and Electronic Engineers
<i>NEC</i>	National Electric Code
<i>UL</i>	Underwriters' Laboratories
<i>AISI</i>	American Iron and Steel Institute
<i>API</i>	American Petroleum Institute
<i>IPCEA</i>	Insulated Power Cable Engineers Association
<i>NEMA</i>	National Electrical Manufacturers Association
<i>AWS</i>	American Welding Society
<i>PCI</i>	Prestressed Concrete Institute
<i>AISC</i>	American Institute of Steel Construction
<i>ANSI</i>	American National Standards Institute (Formerly ASA)

6. Some TECHNICAL SPECIFICATIONS items cover construction requirements and materials in comprehensive manner, and only pertinent portions of these items apply.
- B. **LANDS FOR WORK.** Owner provides, as indicated on PLANS, land upon which work is to be done, rights-of-way for access to same, and such other lands which are designated for use by Contractor. Contractor provides, at his expense and without liability of Owner, any additional land and access thereto that may be required for his construction operations, temporary construction facilities, or for storage of materials.
- C. **LINES AND GRADES.** From benchmarks and horizontal control references established by Engineer, stake out work, establish elevations, and assume responsibility for correctness of installation as to location and grade. Engineer will establish benchmarks and references for horizontal control on various projects as follows:
1. **One Structure at Site.** Benchmark and reference hubs at two corners of structure.
 2. **Two or More Structures.** Benchmark and base line at site.
 3. **Sewer Lines.** Benchmarks at intervals not exceeding 2,000 feet and reference hubs at manholes and on line at intervals not exceeding 200 feet.
 4. **Waterlines.** Reference hubs at turns in line, valves, and fire hydrants, and benchmarks at intervals not exceeding 2,000 feet.
 5. **Pavements and Ditches.** Reference hubs on centerline or one right-of-way line at the P.C., P.I., and P.T. of curves and on tangents at intervals not exceeding 200 feet. Benchmarks at intervals not exceeding 2,000 feet.
 6. **Engineer will set stakes one time only.** Contractor must satisfy himself, before commencing work, as to meaning or correctness of all stakes or marks, and no claim will be entertained for or on account of any alleged inaccuracies, or for alterations subsequently rendered necessary on account of such alleged inaccuracies, unless Contractor notifies Engineer in writing before commencing to work thereon.

Contractor is to protect stakes and pay all costs involved in any restaking. Stakes, as described above, will be furnished as required by Contractor within 48 hours after written notification to Engineer by Contractor on stake-out request forms provided by Engineer. Contractor to have a representative on job at time field party begins work.
- D. **UTILITY SERVICES FOR CONSTRUCTION.** Contractor will provide all utilities necessary for construction at no additional cost to Owner unless otherwise specified in preceding Special Provision.

E. **MATERIALS TESTING.**

All materials, equipment, etc., used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards and frequency, or as required by the contract documents. The CONTRACTOR shall make all arrangements for such tests and inspections with a local independent testing laboratory acceptable to the OWNER, and the CONTRACTOR shall bear all related costs of tests and inspections. If such procedures for testing and inspection reveal failure to comply with accepted standards or with requirements established by the contract documents, all re-testing and re-inspection costs made necessary by such failure, including those of related procedures, shall also be at CONTRACTOR'S expense.

If the ENGINEER and/or OWNER determines that portions of the project requires additional testing or inspection not included in CONTRACTOR'S original bid, the ENGINEER shall, upon written authorization from the OWNER, instruct the CONTRACTOR to make arrangements for additional testing and inspection. The costs for such additional testing and inspection shall be at OWNER'S expense.

The CONTRACTOR'S independent testing laboratory shall give timely notice to the CONTRACTOR and the ENGINEER of when and where tests and inspections are to be made so that the CONTRACTOR and the ENGINEER may be present for such procedures. If the ENGINEER is to observe tests and inspections, the ENGINEER will do so promptly and, where practical, at the normal pace of testing. Tests and inspections shall be made promptly to avoid unreasonable delays on the project.

Required certificates and/or reports of all test and inspections shall, unless otherwise required by the contract documents, be promptly delivered by the independent testing laboratory to the CONTRACTOR, the ENGINEER, and the OWNER.

- F. **VARIATIONS DUE TO EQUIPMENT.** Foundations, structural supports, electrical work, and piping shown on PLANS for items of equipment may be changed if necessary to accommodate equipment furnished. Every effort has been made to design foundations, structural supports, electrical work, and piping to that no changes will be necessary; however, exact dimensions and size of subject foundations and structural supports and exact electrical and piping installations cannot be finally determined until various items of equipment are purchased and manufacturer's certified shop drawings are secured. Make changes, after prior consultation with Engineer, at no cost to Owner.

If substitute items of equipment are authorized which vary materially from those shown on PLANS, prepare equipment data and detailed drawings covering necessary modifications and submit to Engineer for approval. Make drawings same size as Contract PLANS and of comparable quality. Make payment of charges resulting from modifications, including engineering charges for checking modifications.

- G. **ALTERNATE DESIGNS.** If alternate design features are proposed for convenience of Contractor, submit design calculations and detail drawings covering proposed changes and related modifications of Contract PLANS to Engineer for review. Make drawings

same size as Contract PLANS and of comparable quality. Make payment of charges resulting from modifications, including engineering charges for checking such designs.

- H. **SHOP DRAWINGS.** Furnish engineer six (6) copies of shop and erection drawings, schedules, and data sheets covering items of construction and equipment listed below:

1. Structural and miscellaneous steel and steel tanks.
2. Architectural products.
3. Reinforcing steel
4. Prestressed reinforced concrete members.
5. Reinforced concrete pressure pipe.
6. Mechanical equipment, including valves and sluice gates.
7. Electrical equipment, including instruments.
8. Special items, as directed.

Contractor will check and approve shop drawings for compliance with requirements of Contract and will so certify by stamp on each drawing prior to submittal to Engineer. Any drawings submitted without Contractor's stamp of approval will not be considered and will be returned to him for proper submission.

Engineer will pass promptly upon drawings submitted, noting necessary corrections or revisions. If Engineer rejects drawings, resubmit corrected drawings until drawings are acceptable to Engineer as being in conformance with design concept of project and for compliance with information given in the Contract Documents. Such procedure shall not be considered cause for delay. Acceptance of drawings by Engineer does not relieve Contractor of any requirements of terms of Contract.

- I. **OPERATION AND MAINTENANCE MANUALS.** Operation and maintenance manuals are to be provided where required by Specification Item.

1. Contractor to be responsible for obtaining installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. Submit three (3) copies of each complete manual to the Engineer within ninety (90) days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.
2. Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start up equipment.
3. Each manual to be bound in a folder and labeled to identify the contents and project to which it applies.

4. The manual is to contain the following:
- (a) An 8½-inch x 11-inch typewritten sheet listing the manufacturer's identification, including order number, model, and serial number and location of parts and service centers.
 - (b) A separate 8½-inch x 11-inch typewritten list of recommended stock of parts, including part number and quantity.
 - (c) Complete replacement parts list.
 - (d) Performance data and rating tables.
 - (e) Specific instructions for installation, operation, adjustment, and maintenance.
- J. **COST BREAKDOWN.** Within fifteen (15) days after execution of Contract, submit, in acceptable form, schedule showing subdivision of Contract into various items of permanent construction, stating quantities and prices, as basis for computing value to Owner of permanent usable parts of facility to be paid for on monthly estimates. No payment will be made to Contractor until such schedule has been submitted and approved.
- K. **PROGRESS SCHEDULE.** Within fifteen (15) days after execution of Contract, submit in acceptable form, anticipated progress schedule covering work to be performed.
- L. **GUARANTEES.** Guarantee work, including equipment installed, to be free from defects due to faulty workmanship or materials for period of one year from date of issue of Certificate of Acceptance. Upon notice from Owner, repair defects in all construction which develop during specified period at no cost to Owner. Neither final acceptance nor final payment nor any provision in Contract Documents relieves Contractor of above guarantee. Notice of observed defects will be given with reasonable promptness. Failure to repair or replace defect upon notice entitles Owner to repair or replace same and recover reasonable cost thereof from Contractor and/or his Surety.
- M. **SITE MAINTENANCE AND CLEAN-UP.** Maintain sites of work during construction to keep them reasonably neat and free of trash, rubbish, and other debris. In clean-up operations, remove from sites of work and from public and private property, temporary structures, rubbish, and waste materials. Dispose of excavated materials beyond that needed to bring site to elevations shown. During final clean-up, any road constructed by Contractor for access to construction site to be leveled and ruts filled so that natural surface drainage is not hindered.
- N. **MATERIALS AND EQUIPMENT.** Incorporate into work only new materials and equipment of domestic manufacture unless otherwise designated. Store these materials and equipment in manner to protect them from damages. Manner of protection subject to specific approval of Engineer. Pipe, fittings, equipment, and other serviceable materials found on site of work, or dismantled by reason of construction, remain property of

Owner. Remove and deliver materials to Owner at designated points. Pay, at prevailing market price, for usable materials that are damaged through negligence.

- O. **SUBSURFACE EXPLORATION.** It is not represented that PLANS show all existing storm sewer, sanitary sewer, water, gas, telephone, and electrical facilities, and other underground structures. Determine location of these installations in way of construction by referring to available records, consulting appropriate municipal departments and utility owners, and by making necessary exploration and excavations.
- P. **DEVIATIONS OCCASIONED BY UTILITY STRUCTURES.** Whenever existing utilities, not indicated on PLANS, present obstructions to grade and alignment of pipe, immediately notify Engineer, who without delay, will determine whenever existing improvements are to be relocated, or grade and alignment of pipe changed. Where necessary to move services, poles, guy wires, pipelines, or other obstructions, make arrangements with owners of utilities. Owner will not be liable for damages on account of delays due to changes made by owners of privately owned utilities which hinder progress of work.
- Q. **PROTECTION AND REPLACEMENT OF PROPERTY.** In addition to requirements of Paragraph 27 of GENERAL CONDITIONS OF AGREEMENT, the following applies:
- "Where necessary to take down fences, signs, or other obstructions, replace in their original condition and restore damaged property or make satisfactory restitution, at no cost to Owner."
- R. **INTERRUPTION OF UTILITY SERVICES.** Operate no valve or other control on existing systems. Exercise care in performing work so as not to interrupt service. Locate and uncover existing utilities ahead of heavy excavation equipment. At house connections, either lift trenching machine over lines or cut and reconnect with minimum interruption of service, as approved.
- S. **PROTECTIVE MEASURES.** Where construction creates hazard to traffic or public safety, furnish and maintain suitable barricades, warning signs, and lights. Remove same when no longer necessary.
- T. **USE OF STREETS.**
1. Remove, as soon as practicable, accumulated rubbish and open each block for public use. Use of any portion of street shall not constitute acceptance of any portion of work. Backfill and shape trenches across street intersections or driveways for safe traffic at night or, where permitted, span open trenches with wooden mats or bridges to permit traffic flow. When driveways are cut, immediate placement of mats for ingress or egress of vehicles may be directed if undue hardship to property owner would otherwise result.

2. Except where approved otherwise, do not hinder or inconvenience travel on streets or intersecting alleys for more than two blocks at any one time. Whenever street is closed, place properly worded sign announcing fact to public, with proper barricades at nearest street corners, on both sides of obstruction. Leave no street or driveway blocked at night.
3. When street is closed, notify Fire Department and Police Department.
4. Do not block ditches, inlets, fire hydrants, etc., and, where necessary, provide temporary drainage.

SECTION I
PAYMENT BOND

PAYMENT BOND

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF JEFFERSON

THAT we _____, of the City of Port Arthur of _____, County of _____, and State of _____, as Principal, and _____, as Surety, authorized under the laws of the State of Texas to act as Surety on bonds for principals are held and firmly bound unto the City of Port Arthur, Port Arthur Texas, and to all Subcontractors, workmen, laborers, mechanics and furnishers of material, and any other claimant, as their interest may appear, all of whom shall have the right to sue upon their bond, in the penal sum of _____

_____ Dollars (\$_____), lawful currency of the United States of America, for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally and firmly by these presents:

The condition of this Bond is such that, whereas, the above bounden Principal as prime contractor has on the _____ day of _____, 20____, entered into a formal contract with the City of Port Arthur for _____, 20____ which is hereby referred to and made part hereof as if fully written herein.

NOW, THEREFORE, if the above bounden Principal shall protect all claimants supplying labor and material as provided for in Section 1 of Chapter 93 of the Acts of the 56th Regular Session of the Legislature of Texas (compiled as Article 5160 of Vernon's Texas Civil Statutes, as amended) and shall pay and perform any and every obligation that of such principal is required or provided for in such law, this bond being solely for the protection of all such claimants and being for the use of each such claimant, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

It is stipulated and agreed that no change, extension of time, addition to or modification of the Contract or work performed thereunder, shall in anywise affect the obligation of this bond, and surety expressly waives notice of any such change, extension of time, addition or modification.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed, and the said surety has caused these presents to be executed, each by its duly authorized agent and officer, and its corporate seal to be affixed at _____ on this the _____ day of _____, A.D., 20__.

ATTEST:

CONTRACTOR

BY: _____

TITLE: _____

ATTEST:

SURETY

BY: _____

TITLE: _____

NOTE: Date of Bond must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners shall execute Bond. Surety companies executing bonds must appear on Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Texas.

SECTION J
PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: THAT

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
_____ Dollars, \$(_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the OWNER, dated the _____ day of _____, 2000, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect. Provided, that this bond is executed pursuant to Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance therewith.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise 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 of the contract or to the WORK or the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20__.

ATTEST:

Principal

BY: _____(s)

(Principal) Secretary

[SEAL]

(Witness as to Principal)

(Address)

Address

Surety

ATTEST:

BY: _____
Attorney-in-Fact

Witness as to Surety

Address

Address

NOTE: DATE OF BOND must not be prior to date of Contract. IF CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

SECTION K
NOTICE OF AWARD

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INSERT "NOTICE OF AWARD" HERE

SECTION L
NOTICE TO PROCEED

(THIS PAGE INTENTIONALLY LEFT BLANK)

INSERT "NOTICE TO PROCEED" HERE

SECTION M
INSURANCE

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INSERT "INSURANCE DOCUMENTS" HERE

SECTION N
TECHNICAL SPECIFICATIONS

10/13/2005

ITEM NO. A2001 – CLEARING AND GRUBBING

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Scope: Remove and dispose of trees, stumps, brush, roots, logs, vegetation, rubbish, and other objectionable matter from project area. Project area is defined as all easements and that portion of street rights-of-way necessary to allow construction of the facilities proposed in this Contract, including those areas needed for disposal of excess excavated material.
- B. Related work as called for on PLANS or specified elsewhere in this or other TECHNICAL SPECIFICATIONS.

PART 2 - PRODUCTS

Not required for this Item.

PART 3 - EXECUTION

3.01 CONSTRUCTION METHODS

- A. Clear and grub trees, stumps, brush, roots, logs, vegetation, and rubbish within project area except trees, shrubs, and other landscape features designated to remain, and protect same against damage and trim when necessary. Clear stump holes of refuse and loose earth; backfill and compact to density of surrounding ground.
- B. On embankment areas, remove stumps, roots, and objectionable materials to a depth of one foot below existing natural ground surface.
- C. Dispose of all refuse from clearing operation off site. Obtain required permits from various governmental agencies involved. Bury no refuse on Owner's property. On areas other than embankment, remove stumps and roots to depth of two feet below natural ground.
- D. For pavement construction, strip grasses to a depth 2-inches below existing grade and spoil off site.

3.02 MEASUREMENT AND PAYMENT

- A. No separate pay for work performed under this Item except as indicated below. Include cost of same in Contract price bid for work of which this is a component part.

10/13/2005

- B. Proposal will indicate if clearing and grubbing is a pay item. If so, measure by acre or lump sum as indicated in PROPOSAL.
- C. Pay for "Clearing and Grubbing" at Contract price bid as measured. Such payment to be full compensation for work as described herein.

8/03/2004

ITEM NO. A2002 - SITE GRADING

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Scope: Within the limits indicated, or in areas where existing grade is altered, strip existing topsoil to 6-inch depth and stockpile in approved areas for subsequent replacement. Remove and dispose of all vegetation, roots, and waste material.
- B. Related work as called for on PLANS or specified elsewhere in this or other TECHNICAL SPECIFICATIONS.

PART 2 - PRODUCTS

2.01 MATERIALS

Fill: Use approved excess excavation or borrow material. Borrow from approved source, excavate, and clean up borrow area. Reuse of material stripped from borrow site is not allowed unless specifically indicated on PLANS.

PART 3 - EXECUTION

3.01 GENERAL

Maintain surface drainage on site during construction.

3.02 CONSTRUCTION

- A. Fill Under Structures and Roads: Place dirt fill in 8-inch maximum layers (loose measure) and compact at or near optimum moisture to at least 95 percent AASHTO Standard T-99-74 density. Place fill to subgrade elevation without addition of topsoil. Where fill to subgrade elevation is less than 6 inches, scarify existing ground to a depth of 6 inches and compact as specified herein.
- B. Site Fill: Place approved fill within 4 inches of finish grade shown on all areas not covered by structures or roads. Fill in 10-inch maximum layers (loose measured) and compact at or near optimum moisture to at least 90 percent AASHTO Standard T-99-74 density, unless otherwise shown on PLANS.

8/03/2004

- C. Topsoil: Place topsoil over areas within limits shown on PLANS. After substantial completion of construction, grade site 4 inches lower than finished grade on all unpaved areas. Clear ground surface of all foreign materials, then place 4 inches of topsoil to bring site to smooth finished grade indicated.
- D. Waste: Waste stripped materials from within limits indicated. Spread waste material over designated area, dress by blading, and slope to provide drainage.
- E. Final Cleanup: Level washes, ruts, depressions, and mounds to give areas smooth finish.

3.03 MEASUREMENT AND PAYMENT

No separate payment for work performed under this Item. Include cost of same in Contract price bid for work of which this is a component part.

08/03/2004

ITEM NO. A2008 - CLEARING AND GRUBBING (CHANNEL)

PART 1 - GENERAL

1.01 SCOPE OF WORK

Furnish labor, supervision, materials, equipment, and supplies necessary for clearing, grubbing, and stripping operations.

PART 2 - PRODUCTS

2.01 GENERAL

Not required for this Item.

PART 3 - EXECUTION

3.01 CONSTRUCTION METHODS

- A. Clear, grub, and dispose of trees, stumps, brush, logs, vegetation, rubbish, and other objectionable matter from the entire easement area.
- B. Protect from damage any trees designated to remain.
- C. In areas to be cleared that are not within the limits of the proposed channel, clear out stump holes of all refuse and loose earth, backfill and compact to approximate density of surrounding ground. Do not allow water to accumulate in stump holes before backfilling.
- D. Dispose of off-site all refuse from clearing operations in approved manner. Obtain required permits from various governmental agencies involved. Bury no refuse on Owner's property.

3.02 MEASUREMENT AND PAYMENT

Measure "Channel Clearing" by the acre or lump sum as indicated in PROPOSAL. Payment for work under this Item will be made at Contract unit price for "Channel Clearing."



08/03/2004

ITEM NO. A2009 – CHANNEL EXCAVATION

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Extent of Work: Work under this Item consists of required excavation for completed channel or ditch section, disposal of excavated materials in designated areas, and all related work as shown on PLANS and as specified hereinafter.
- B. Work Specified Elsewhere – Erosion Control: Per Item “Seeding”, “Spot Sodding Grass”, or “Concrete Slope Protection”.

PART 2 – PRODUCTS

Not required for this Item.

PART 3 – EXECUTION

3.01 CONSTRUCTION METHODS

- A. Excavation: Contractor to excavate to required lines, grades, and cross sections shown on PLANS or as modified by Engineer. Material to be removed in channel excavation of whatever character or physical conditions will be unclassified and paid for as herein provided. A tolerance of 0.3 foot plus or minus from typical dimensions for channel excavation will be allowed, provided that no abrupt changes in grading of side slopes or alignment occurs. Where special structures, inlets, and concrete lining are provided for, construction to conform to grades and dimensions indicated. Dimensions for embankment and shallow ditches at top of channel slopes are minimum. Grade interceptor ditches to slope uniformly to nearest inlet.
- B. Pipeline Crossings: Contractor to suspend machine excavation within 5-feet of any pipeline right-of-way until a company representative is present to identify pipe location and to direct further excavation operations. Notification of pipeline company of Contractor's operations and request for attendance of a representative to be Contractor's responsibility. Contractor to resume suspended operations only under supervision of pipeline company representative and employ only such excavation methods, means, equipment, and safety measures as approved by representative. Contractor not to accomplish work on pipeline as part of this Contract, such as lowering, cribbing up, construction of bents, repairs to coating, cutting, welding, making repairs, or other essential work, all of which will be done by pipeline company and at its own expense. Contractor to be solely responsible to pipeline company for

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any damages to its line and any related construction as result of Contractor's operations, irrespective of any order, directive, or approval by Company representative, or of his presence at the site. Contractor not to be reimbursed directly for any extra work or expenditure as a result of intersecting any pipeline installation. Any contingent costs therefor to be anticipated in preparation of the bid and included as distributed items of cost in the price for unclassified channel excavation.

- C. Disposal of Excavated Material: Dispose of all excess spoil as shown on PLANS or called for by Special Provision to this Item. When excess spoil is to be stockpiled, spoil piles to be shaped to permit drainage without excessive erosion, and openings to be left in the spoil piles at least every 200-feet to permit drainage of adjacent lands.
- D. Final Slope Treatment: Prior to final inspections, Contractor to remove all silt and slides from the channel, and to drag slopes to an even surface. When indicated, seed and fertilize or pave channel side slopes and maintenance area in accordance with PLANS.

3.02 MEASUREMENT AND PAYMENT

- A. "Channel Excavation" will be measured in its original position by method of average end areas. Payment will be based upon the unit price per cubic yard for "Channel Excavation". Such payment to be full compensation for furnishing all labor, supervision, supplies, materials, and equipment, etc. required to complete the work.

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ITEM NO. A2013 – STRIPPING AND SITE GRADING

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Scope: Furnish necessary equipment and labor to remove vegetation and rubbish and place approved excess roadway excavation in conformity with lines, grades, dimensions, and details shown on PLANS.
- B. Related work as called for on PLANS or specified elsewhere in this or other TECHNICAL SPECIFICATIONS.

PART 2 – PRODUCTS

2.01 MATERIALS

- A. Fill: Use approved excess excavated material from roadway construction or borrow material. Where necessary to borrow material, borrow from approved source, excavate, and clean up borrow area. Material stripped from borrow site not to be reused unless specifically designated on PLANS.

PART 3 – EXECUTION

3.01 GENERAL

- A. Maintain surface drainage on site during construction. Remove unsatisfactory fill material and waste vegetation from jobsite and dispose.

3.02 CONSTRUCTION

- A. Fill Under Roadway: Remove muck and spongy materials from road subgrade. Place fill in maximum 8-inch lifts, measured loose, and compact to minimum 95 percent Standard Proctor Density (AASHTO Standard T-99-83).
- B. Site Fill: Place approved fill material in project area outside of road ROW in accordance with site grading plan. Grade to drain. When fill exceeds 4-inches, place fill in maximum 8-inch lifts, measured loose, and compact to minimum 90 percent Standard Proctor Density (AASHTO Standard T-99-83).
- C. Waste: Waste vegetation and unsuitable fill material to become property of Contractor and removed from jobsite.

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- D. Final Clean-up: Level washes, ruts, depressions, and mounds to give areas smooth finish.

3.03 MEASUREMENT AND PAYMENT

- A. Stripping and site grading to be measured by lump sum and paid for at Contract price bid for "Stripping and Site Grading".

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ITEM NO. A3004 – SEEDING

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Scope: Seeding and fertilizing of areas not covered by structures, sidewalks, or roads within the project area. Project area is indicated on PLANS or by Special Provision. When shown on PLANS, provide soil retention protection.

PART 2 – PRODUCTS

2.01 MATERIALS

- A. Seeds: Conform to requirements of U.S. Department of Agriculture Rules and Regulations as set forth in Federal Seed Act and Texas Seed Law. Use seed, which has been treated with an approved fungicide. Container labels to show purity and germination, and name and type of seed. Planting date, type, and rate of application as follows.

Type	Rate of Application in Pounds per Acre	Planting Date
1. Unhulled Bermuda Grass	20	January 1 to April 1
2. Hulled Bermuda Grass	12	April 1 to October 1
3. Mix Bermuda and Rye in Following Proportions:		October 1 to January 1
Unhulled Bermuda Grass	12	
Rye Grass (Gulf)	200	

- B. Fertilizer: Use pellet or granular fertilizer with analysis of 16 percent nitrogen, 20 percent phosphoric acid, and zero percent potash (or 10-10-5) unless otherwise required. Determine percent by methods of Association of Official Agricultural Chemists. Container labels to show analysis. Powdered or caked fertilizer not permitted.
- C. Straw Mulch: Use straw of oat or rice stems, prairie grass, bermuda grass, or other approved straw. Do not use straw containing Johnson grass or other noxious weeds and foreign materials.
- D. Fiber Mat: Fiber mat to consist of machine-produced mat or wood fibers, with consistent thickness throughout blanket. Use blanket with topside of netted twisted

- kraft paper having high wet strength, or biodegradable extruded plastic mesh. Use blanket of weight from 0.7 pound per square yard to 1.0 pound per square yard.
- E. Paper Mesh: Use paper mesh consisting of knitted construction of yarn with uniform openings interwoven with strips of biodegradable paper, furnished in rolls with suitable protection for outdoor storage. Use paper mesh of weight from 0.2 pound per square yard to approximately 0.5 pound per square yard.
 - F. Wire Staples: As recommended by fiber mat or paper mesh manufacturer.

PART 3 – EXECUTION

3.01 CONSTRUCTION METHODS

A. GENERAL

Fertilizing and Seeding: After area(s) to receive fertilizing and seeding has been completed to lines, grades, and sections shown on PLANS, apply fertilizer at uniform average rate of 500 pounds per acre. Thoroughly mix upper 3-inches of topsoil with fertilizer until a uniform mixture of fertilizer and topsoil is obtained. Sprinkle areas to be seeded with water, using fine spray to avoid washing or erosion of soil. Broadcast seed with sowing equipment at rate specified above, using care to obtain uniform distribution. After broadcasting, lightly rake seeds into soil to a depth not to exceed ½-inch. Complete seeding by rolling with roller developing 15 to 25 pounds per inch of tread. Keep seeded areas moist for a period of ten (10) days immediately following placement. When watering seeded areas, use fine spray to prevent erosion of seeds or soil. Reseed any areas damaged by erosion. Do not apply seeds when weather is too windy or other adverse conditions exist.

B. Straw Mulch Soil Retention Blanket

1. Fertilizing and Seeding: After ditch or slope has been completed to lines, grades, and cross-sections shown on PLANS, apply fertilizer and seed as per "A." above. When seed and fertilizer are to be distributed as water slurry, mixture to be applied within thirty (30) minutes after all components are placed in equipment.
2. Mulch Application: Immediately upon completion of planting of seed and fertilizing, spray straw mulch uniformly over the area at the rate of 1½ to 2 tons of hay or 2½ tons of straw per acre. Equip mulching machine to inject asphaltic material into straw uniformly as it leaves the equipment, at the rate of 0.05 to 0.10 gallon of asphalt per square yard of mulched area. When watering seeded areas, use fine spray to prevent erosion for any reason. Mulching operation to follow seeding and fertilizing immediately in continuous operation.

C. Fiber Mat or Paper Mesh Soil Retention Blanket

1. Fertilizing and Seeding: See "B.1" above.

2. Fiber Mat or Paper Mesh Installation: Place fiber mat or paper mesh within 24-hours after seeding operations have been completed. Prior to placing, clear area to be covered of all rocks or clods over 1½-inches in diameter and all sticks or other foreign material which will prevent close contact of the blanket with the soil. Area to be smooth and free of ruts or other depressions.
 - a. If, as a result of a rain, prepared seedbed becomes crusted or eroded, or if eroded places, ruts, or depressions exist for any reason, rework soil until smooth and reseed such areas. After area has been properly prepared, lay fiber mat or paper mesh flat, smooth, and loosely, without stretching or crimping material.
 - b. Apply materials with lengths running parallel to the flow of water. Where more than one width is required, butt or overlap edges as required by manufacturer.
 - c. Hold material in place by means of wire staple driven into soil at 90° angle to surface. Staple material along each edge and in grid pattern with minimum 3-foot centers each way as recommended by manufacturer. In ditches and on slopes, provide additional stapling as recommended by manufacturer.

3.02 MEASUREMENT AND PAYMENT

- A. Fertilizing and Seeding: Measure by the acre or lump sum as indicated in PROPOSAL. Payment for work under this Item will be made at Contract price for "Seeding", which price to be full compensation for all fertilizer, seed, equipment, materials, and labor necessary for fertilizing and seeding.
- B. Straw Mulch Seeding: Measure by the square yard as indicated in the PROPOSAL. Payment for work under this Item to be made at the Contract price for "Straw Mulch Seeding", which price to be full compensation for all fertilizer, seed, straw mulch, equipment, materials and labor necessary for fertilizing and seeding.
- C. Fiber Mat Seeding: Measure by the square yard as indicated in the PROPOSAL. Payment for work under this Item to be made at the Contract price for "Fiber Mat Seeding", which price to be full compensation for all fertilizer, seed, fiber mat, equipment, materials, and labor necessary for fertilizing and seeding.
- D. Paper Mesh Seeding: Measure by the square yard as indicated in the PROPOSAL. Payment for work under this Item to be made at the Contract price for "Paper Mesh Seeding", which price to be full compensation for all fertilizer, seed, paper mesh, equipment, materials, and labor necessary for fertilizing and seeding.

ITEM NO. A3033 – EROSION CONTROL GEOTEXTILE

PART 1 – GENERAL

1.01 DESCRIPTION

Scope: This work shall consist of furnishing and placing a geotextile for the following drainage applications: cut and fill slope protection, protection of various small drainage structures and ditches, wave protection for causeways and shoreline roadway embankments, and scour protection for structures such as bridge piers and abutments. The geotextile shall be designed to allow passage of water while retaining insitu soil without clogging. The quantities of erosion control geotextiles as shown on the PLANS may be increased or decreased at the direction of the Engineer based on construction procedures and actual site conditions that occur during construction of the project. Such variations in quantity will not be considered as alterations in the details of construction or a change in the character of the work.

PART 2 – PRODUCTS

2.01 MATERIALS

A. Fibers

1. Fibers used in the manufacture of geotextiles, and the threads used in joining geotextiles by sewing, shall consist of long chain synthetic polymers composed of at least 85% by weight polyolefins, polyesters, or polyamides. They shall be formed into a network such that the filaments or yarns retain dimensional stability relative to each other, including selvages. These materials shall conform to the physical requirements of Table 1.

B. Protection

1. Geotextile rolls shall be furnished with suitable wrapping for protection against moisture and extended ultraviolet exposure prior to placement.
2. Each roll shall be labeled or tagged to provide product identification sufficiently for inventory and quality control purposes. Rolls shall be stored in a manner, which protects them from the elements. If stored outdoors, they shall be elevated and protected with a waterproof cover.

PART 3 – EXECUTION

3.01 CONSTRUCTION REQUIREMENTS

A. Exposure

1. Geotextile Exposure Following Placement: Exposure of geotextiles to the elements between laydown and cover shall be a maximum of 72 hours to minimize damage potential.

B. Placement

1. Erosion Control Placement: The geotextile shall be placed and anchored on a smooth graded surface approved by the Engineer. The geotextile shall be placed in such a manner that placement of the overlying materials will not excessively stretch or tear the fabric. Anchoring of the terminal ends of the geotextile shall be accomplished through the use of key trenches or aprons at the crest and the toe of the slope (refer to Fig. 1 through 4 for construction details).

[Note: In certain applications to expedite construction, 18-inch long anchoring pins, placed on 2 to 6 feet centers, depending on the slope of the covered area, have been used successfully.]

2. Slope Protection Placement: Successive geotextile sheets shall be overlapped in such a manner that the upstream sheet is placed over the downstream sheet and/or upslope over downslope. In underwater applications, the geotextile and required thickness of backfill material shall be placed the same day. The backfill placement shall begin at the toe and proceed up the slope.
 - a. Riprap and heavy stone filling shall not be dropped onto the geotextile from a height of more than one (1) foot.
 - b. Slope protection and smaller sizes of stone filling shall not be dropped onto the geotextile from a height exceeding three (3) feet. Any geotextile damaged during placement shall be replaced as directed by the Engineer at the Contractor's expense.

- C. Seams: The geotextile shall be joined by either sewing or overlapping. All seams shall be subject to the approval of the Engineer. Overlapped seams shall have a minimum overlap of 12-inches except when placed under water where the overlap shall be a minimum of three (3) feet.

- D. Repair: A geotextile patch shall be placed over the damaged area and extend three (3) feet beyond the perimeter of the tear or damage.

3.02 METHOD OF MEASUREMENT

- A. The geotextile shall be measured by the number of square yards computed from the payment lines shown on the PLANS or from payment lines established in writing by the Engineer. This excludes seam overlaps, but shall include geotextiles used in the crest and the toe of slope treatments.
- B. Slope preparation, excavation and backfill, bedding, and cover material are separate pay items.

3.03 BASIS OF PAYMENT

- A. The accepted quantities of geotextiles shall be paid for at the contract unit price per square yard in place.

TABLE 1
PHYSICAL REQUIREMENTS 1,2 FOR FILTRATION GEOTEXTILES

PROPERTY	TEST METHOD	MINIMUM VALUE
Grab Strength (lbs.)	ASTM D 4632	
Elongation (%)	ASTM D 4632	
Sewn Seam Strength ⁴ (lbs.)	ASTM D 3632	
Puncture Strength (lbs.)	ASTM D 4833	
Burst Strength (psi)	ASTM D 3786	
Trapezoid Tear (lbs.)	ASTM D 4533	
Apparent Opening Size (mm)	ASTM D 4751	
Permeability (cm/sec)	ASTM D 4491	
Percent Open Area – Woven Geotextiles (%)	$\frac{\text{Area of Openings}}{\text{Total Area}}$	
Porosity – Nonwoven Geotextiles (%)	$\frac{\text{Volume of Voids}}{\text{Total Volume}}$	

1. Acceptance of geotextile material shall be based on ASTM D 4759.
2. Contracting agency may require a letter from the supplier certifying that its geotextile meets specification requirements.
3. Minimum. Use value in weaker principal direction. All numerical values represent minimum average roll value in the Table. Stated values are for non-critical, non-severe applications. Lots sampled according to ASTM D 4354.
4. Values apply to both field and manufactured seams.



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ITEM NO. A3034 - STORM WATER POLLUTION PREVENTION PLAN (SW3P)

PART 1 - GENERAL

1.01 DESCRIPTION

A. Section Includes:

1. A draft of the Storm Water Pollution Prevention Plan to use as a general guideline to meet new EPA Standards.
2. Specifications pertaining to the structural systems and pollution prevention systems to be used to meet the guidelines.
3. Details of the structural systems to be used to meet the EPA requirements.

B. References

1. Clean Water Act of 1972 establishing the National Pollution Discharge Elimination System (NPDES).
2. 40 CFR 122.21 Application for a NPDES Permit.
3. 40 CFR 122.26 Storm Water Discharges.

C. Related Work Specified Elsewhere

1. Embankment - Item No. A2004
2. Channel Excavation - Item No. A2009

1.02 QUALITY ASSURANCE / QUALIFICATIONS

It is the intent of the information provided in this section to be used as the general guidelines of the storm water pollution prevention plan for this project to establish a minimum basis of compliance for bid purposes. However, it is the responsibility of the Contractor and all Subcontractors to meet all of the requirements of the law, regardless of the information provided herein. The plan to which the Contractor certifies compliance shall be the Contractor's plan and no responsibility for the information contained in this section or shown on the plans shall be construed as the Owner's or Engineer's responsibility.

1.03 PLAN

The Site Grading Plan supplements the information contained within this section.

PART 2 - PRODUCTS

Not required for this item.

PART 3 - EXECUTION

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The following information is the basis for the Storm Water Pollution Prevention Plan:

*Storm Water Pollution Prevention Plan for
Site Grading of the Dravo Spoil Area*

SECTION 0
QUALIFICATION STATEMENT

QUALIFICATION STATEMENT

SUBMITTED TO _____

BY _____
[Corporation, Co-Partnership, An Individual]

PRINCIPAL OFFICE _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years has your organization been in business as a general contractor under your present business name: _____
2. How many years' experience in this type of construction work has your organization had?
 - (a) As a general contractor _____
 - (b) As a sub-contractor _____
3. What projects has your organization completed?

Contract Amount	Class of Work	When Completed	Name and Address of Owner
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Have you ever failed to complete any work awarded to you? _____

If so, where and why? _____

5. In what manner have you inspected this proposed work? Explain in detail.

6. Explain your plan or layout for performing the proposed work:

7. The work, if awarded to you, will have the personal supervision of whom?

(a) For *administrative management*? _____

(b) For *resident construction superintendence*? _____

(c) What experience in this type of work is enjoyed by the superintendent designated under (b) above?

8. What portions of the work do you intend to sub-let?

[illegible]

9. What equipment do you own that is available for the proposed work?

[illegible]

10. Have you received firm offers for all major items of equipment within prices used in preparing your proposal? _____

11. List the construction projects your organization has underway on this date:

Contract Amount	Class of Work	Percent Complete	Name and Address of Owner or Contracting Officer

Dated at _____ this _____ day of _____, 20__.

BY: _____

TITLE: _____

APPENDIX "A"

FORM FOR REQUEST FOR TIME EXTENSION

REQUEST FOR EXTENSION OF TIME DUE TO WEATHER OR SUPPLIES

CITY OF PORT ARTHUR

DATE: _____ MONTH OF: _____
2012.

NAME OF PROJECT: _____

CONTRACTOR: _____

TO: CITY OF PORT ARTHUR
PUBLIC WORKS DEPARTMENT
P.O. BOX 1089
CITY OF PORT ARTHUR, TEXAS 77641-1089

ATTENTION:

Gentlemen:

We request extension of completion time on our Contract due to the days of work lost as specified (circle dates actually lost; do **not** include days not normally worked, such as Saturdays, Sundays, or holidays):

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

DAYS LOST (_____) ÷ 5 X 7 = _____ CALENDAR DAYS
REQUESTED

Reason(s) for Request: _____

[Name of Contractor]

BY: _____

_____ Approved for extension of _____ calendar days.

_____ Disapproved.

Date: _____, 2012
CITY OF PORT ARTHUR

BY: _____

Distribution:
Original: Executive Director
Copy: Engineer
Contractor

APPENDIX "B"

GEOTECHNICAL INVESTIGATION