

SECTION 2
AGREEMENT REQUIREMENTS

**SUBSECTION 2.01
STANDARD FORM OF AGREEMENT**

THIS AGREEMENT is made between the City of Amarillo, a municipal corporation situated in Potter and Randall Counties, Texas, hereinafter called "CITY" and _____, hereinafter called "CONTRACTOR" upon the following terms and conditions performable in Potter and Randall Counties, Texas:

The CONTRACTOR agrees to perform all work required by the contract documents under the terms as stated in the General Conditions of the Agreement, in conformance with the plans, project specifications and City of Amarillo standard specifications as bid and in conformance with all applicable state and Federal laws and local ordinances, and to maintain for a period of twelve months from the date of written acceptance the construction of certain improvements described as follows: _____

The contract documents consist of the CONTRACTOR'S written proposal, this agreement, all of the General Conditions of the Agreement, the plans which include all maps, plats, blueprints, and other drawings and printed or written explanatory matter as prepared by the Engineering Department of the City of Amarillo, Texas incorporated herein by reference and as if appended to this document plus all addenda issued prior to and all modifications issued after execution of this agreement which are properly executed by the parties hereto.

The CONTRACTOR shall commence work within ten (10) calendar days after written notice to proceed is received from the CITY, and substantially complete same within the prescribed working days bid or by calendar completion date given, which ever is applicable.

The CITY agrees to pay the CONTRACTOR for the performance of the contract in accordance with the Proposal submitted therefor, subject to additions and deductions, as provided in the General Conditions of the Agreement, and to make payments as provided therein.

STANDARD FORM OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have made and executed this agreement the
_____ day of _____, 19____.

ATTEST CITY OF AMARILLO, TEXAS

Donna DeRight, City Secretary

John Q. Ward, City Manager

ATTEST CONTRACTOR

If Corporation

, Title

**SUBSECTION 2.02
PAYMENT BOND**

THE STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS, that we _____,
a _____ of _____ hereinafter called
Principal, and _____

_____ a corporation organized under the laws of
_____ hereinafter called Surety, are held and firmly bound unto the City
of Amarillo, a municipal corporation, chartered by virtue of the constitution and laws of the
State of Texas, hereinafter called Obligee, in the amount of
_____ dollars (\$ _____) for the payment whereof, the
said Principal and Surety bind themselves, and their heirs, administrators, executors,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the _____ day of _____, _____, to _____
_____ which contract is hereby referred to and made a part hereof as fully
and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal shall pay all claimants supplying labor and material to him or a subcontractor
in the prosecution of the work provided for in said contract, then, this obligation shall be
void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this
bond shall be determined in accordance with the provisions of said article to the same
extent as if it were copied at length herein.

IN WITNESS WHEREOF _____, Principal has caused
these presents to be executed by its authorized attorney in fact and the said
_____, Surety, has caused these presents to be executed by its
_____, this _____ day of _____, A.D., _____.

ATTEST

PRINCIPAL

By _____

PRINCIPAL
(SEAL)

Address

ATTEST

SURETY

By _____

SURETY
(SEAL)

Address

NOTE: DATE OF THE BOND MUST NOT PRECEDE THE DATE OF THE AGREEMENT

**SUBSECTION 2.03
PERFORMANCE BOND**

THE STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS, that we _____,
a _____ of _____ hereinafter called
Principal, and _____

_____, a corporation organized under the laws of
_____ hereinafter called Surety, are held and firmly bound unto the City
of Amarillo, a municipal corporation, chartered by virtue of the constitution and laws of the
State of Texas, hereinafter called Oblige, in the amount of _____
dollars (\$ _____) for the payment whereof, the said Principal
and Surety bind themselves, and their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige,
dated the _____ day of _____, _____, to _____
_____ which contract is hereby referred to and made a part hereof
as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal shall faithfully perform the work in accordance with the plans,
specifications, and contract documents, then, this obligation shall be void; otherwise to
remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this
bond shall be determined in accordance with the provisions of said article to the same
extent as if it were copied at length herein.

IN WITNESS WHEREOF _____, Principal has caused
these presents to be executed by its authorized attorney in fact and the said
_____, Surety, has caused these presents to be executed by its
_____, this _____ day of _____, A.D., _____.

ATTEST

PRINCIPAL

By _____

PRINCIPAL
(SEAL)

Address

ATTEST

SURETY

By _____

SURETY
(SEAL)

Address

NOTE: DATE OF THE BOND MUST NOT PRECEDE THE DATE OF THE AGREEMENT

**SUBSECTION 2.04
CERTIFICATE OF INSURANCE REQUIREMENTS**

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide minimum insurance coverages as listed below, prior to the execution of the contract and maintain coverages, without interruption provided by an insurer of a Best Rating of B+ or better, until the work is completed and accepted by the City. A certificate of insurance will be placed on file with the contracting department of the City of Amarillo prior to the execution of the contract.

TYPE OF COVERAGE	MINIMUM LIMITS
WORKERS' COMPENSATION - Coverage A	Statutory
Workers' Compensation insurance shall include a Waiver of Subrogation in favor of the City of Amarillo	
EMPLOYERS LIABILITY - Coverage B	
Bodily Injury by Accident - each accident	\$100,000
Bodily Injury by Disease - policy limit	\$500,000
Bodily Injury by Disease - each employee	\$100,000
COMMERCIAL GENERAL LIABILITY:⁽⁶⁾	
Coverage A - Each Occurrence	\$250,000
Coverage B - Personal & Advertising Injury	\$250,000
General Aggregate Other Than Products/Completed Operations	\$500,000
Products/Completed Operations Aggregate	\$500,000
NOTES:	
1)	Coverage for explosion, collapse, & underground property hazards cannot be excluded.
2)	Contractual liability coverage cannot be excluded.
3)	Contractor will assume all liability for independent subcontractors.
4)	Coverage must include the City of Amarillo as an Additional Insured for all work performed for or on behalf of the City.
5)	Coverage must include all owned, hired, and non-owned vehicles.
6)	Separate aggregate endorsement for the project is required.
AUTOMOBILE LIABILITY:	
Bodily Injury Liability - Each Person	\$250,000
Bodily Injury Liability - Each Occurrence	\$500,000
Property Damage Liability - Each Occurrence	\$100,000
OWNER-CONTRACTOR PROTECTIVE POLICY FOR WATER, SEWER, STORMSEWER OR PROJECTS WITH OVERHEAD CONSTRUCTION	
Each Occurrence	\$500,000

In the event of any material change, non-renewal or cancellation of any policy, contractor's insurance company will give forty-five (45) days actual prior written notice to the contracting department of the City of Amarillo for such changes or cancellation.

**SUBSECTION 2.05
EXEMPTION CERTIFICATE
CITY OF AMARILLO**

The undersigned hereby claims an exemption from payment of sales and use taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, and Rule 3.291, paragraphs (a)(1), subsections (b)(3) and (c) of Chapter 151 of the Texas Tax Code for the purchase of the tangible personal property described below or attached or by attached order or invoice, which is made a part hereof, and will be purchased from _____

This contract is issued by an organization which qualifies for exemption pursuant to the provision of Article 20.04, H, of the Texas Limited Sales, Excise and Use Tax Act.

This exemption shall apply only to that material which shall become a permanent part of the City of Amarillo capital improvements project.

The purchaser will be liable for payment of the limited sales and use tax if the Purchaser uses the tangible personal property in some other manner or for some other use other than the reasons stated above, and shall pay the tax based on the price paid for the tangible personal property listed below or attached.

Description of tangible personal property listed below or attached

Executed this day the _____ day of _____, _____.

Description of project for City of Amarillo, Texas

Name of Business

By _____
Authorized Representative-Signed

Authorized Representative-Typed
or printed

**SUBSECTION 2.06
CONTRACTOR'S STATEMENT OF MATERIALS AND OTHER CHARGES**

Project Name:

Project Workorder No.

A. Total cost of material which shall be become a permanent part of this project.

_____ dollars

_____ cents

\$ _____

B. Total cost of labor, equipment, processes, incidentals, and remaining costs necessary to complete this project.

_____ dollars

_____ cents

\$ _____

C. Sum of A. and B. from above. This total shall equal the total bid as shown in the proposal for this project.

For complying with the Texas Tax Code, the Contractor agrees that the charges for any material incorporated into the project in excess of the estimated quantity provided for in the proposal will be no less than the invoice price for such material to the Contractor.

Name of Business

By _____
Authorized Representative-Signed

Authorized Representative-Typed
or printed

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**SUBSECTION 2.07
GENERAL CONDITIONS OF THE AGREEMENT**

1. Owner: The term Owner in this contract means the City of Amarillo, Texas, which is authorized to act through its City Manager or his representative.
 - A. Engineer: The Owner's specifically designated representative for the work covered by the instant contract. Depending on the project, the Engineer may also be the Project Manager.
 - B. Project Representative: The Engineer or another person designated by the Owner to observe the work.
 - C. Project Manager: The Department Head or his representative responsible for the project administration.
2. Contractor: The term Contractor, whether or not capitalized, means the person or entity who or which has agreed to perform the work contemplated by this contract.
3. Work: The term Work, whether or not capitalized, means the furnishing of superintendence, labor, equipment, materials and other requirements required to complete this contract.
4. Interpretation of Phrases:
 - A. Whenever the words, Directed, Required, Permitted, Designated, Considered Necessary, Prescribed or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Engineer is intended; and, similarly, the words approval, acceptable, satisfactory or words of like import shall mean acceptable or satisfactory to the Engineer.
 - B. Whenever in the specifications or drawings accompanying this agreement the terms or description of various qualities relative to finish, workmanship or other qualities of similar kind which cannot from their nature be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said specifications shall be decided by the Engineer, and said work shall be done in accordance with his interpretations of the meaning of the words, terms or clauses defining the character of the work.
5. Contract Documents: The Contract Documents shall consist of the Notice to Bidders, Instructions to Bidders, Proposal, Specifications, Bonds, General Conditions of the Agreement, Special Requirement Section, Signed Agreement, Certificate of Insurance, Detailed Specifications and plans and all other documents made available to Bidder for his inspection in accordance with the Notice to Bidders.
6. Keeping of Plans and Specifications Accessible: The Contractor shall be furnished with two (2) copies of all plans, profiles and specifications without expense to him, and shall keep one (1) copy of the same readily available on the job site. On more complex or larger projects, more copies will be furnished to the Contractor by the Engineer.

7. Right of Entry: The Owner reserves the right to enter the property or location of which the works herein contracted for are to be constructed or installed, by it or its representative, for the purpose of observing the progress and quality of the work, or for the purpose of construction or installing collateral work. When another Contractor requires entry in or through the project, the Owner and Contractor shall notify the other Contractor of the requirements needed for his entry.
8. Quantities and Measurements:
 - A. The Contractor shall exercise proper precaution to verify all figures shown on drawings before laying out the work and will be responsible for any error resulting from his failure to exercise such precaution. Contractor shall immediately notify the Project Representative of any errors he may discover while laying out the work.
 - B. Before ordering any material or doing any work, the Contractor shall verify all measurements at the site. No extra charge or compensation shall be allowed on account of differences between actual dimensions and the measurements indicated on the drawings unless approved by the Engineer.
9. Lines and Grades:
 - A. Lines and grades shall be furnished by the Engineer. Whenever necessary, work shall be suspended to permit this work, but suspension will be as brief as practical, and the Contractor shall be allowed no extra compensation therefor. The Contractor shall give the Engineer at least four (4) hour notice of the time and place where lines and grades will be needed. All stakes, marks, and other survey monuments, shall be carefully preserved by the Contractor. In case of careless destruction or removal by him or his subcontractors, such Engineer furnished work shall be replaced at the Contractor's expense.
 - B. Contractor shall establish line and grade when a City survey crew is not available.
 - C. Contractor shall establish line and grade on portions of a street project such as aprons, curb returns and public sidewalk access ramps.
10. Observation and Inspection: The Owner shall appoint such engineers or project representatives as the said Owner may deem proper to inspect the material furnished and observe the work done under this agreement, and to see that the said material is furnished and work is done in accordance with the specifications for such work. The Contractor shall comply to the specifications regardless if defects or unacceptable work are discovered by the observation and inspection provided by the Owner. The Contractor shall furnish all reasonable assistance required by the engineers or project representatives for the proper inspection and examination of the work. The Contractor shall regard and obey the directions and instructions of any engineers or project representatives so appointed when such directions and instructions are consistent with the obligations of the agreement and the accompanying specifications. Should the Contractor object to any order by any subordinate engineer or project representative, the Contractor may within six (6) calendar days make written appeal to the Engineer.
11. Coordination of Plans, Specifications, Proposal, and Special Requirements Section: The plans and specifications, the proposal, special requirements section and all supplementary documents are intended to describe a complete work and are essential parts of the contract. A requirement appearing in any of them is binding. In case

of discrepancies, figured dimensions shall govern over scaled dimensions, plans shall govern over specifications, special requirements shall govern over both general and standard specifications, and the plans and quantities shown on the plans shall govern over those shown in the proposal. The Contractor shall not take advantage of an error or omission in the plans and specifications, and the Engineer shall be permitted to make such corrections or interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications. In the event the Contractor discovers an error or discrepancy, he shall immediately call such error or discrepancy to the attention of the Engineer.

12. Collateral Contracts: The Owner agrees to provide by separate contract all labor and material essential to the completion of the work that is not included in this contract.
13. Damages: In the event the Owner is damaged in the course of the work by the act, omission or mistake of the Contractor, the Contractor shall reimburse the Owner for such loss.
14. Losses From Natural Causes: All loss or damage arising out of the nature of the work done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor.
15. Estimated Quantities:

A. The Contract Documents are intended to clearly show all work to be done and material to be furnished hereunder. The estimated quantities of the various classes of work to be done and material to be furnished under this contract are approximate and should be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. The actual amount of work to be done and material to be furnished under this contract may differ somewhat from the estimates, and the basis for payment under this contract shall be the actual amount of work done and material furnished. The Owner will pay for in-place quantities authorized by the Engineer.

B. The Contractor agrees that it will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of each item of work actually done and material actually furnished for this contract and the estimated quantities of each item contemplated and contained in the proposal. If the total value of the project varies more than twenty-five (25) percent from the original estimated project value, either the City of Amarillo or Contractor upon demand is entitled to revised consideration according to State Law. Both parties shall agree to the revised consideration, otherwise the revised consideration shall be considered under the Extra Work provisions.

C. Should any contract item be deleted in its entirety, payment will be made only for actual costs incurred prior to notification of such deletion.

16. Changes and Alterations:

A. The Contractor further agrees that the Owner may make changes and alterations in the line, grade, form dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of construction, without affecting the validity of this contract and the accompanying bonds.

B. If such changes or alterations diminish the quantity of the work, they shall not constitute the basis for claim for damages or for anticipated profits on the work that may be deleted. If they increase the amount of work, and the increased work can fairly be classified under the specifications and administered by the City strict change order procedures, such increase shall be compensated according to the quantity actually done and at the unit price established for such work under this contract; otherwise, such additional work shall be compensated as provided under Extra Work. Should the Owner make changes or alterations that render useless any work already done or material already furnished or used in said work, then the Owner will compensate the Contractor for any material or labor so used according to the actual expenses incurred in performing the work as originally planned.

C. When a major item of work (a bid item whose cost is greater than five (5) percent of the original contract) is increased in excess of one hundred and twenty-five (125) percent or decreased below seventy-five (75) percent of the original contract, a price request and change order shall be executed with a new unit price.

17. Extra Work:

A. The term Extra Work as used in this contract shall be understood to define all work that may be required by the Engineer or Owner to be done by the Contractor to accomplish any change, alteration, or addition to the work as shown on the plans and specifications or reasonably implied by the Contract Documents, except as provided under Changes and Alterations herein.

B. The Contractor shall perform all Extra Work under the direction of the Engineer when presented with a written work order signed by the Engineer; subject, however, to the right of the Contractor to require a written confirmation of such Extra Work by the Owner. It is also agreed that the total compensation to be paid the Contractor for performing said Extra Work shall be determined by one or more of the following methods:

- Method (a) By agreed unit prices; or
- Method (b) By agreed lump sum; or
- Method (c) Actual field cost of the work
plus fifteen percent (15%)

If Method (c) is used, the Contractor will submit in a form prescribed by the Engineer an itemized cost breakdown together with the supporting data.

C. No claim for Extra Work will be considered unless the work has been ordered in writing by the Engineer. Should any orders or instructions, either oral or written, appear to the Contractor to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the Engineer for a written order authorizing such Extra Work. Should a difference of opinion arise as to what constitutes Extra Work or as to the subsequent payment, and the Engineer insists upon its performance, the Contractor shall proceed with the work after making a written request for a written order and shall keep an accurate account of the actual field cost thereof, as provided under Method (c).

D. When extra work is required, a change order must be executed prior to authorizing the extra work.

18. Preliminary Approval:

A. No person shall have the authority to waive the obligations of this contract for the furnishing by the Contractor of good material or of his performing good work in full accordance with the plans and specifications. Failure or omission of any engineer or project representative to condemn any defective work or material shall not release the Contractor from the obligations to immediately tear out, remove or properly replace defective work or material, or both. The Engineer shall upon request of the Contractor inspect and accept or reject any material furnished, and should the material have been once accepted by the Engineer, such acceptance shall be binding on the Owner, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

B. Any work may be ordered taken up or removed for reexamination by the Engineer prior to final acceptance, and if found not in accordance with the specifications for said work, the expense of removing, reexamination and replacement shall be borne by the Contractor; otherwise, the expense thus incurred shall be allowed as Extra Work and shall be paid for by the Owner.

19. Defects and Their Remedies:

A. If any of the work or any material brought on the site for use in the work or otherwise selected for the work shall be deemed by the Engineer as not in compliance with the specifications, the Contractor shall, after receipt of written notice from the Engineer, forthwith remove such material and rebuild or otherwise remedy such work.

B. Should the Contractor fail to comply with the Engineer's direction within a reasonable time, or should he fail to properly prosecute and complete correction of such faulty work, the Engineer may direct that the work be done by others, and that the cost of such work be deducted from payments due the Contractor.

20. Time and Order of Completion:

A. It is the intent of this contract, except where otherwise herein specifically provided, that the Contractor shall be allowed to prosecute his work at such times and order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the Contractor shall not remove more existing structure than he needs for normal progress. If, in the opinion of the Engineer, an excessive amount of structure is removed without immediate plans for replacement that will unduly cause hardship on the Owner, all work will be halted immediately. Work will not again proceed without written instructions from the Engineer. Any work accomplished after halting of construction and before written instructions from the Engineer to renew construction will not be compensated. The order and time of prosecution of work shall be such that the work shall be substantially completed in accordance with this contract within the time of completion herein authorized. No work will be performed between 6:00 p.m. and 7:00 a.m. without written approval from the City.

B. The Contractor will commence work within ten (10) calendar days after written notice to do so has been given to the Contractor. Written notice to commence work shall not be given until the contract has been properly executed by the Contractor and the Owner and the Contractor has provided the Owner with the necessary bonds, certificates of insurance, any special items required, and a preconstruction conference has been held. If the cutsheets or cut cards have not been approved and/or utility relocations have not been completed, working days will

not be charged until the project manager determines work can begin. This determination is at the discretion of the project manager who may instruct the Contractor to begin work on other portions of the project.

1. Working days shall commence on the highest valued project in a multiple project agreement either when the Contractor begins work or ten (10) calendar days after written notice to proceed has been given to the Contractor at the preconstruction conference. If other circumstances such as utility relocation prevents construction beginning on the highest valued project, the project manager shall determine which project shall start first.

2. Working days shall commence on the next highest valued project in a multiple project agreement when one of the following first occurs:

- a. The Contractor begins work;
- b. Ten (10) calendar days have elapsed after the previous project was determined to be substantially complete by the Project Representative;
- c. Ten (10) calendar days have elapsed from the last allowable working day on the previous project.

The Contractor may request to begin work on a lesser valued project, but the project manager must concur with the selection. Each project in a multiple project agreement shall be independent in terms of either working days established by the project manager or proposed by the Contractor.

C. A working day is a calendar day, not including Saturdays, Sundays or legal holidays observed by the City, between 7:00 a.m. and 6:00 p.m. Legal holidays are those holidays for which City Hall is closed. No Sunday or legal holiday work will be permitted without the Engineer's authorization on any project except to protect work already done or to meet an emergency.

1. Should a Contractor desire special permission to work on a Saturday, he shall make request of such on the preceding Friday before 12:00 noon, and shall provide an explanation of why he desires such. The Project Manager and/or Engineer with the project division director's affirmation shall make a ruling on the Contractor's request by 4:30 p.m. of the preceding Friday.

2. All requests made after 12:00 noon on the preceding Friday shall not be considered.

3. Any work performed on Saturday without permission is subject to removal and replacement.

4. The Owner shall charge the Contractor for administration, surveying, and inspection services furnished by the City of Amarillo on Saturday or Sunday work.

D. The Project Representative assigned to the project will determine if a day is to be counted as a working day or not on each project. Weather or other conditions the Contractor does not control that preclude any work on the project for at least seven continuous hours will be the basis for not counting a working day. The Contractor shall contact the Project Representative when he may question a working day will be charged or not. Appeals from the Project Representative's

decision must be in writing and submitted within seven (7) calendar days to the Project Manager and/or Engineer.

E. By the term substantially completed, it is meant that the structure or project has been made suitable for use or occupancy and is in condition to serve its intended purpose, but might require minor work and adjustment, which the Contractor agrees to perform expeditiously.

F. Certain unique projects may require completion prior to designated dates or to be completed in a City of Amarillo determined number of calendar days. These requirements will be readily identifiable in the project proposal, and special notice to bidders.

21. Extension of Time: Should the Contractor be delayed in the completion of the work by any act or neglect of the Owner or Engineer, or by changes ordered in the work, or by strikes, lockouts, fire and unusual delays by common carriers, and unavoidable cause or causes beyond the Contractor's control, or by any cause which the Engineer shall decide justifies the delay, then an extension of time determined by the Engineer shall be allowed for completing the work.
22. Hindrances and Delays: The Contractor agrees that in the event of delay in the progress of the work for any reason caused by any party or person, Contractor will be fully compensated for the delay by an extension of time to complete the contract and will not seek additional compensation.
23. Failure to Execute Contract: Should the bidder fail to execute the required bonds or to sign the required contract within ten (10) calendar days after the contract is awarded, he will be considered to have abandoned his proposal and the City may cancel the award and collect the bid security.
24. Price for Work: In consideration of the furnishing of all the necessary labor, equipment, and material, and the completion of all work by the Contractor and on the completion of all work and the delivery of all material embraced in this contract in full conformity with the specifications and stipulations herein contained, the Owner agrees to pay the Contractor the prices set forth in the proposal hereto attached, which has been made a part of this contract. The Contractor hereby agrees to accept such payment in full for furnishing all material and all labor required for the work, for all expense incurred by him and for well and truly performing the work, in the manner and required by this agreement, the attached specifications, and requirements of the Engineer.
25. Partial Payments and Retainage:

A. Before the last day of each month, the Contractor shall submit to the Engineer an application for payment for projects requiring the Contractor to submit monthly payment applications. The Engineer will review the application and the progress of the work, and if found to be in order will prepare a certificate for partial payment showing the amount of partial payment, the total value of the work done by the Contractor through the last working day of the month and the value of all sound materials delivered to the work site. The Contractor will be notified within twenty-one (21) calendar days from receipt of a disputed application of payment and the nature of the dispute in accordance with Article 601f of Vernons Texas Civil Statutes.

B. On projects where the Engineer prepares the monthly payment estimates, the Contractor shall certify on the appropriate estimate form, the work was accomplished in accordance with the agreement and its relevant specifications.

C. The Owner will pay the Contractor from the certificate less ten (10) percent of the amount thereof, which ten (10) percent shall be retained until final payment, on or before the tenth (10th) day of the following month.

D. The Owner will pay the Contractor from the certificate less five (5) percent of the amount thereof, for all contracts with a total amount greater than \$400,000.00, which five (5) percent shall be retained until final payment.

E. On contracts without Payment and Performance Bonds, total payment will be made when all the work is satisfactorily completed, lien and payment affidavits have been received by the issuing department and accepted regardless who prepares the payment estimate.

26. Final Completion, Payment, and Acceptance: Within ten (10) calendar days after the Contractor has notified the Engineer in writing that the work has been completed, the Engineer shall inspect the work; and, if the work is found to be completed in accordance with the plans and specifications, the Engineer shall prepare final statements of the value of all work performed and materials furnished and the Contractor shall certify the work was accomplished in accordance to the agreement and its relevant specifications. The Owner will pay the Contractor the balance due under terms of the agreement after completion of the work has been determined by the Engineer. The Owner shall furnish to the Contractor a letter of acceptance of the work when it has been completed to the satisfaction of the Engineer.
27. Engineer's Authority and Duty: The Engineer shall observe all work included herein. Failure to comply with the plans, specifications, or instructions of the Engineer may cause suspension of the work or withholding of payments. In order to prevent delays and disputes and to discourage litigation, it is further agreed that if it cannot be otherwise decided, the Engineer shall determine the amounts and quantities of the several kinds of work which are to be paid for under this contract; and he shall determine all questions in relations to said work and the construction thereof. The Engineer shall promptly decide all questions which may arise relative to the execution of this contract on the part of the Contractor, and his estimates and findings shall be the conditions precedent to the right of the parties hereto to arbitration or to any action on the contract. Should the Engineer render any decision or give any direction which, in the opinion of the Contractor is not in accordance with the intent of this contract, the Contractor may file with the Engineer, within thirty (30) calendar days, his written objection to the decision or direction and reserve the right to submit the question so raised to arbitration as herein provided. It is the intent of this agreement that there shall be no delay in the execution of the work. The decisions or directions of the Engineer shall be promptly carried out, and any claim arising therefrom may be adjusted by arbitration as hereinafter provided.
28. Contractor's Duty: The Contractor shall give personal attention to the faithful prosecution and completion of this work and shall be present either in person or by a duly-authorized representative on the site of the work continually during its progress. All Contractor's personnel shall be appropriately attired.

29. Contractor's Agent:

A. Notice in writing to do any work, to alter work, to cease work, or notice concerning any imperfections in material furnished when given to the Contractor's authorized representative in charge of any operation of the work in the absence of the Contractor, shall be considered as notice to the Contractor.

B. Should both the Contractor and the authorized representative be absent from the work for prolonged periods of time, the Engineer may order work to be stopped until the Contractor provides supervision of the work. Such stoppage shall not constitute a basis for any claim against the Owner for damages caused by delay for such work stoppages.

30. Character of Workers: The Contractor agrees to employ only orderly, competent and skillful workers to do the work; and that whenever the Engineer shall inform him in writing that any workers on the job site are, in his opinion, incompetent, unfaithful, or disorderly, such workers shall be discharged from the job site. The unacceptable employees shall not be allowed on any City of Amarillo project without the Engineer's written consent.31. Construction Plant:

A. The Contractor shall provide all labor, tools, equipment, machinery, and material necessary in the prosecution and completion of this contract where it is not otherwise specifically provided that the Owner shall furnish the same. The Owner shall not be held responsible for the care, preservation, conservation, or protection of any material, tools, or machinery, or any part of the work until it is finally completed and accepted.

B. The Contractor shall make arrangements for receiving and storing materials. The Owner will not sign for or receive shipments of materials consigned to the Contractor. The Owner will not furnish storage space for materials except by the written permission of the Engineer.

32. Right of Engineer to Modify Methods and Equipment: If at any time the methods or equipment used by the Contractor are found to be inadequate to secure the quality of the work or the rate of progress required under this contract, the Engineer may direct the Contractor, in writing, to improve the character and efficiency of the methods and equipment, or to cease operations. No claims shall be made against the Owner for damages caused by any delay resulting from such order.33. Sanitation: Sanitary facilities for the use of laborers on the job site, properly secluded from public observation, shall be provided by and maintained by the Contractor.34. Public Convenience and Safety:

A. The safety of the public shall be regarded as of prime importance. Construction material and excavated material shall be placed and the work be conducted as to cause no greater obstruction or inconvenience to pedestrians, motorists, and the general public than is considered necessary by the Engineer. The Contractor shall make provisions by bridges, covered walkways, temporary plank walks or otherwise at all sidewalks and driveways for the free passage of pedestrians and motorists.

B. Sidewalks must not be obstructed unless by special permission of the Engineer. The Owner reserves the right to remedy any neglect on the part of the Contractor regarding the public convenience and safety which may come to its attention, after twenty-four (24) hours notice in writing to the Contractor, except in cases where the Owner perceives an emergency it shall have the right to remedy any such neglect without notice and, in either case, the cost of such work done by the Owner shall be deducted from monies due or to become due the Contractor.

C. Contractor is responsible for any damage to private automobiles caused by prime oil operations or any other material placement operation.

35. Contractor's Insurance: The Contractor shall procure and carry at his sole cost and expense throughout the life of this contract, insurance protection. Such insurance shall be carried with an insurance company with proper rating licensed to transact business in the State of Texas and shall cover all operations in connection with this contract, whether performed by the Contractor or a subcontractor, or separate policies shall be provided covering the operation of each subcontractor. Minimum coverages and certificate requirements are delineated on the Certificate of Insurance Requirements of these Contract Documents.

36. Protection and Restoration of Adjoining Property:

A. The Contractor shall take proper measures to protect the adjacent or adjoining property which might be injured by any process of construction, and, in case of any injury or damage, he shall restore at his own expense the damaged property to a condition equal to or better than that existing before such injury or damage was done, or he shall make good such injury or damage in an acceptable manner.

B. The Contractor shall exercise all reasonable precautions necessary to avoid restriction of access to adjoining property and shall indemnify and hold harmless the Owner from claims, damages and expenses based on allegations of restriction of access, undue delay or negligent performance of the work.

C. The Contractor shall use every precaution necessary to prevent damage to all trees, driveways, sidewalks, water, sewer, gas or electric lines or appurtenances thereof, and to all other public or private property along or adjacent to the work. The Contractor shall notify the proper representative of any public utility, any company, or any individual not less than twenty-four (24) hours in advance of any work which might damage or interfere with the operation of its property adjacent to the work. The Contractor shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to his non-execution of the work or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed and accepted.

37. Protection Against Accident to Employees and the Public:

A. The Contractor shall take out and procure a policy or policies of Workers' Compensation Insurance with an insurance company licensed with proper rating to transact business in the State of Texas, which policy shall comply with the Workers' Compensation laws of the State of Texas. Workers' Compensation Insurance shall include a Waiver of Subrogation in favor of the City of Amarillo.

B. The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State and Municipal laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with Federal, State or Municipal laws or regulations.

C. The Contractor, his sureties and insurance carriers shall defend, indemnify and save harmless the Owner and all of its officers, agents and employees from all suits, actions or claims of any character whatsoever, brought for or on account of: (a) any injuries or damages received or sustained by any person or persons or property; (b) any negligent act or fault of the Contractor or any subcontractor, their agents or employees, in the execution and supervision of said contract, and the project which is the subject matter of this contract; (c) the failure of Contractor or any subcontractor to provide necessary barricades, warning lights or signs; (d) any allegations of negligence of the Owner made by the Contractor's employees or their heirs or representatives or by members of the public arising out of any incident related to the work, and will be required to pay any judgment with costs which may be obtained against the Owner or any of its officers, agents or employees, including attorney's fees.

D. The safety precautions taken shall be the sole responsibility of the Contractor, in his sole discretion as an Independent Contractor; inclusion of this paragraph in the Agreement, as well as any notice which may be given by the Owner, the Owner's Representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the Contractor of his duty and shall not be construed as any assumption of duty by the Owner or the Engineer to supervise or exercise safety precautions required of either the Contractor or any of his subcontractors.

E. The Contractor shall contact all emergency services and the project representative at least one working day prior to closing any streets in their projects.

38. Protection Against Claims of Subcontractors, Laborers, Materialmen, and Furnishers of Machinery, Equipment, and Supplies:

A. The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools, all suppliers, including commissary, incurred in the furtherance of the performance of this contract. When Owner so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived.

B. If during the progress of the work, Contractor shall allow any indebtedness to accrue for work furnished by any of those designated in the preceding paragraph and shall fail to pay and discharge any such indebtedness within five (5) calendar days after demand is made, then Owner may, during the period for which such indebtedness shall remain unpaid, withhold from the unpaid portion of this contract, a sum equal to the amount of such unpaid indebtedness or may apply the sum so withheld to discharge any such indebtedness.

39. Protection Against Royalties or Patent Infringement: The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device,

material or process covered by letters patent or copyright by suitable legal agreement with the Patentee or Owner thereof. The Contractor shall defend all suits or claims for infringement of any patent or copyright and shall indemnify and save the Owner harmless from any loss on account thereof, except that Owner shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required in these contract documents by Owner; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then Contractor shall indemnify and save Owner harmless from any loss on account thereof. If the material or process specified or required by Owner is an infringement, the Contractor shall be responsible for such loss unless he promptly gives written notice to the Owner of such infringement.

40. Laws and Ordinances: The Contractor shall comply with all Federal, State and local laws, ordinances and regulations, which in any manner affect the contract or the work and shall indemnify and save harmless the Owner, its officers and employees, against any claim arising from the violation of any such laws and ordinances, whether by the Contractor or his employees.

41. Liquidated Damages:

A. The date of beginning and the time of completion as bid by the Contractor are essential conditions of this contract. Time is of the essence.

B. Should the Contractor fail to complete the work within the time specified and any extensions of time, the Contractor agrees and stipulates that the Owner may withhold permanently from the Contractor's total compensation \$200.00 (Two Hundred Dollars) as liquidated damages for breach of contract for each and every calendar or working day as stated in each project proposal. Certain projects may have other amounts and conditions for liquidated damages and they will be stated in the Special Requirements Section or Special Notice to Bidders Subsection of the individual projects.

C. The Contractor stipulates and agrees that the time for completion is reasonable and adequate, considering the average climatic conditions and usual industrial conditions prevalent in this locality.

D. The amount of liquidated damages is fixed and stipulated due to the difficulty in ascertaining the actual damages the Owner would sustain, and the damages may be retained by the Owner from partial payments or from the final payment.

E. The Contractor shall be charged for administration, surveying, and inspection services furnished by the City of Amarillo when liquidated damages are assessed and when work occurs after the stated time for completion of the project.

42. Assignment and Subletting:

A. The Contractor will retain personal control and will give his personal attention to the fulfillment of this contract and will not assign or sublet said contract without the written consent of the Owner. No part of the work will be sublet to anyone objectionable to the Engineer or the Owner. The Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the Contractor from his full obligation to the Owner under this agreement.

B. The Contractor shall be as fully responsible to the Owner for the acts and 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. Should any subcontractor fail to perform the work undertaken by him in a satisfactory manner, corrective action shall be taken by the Contractor.

C. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

D. If the Contractor assigns any of the compensation to be paid under this contract, the instrument of assignment shall agree that the right of the assignee in and to any compensation to be paid to the Contractor shall be subject to all prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

E. The Contractor shall pay his subcontractors in a timely manner as required per Article 601f, Vernons Texas Civil Statutes.

43. Abandonment By Contractor:

A. Should the Contractor abandon and fail or refuse to resume work within ten (10) calendar days after written notification from the Owner or the Engineer, or if the Contractor fails to comply with the orders of the Engineer when such orders are consistent with this contract, the surety on the bond shall be notified in writing and directed to complete the work and a copy of said notice shall be delivered to the Contractor.

B. After receiving notice of abandonment, the Contractor shall not remove from the job site any machinery, equipment, tools, materials or supplies, but the same, together with any materials and equipment under contract for the work, may be held for use on the job site in completion of the work. The Contractor shall not receive any rental or credit therefor, except when used in connection with Extra Work, where credit shall be allowed as provided for under Extra Work.

C. Should the surety fail to commence construction within ten (10) calendar days after service of notice of abandonment, then the Owner may provide for completion of the work in either of the following elective manners:

1. By employment of the Owner's own forces at the expense of the Contractor and its surety.
2. By advertising for bids for completion of the work at the expense of the Contractor and its surety.

D. When the work shall have been substantially completed, the Contractor and his surety will be so notified, and a letter of acceptance shall be issued. A complete itemized statement of the contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and its surety. The Contractor and its surety shall pay the Owner the balance due as reflected by said statement within fifteen (15) calendar days after the date of such letter of acceptance.

E. After settlement of the balance due, the machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor or its surety. Should the cost to complete the work exceed the contract price, and should the Contractor and its surety fail to pay the amount due the Owner

within the time required herein and there remains any machinery, equipment, tools, materials or supplies on the site of the work, an itemized list of such equipment and materials shall be mailed to the Contractor and its surety at the respective addresses designated in this contract.

44. Bonds: It is further agreed by the parties to this contract that the Contractor and a corporate surety authorized to act in the State of Texas as surety will execute two bonds, when required, each in the sum of one hundred (100) percent of the contract price in the form provided for this purpose, as follows: (1) a performance bond for the satisfactory performance of the work in accordance with this contract; and (2) a payment bond for the payment of all persons supplying labor or furnishing materials under this contract. If bonds are required, this contract shall not be in effect until these bonds are filed with and approved by the Owner. All contracts in excess of \$25,000.00 require both performance and payment bonds.
45. Time of Filing Claims: Should the Contractor appeal an Engineer's decision, any demand for arbitration shall be filed with the Engineer and the Owner in writing within ten (10) calendar days after the date of the Engineer's final written decision. It is further agreed that final acceptance of the work by the Owner and the acceptance by the Contractor of the final payment shall be a bar to any claim by the Contractor.
46. Adequacy of Design: It is understood that the Owner has selected the Engineer named in this agreement to prepare the plans and specifications, and all supplements thereto; and the Owner will be responsible for the adequacy of the design if the Contractor has complied with said plans and specifications and all modifications thereof approved by the Engineer. The burden of proof shall be upon the Contractor to show that he has complied with this contract, the plans, specifications and all modifications thereof.
47. Arbitration:
- A. Any dispute under this agreement may be submitted to arbitration at the request of either party to the dispute. The parties may agree upon one arbitrator, otherwise, there shall be three; one named in writing by each party and the third chosen by the two arbitrators so selected; or if the arbitrators fail to select a third within ten (10) calendar days, he shall be chosen by the District Judge, 47th Judicial District, Amarillo, Texas. Should the party demanding arbitration fail to name an arbitrator within ten (10) calendar days of the demand, his right to arbitrate shall lapse, and the decision of the Engineer shall be final and binding on him. Should the other party fail to choose an arbitrator within ten (10) calendar days, the Engineer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to take ex parte proceedings.
- B. The arbitrators shall act with promptness. The decision of any two shall be binding. The decision of the arbitrators upon any question submitted to arbitration under this contract shall be a condition precedent to any right of legal action. The decision of the arbitrator or arbitrators may be filed in court to carry it into effect.
- C. The arbitrators are authorized to award the party whose contention is sustained such sums as they deem proper for the expense incidental to the appeal; and if the appeal was taken without reasonable cause, they may award damages for the expense occasioned thereby. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the cost and charges of

the arbitration upon either or both parties. The award of the arbitrators must be made in writing, and shall not be open to objection on account of the form.

48. Wage Rates: The labor classification and minimum wage scale contained in each project bid book shall determine the labor classification and minimum wage scale applicable to the project, said classification and scale being incorporated by reference into this paragraph and made a part hereof for all purposes. A copy of said classification and wage rate scale must be posted and kept posted in a conspicuous place by the Contractor at the project site and the location where workers clock in and out during the project.

Any violation of wage scale requirements shall constitute a breach of contract. Any breach of contract of this nature may be grounds for immediate cancellation of this contract if any worker who has been determined to have been underpaid has not been properly compensated within the required period of time in the City of Amarillo notification to the Contractor of any wage underpayment.

The City of Amarillo uses the Davis-Bacon Act rates for the City of Amarillo projects for each craft or type of worker or mechanic needed to execute this contract. The wage rates have been specified in the bid book and in the contract and the Contractor and any subcontractor, shall pay not less than the said specified rates to all employees employed by them on the project.

A penalty of One Hundred dollars (\$100.00) may be assessed against the Contractor in violation payable to the City of Amarillo for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such employee is paid less than the said stipulated rates for applicable work under said contract. The money collected shall be used by the City of Amarillo to offset its administrative costs.

The City of Amarillo will withhold an estimated amount equivalent to what may be due to the affected employee from the monthly payment estimate and concurrently give the Contractor notice. The City of Amarillo will require the contractor to give an accounting of all hours worked, duties performed, and wages paid to the affected employee. The Contractor may request a hearing before the City Engineer or with the Alternate Dispute Resolution Center of Amarillo. The affected employee shall be a party to the hearing. After written notice and an opportunity for a hearing, the City of Amarillo shall assess against the Contractor in violation reasonable costs actually incurred by the City of Amarillo in enforcing wage rate restitution. An officer, agent, or employee of the City of Amarillo shall be held harmless for any action it takes in enforcing the wage scale requirements.

The Contractor shall withhold from any of his subcontractors sufficient sums to cover any amounts withheld from the Contractor by the City of Amarillo on account of the said subcontractor's failure to comply with the wage rate requirements, and if payment has already been made to him the Contractor may withhold the sufficient sum from any future payments due the subcontractor and/or may recover from the subcontractor and subcontractor's sureties the amount retained or forfeited in a suit at law.

49. Clean Up: Before final payment shall be made, the Contractor shall remove all construction materials, equipment and rubbish from the site and leave the site clean. Any private property adjacent to the project that was used by the Contractor during the project shall be cleaned.

within the time required herein and there remains any machinery, equipment, tools, materials or supplies on the site of the work, an itemized list of such equipment and materials shall be mailed to the Contractor and its surety at the respective addresses designated in this contract.

44. Bonds: It is further agreed by the parties to this contract that the Contractor and a corporate surety authorized to act in the State of Texas as surety will execute two bonds, when required, each in the sum of one hundred (100) percent of the contract price in the form provided for this purpose, as follows: (1) a performance bond for the satisfactory performance of the work in accordance with this contract; and (2) a payment bond for the payment of all persons supplying labor or furnishing materials under this contract. If bonds are required, this contract shall not be in effect until these bonds are filed with and approved by the Owner. All contracts in excess of \$25,000.00 require both performance and payment bonds.
45. Time of Filing Claims: Should the Contractor appeal an Engineer's decision, any demand for arbitration shall be filed with the Engineer and the Owner in writing within ten (10) calendar days after the date of the Engineer's final written decision. It is further agreed that final acceptance of the work by the Owner and the acceptance by the Contractor of the final payment shall be a bar to any claim by the Contractor.
46. Adequacy of Design: It is understood that the Owner has selected the Engineer named in this agreement to prepare the plans and specifications, and all supplements thereto; and the Owner will be responsible for the adequacy of the design if the Contractor has complied with said plans and specifications and all modifications thereof approved by the Engineer. The burden of proof shall be upon the Contractor to show that he has complied with this contract, the plans, specifications and all modifications thereof.
47. Arbitration:
- A. Any dispute under this agreement may be submitted to arbitration at the request of either party to the dispute. The parties may agree upon one arbitrator, otherwise, there shall be three; one named in writing by each party and the third chosen by the two arbitrators so selected; or if the arbitrators fail to select a third within ten (10) calendar days, he shall be chosen by the District Judge, 47th Judicial District, Amarillo, Texas. Should the party demanding arbitration fail to name an arbitrator within ten (10) calendar days of the demand, his right to arbitrate shall lapse, and the decision of the Engineer shall be final and binding on him. Should the other party fail to choose an arbitrator within ten (10) calendar days, the Engineer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to take ex parte proceedings.
- B. The arbitrators shall act with promptness. The decision of any two shall be binding. The decision of the arbitrators upon any question submitted to arbitration under this contract shall be a condition precedent to any right of legal action. The decision of the arbitrator or arbitrators may be filed in court to carry it into effect.
- C. The arbitrators are authorized to award the party whose contention is sustained such sums as they deem proper for the expense incidental to the appeal; and if the appeal was taken without reasonable cause, they may award damages for the expense occasioned thereby. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the cost and charges of

the arbitration upon either or both parties. The award of the arbitrators must be made in writing, and shall not be open to objection on account of the form.

48. Wage Rates: The labor classification and minimum wage scale contained in each project bid book shall determine the labor classification and minimum wage scale applicable to the project, said classification and scale being incorporated by reference into this paragraph and made a part hereof for all purposes. A copy of said classification and wage rate scale must be posted and kept posted in a conspicuous place by the Contractor at the project site and the location where workers clock in and out during the project.

Any violation of wage scale requirements shall constitute a breach of contract. Any breach of contract of this nature may be grounds for immediate cancellation of this contract if any worker who has been determined to have been underpaid has not been properly compensated within the required period of time in the City of Amarillo notification to the Contractor of any wage underpayment.

The City of Amarillo uses the Davis-Bacon Act rates for the City of Amarillo projects for each craft or type of worker or mechanic needed to execute this contract. The wage rates have been specified in the bid book and in the contract and the Contractor and any subcontractor, shall pay not less than the said specified rates to all employees employed by them on the project.

A penalty of One Hundred dollars (\$100.00) may be assessed against the Contractor in violation payable to the City of Amarillo for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such employee is paid less than the said stipulated rates for applicable work under said contract. The money collected shall be used by the City of Amarillo to offset its administrative costs.

The City of Amarillo will withhold an estimated amount equivalent to what may be due to the affected employee from the monthly payment estimate and concurrently give the Contractor notice. The City of Amarillo will require the contractor to give an accounting of all hours worked, duties performed, and wages paid to the affected employee. The Contractor may request a hearing before the City Engineer or with the Alternate Dispute Resolution Center of Amarillo. The affected employee shall be a party to the hearing. After written notice and an opportunity for a hearing, the City of Amarillo shall assess against the Contractor in violation reasonable costs actually incurred by the City of Amarillo in enforcing wage rate restitution. An officer, agent, or employee of the City of Amarillo shall be held harmless for any action it takes in enforcing the wage scale requirements.

The Contractor shall withhold from any of his subcontractors sufficient sums to cover any amounts withheld from the Contractor by the City of Amarillo on account of the said subcontractor's failure to comply with the wage rate requirements, and if payment has already been made to him the Contractor may withhold the sufficient sum from any future payments due the subcontractor and/or may recover from the subcontractor and subcontractor's sureties the amount retained or forfeited in a suit at law.

49. Clean Up: Before final payment shall be made, the Contractor shall remove all construction materials, equipment and rubbish from the site and leave the site clean. Any private property adjacent to the project that was used by the Contractor during the project shall be cleaned.

50. Maintenance Clause:

A. The Contractor shall guarantee all labor, materials, and equipment furnished against any defects developing from faulty or poor workmanship or materials for a period of one (1) year from the date of written acceptance by the Owner. Any defect appearing within that time shall be remedied by the Contractor without extra charge to the Owner within a reasonable time after notice. The term defect as used herein shall not be construed to include accidental damage or wear and tear of normal or abnormal use or acts of God. The judgment in such cases shall be made by the Engineer.

B. If within ten (10) calendar days after the mailing of a written notice of a defect, the Contractor fails to make or undertake with due diligence the required repairs, the Owner will make such repairs at the Contractor's expense. However, in case of an emergency, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

51. Completed Portions of Work: The Owner shall have the right to take possession of and to use any completed or partially completed portions of the work prior to completion of the entire work, but such use shall not constitute an acceptance of any of the work not completed in accordance with the contract documents. If the Engineer determines that taking possession of and using partially completed work substantially increases the cost of or delays construction, the Contractor shall be entitled to extra compensation or extension of time or both as determined by the Engineer.

52. Or Equal Clause: Whenever a material is specified or shown on the plans by using the name of a proprietary product or of a particular manufacturer or vendor and is followed by the term or equal, the Contractor may submit a written request to the Engineer for approval of the use of a material it feels is equal to the one specified. The Engineer will evaluate the request to determine if the material is of equal substance and function and if it will perform identically the duties imposed by the general design on the product to be replaced. Written approval of an or equal material must be obtained from the Engineer before it may be incorporated into the work as a substitute for that specified in the contract documents.

53. Materials Furnished by the Owner: The Contractor shall assume responsibility for and safeguard any and all materials supplied by the Owner against loss or injury.

54. Antitrust Claims: The language used in State contracts requires that: "Vendor hereby assigns to Purchaser any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1, et seq. (1973)." September 16, 1981.

55. Discrimination: The Contractor or his sub-contractors shall not discriminate against any person as specified in appropriate Federal laws, Executive Orders, State laws, and other anti-discriminatory legislation as required.

56. Differing Site Conditions:

A. The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: 1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or 2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The Engineer shall promptly investigate the

conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment may be made and the contract modified in writing accordingly.

B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required; provided, however, the time prescribed therefore may be extended by the Engineer.

C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

57. Cost reduction incentive: After the execution of contracts, the Contractor may submit to the Engineer written proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the cost of construction. The cost reduction proposal shall not impair the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, design and safety standards. This provision shall not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a value engineering proposal and provide a cost reduction to the City.

Changes in the basic design of a pavement type, hydraulic capacity of drainage facilities, or changes in grade or alignment that reduce the geometric standards of the project are not eligible for a cost reduction incentive consideration.

The following information shall be submitted by the Contractor with each proposal:

- A. descriptions of existing contract requirements and the proposed changes with a discussion of the comparative advantages and disadvantages of each;
- B. the contract requirements that must be changed if the proposal is adopted;
- C. detailed construction cost estimates performing the work under the existing contract and under the proposed changes;
- D. the latest date by which a change order adopting the proposal must be issued;
- E. a statement of the effect the proposal will have on the contract completion time; and
- F. the contract items of work affected by the proposed changes, including any quantity variation attributable to them.

The Contractor may withdraw, in whole or in part, any cost reduction proposal not accepted by the Engineer, within the first two weeks of construction. This time period provision shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted.

The Contractor shall continue to perform the work in accordance with the contract requirements until a change order incorporating the cost reduction proposal has been issued. If a change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such cost reduction proposal shall be deemed rejected.

The Engineer with confirmation from the City Manager shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, the Engineer may disregard the contract bid prices if, in the Engineer's judgment such prices do not represent a fair measure of the value of the work to be performed or deleted.

The Contractor shall share in the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal.

The City shall deduct the cost of investigating a cost reduction proposal from amounts payable to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, a contract change order shall be executed. The change order shall incorporate the changes in the plans and specifications caused by the cost reduction proposal and shall include any conditions upon which the Engineer's approval is based. The change order shall also set forth the estimated net savings attributable to the cost reduction proposal. The net savings shall be determined as the difference in costs between the original contract costs for the involved work items and the costs occurring as a result of the proposed change. The change order shall also establish the net savings and shall provide for adjustment in the contract price that will divide the net savings equally between the Contractor and the Owner.

The Contractor's fifty (50) percent share of the net savings shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work.

Acceptance of the cost-reduction proposal and performance of the cost-reduction work shall not extend the time of completion of the contract unless specifically provided for in the contract change order.

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**SUBSECTION 2.08
MINIMUM WAGE SCALE
CITY OF AMARILLO, TEXAS**

The following labor classifications and minimum wage scale is herein below determined by the City of Amarillo in accordance with the statutory requirements and prevailing local wages and shall govern on all public construction work performed by the successful bidding Contractor and his Subcontractors in connection with the construction of water and sewer lines and street paving. The said classification and minimum wage scale being as follows to wit:

SUTX2037A 11/13/1991

<u>A.G.C. Index No.</u>	<u>CLASSIFICATION</u>	<u>RATE PER HOUR</u>
103	Asphalt Heater Operator.....	\$ 7.467
106	Asphalt Raker.....	7.267
109	Asphalt Shoveler.....	6.400
112	Batching Plant Weigher.....	9.799
118	Carpenter.....	8.153
124	Concrete Finisher (Paving).....	7.496
130	Concrete Finisher (Structures).....	8.148
139	Electrician.....	10.000
---	Flagger.....	5.500
151	Form Builder (Structures).....	8.021
160	Form Setter (Paving and Curb).....	8.300
166	Form Setter (Structures).....	7.839
172	Laborer, Common.....	6.018
175	Laborer, Utility	7.102
187	Mechanic.....	10.282
193	Oiler.....	8.233
194	Servicer.....	7.823
205	Pipe Layer.....	7.000
300	Asphalt Distributor Operator.....	7.972
303	Asphalt Paving Machine.....	8.187
305	Broom or Sweeper Operator.....	6.411
306	Bulldozer.....	7.963
315	Concrete Paving Curing Machine.....	9.100
318	Concrete Paving Finishing Machine.....	8.075
329	Concrete Paving Joint Sealer.....	7.750
333	Concrete Paving Saw.....	10.063
336	Concrete Paving Spreader.....	9.100
340	Reinforcing Steel Machine.....	6.500
341	Slipform Machine Operator.....	9.000
342	Crane, Clamshell, Backhoe, Derrick, Dragline Shovel (Less than 1-1/2 CY).....	8.574
347	Crane, Clamshell, Backhoe, Derrick, Dragline Shovel (1-1/2 CY and Over).....	10.043
351	Crusher or Screening Plant Operator.....	7.500
360	Foundation Drill Operator (Crawler Mounted).....	9.000
363	Foundation Drill Operator (Truck Mounted).....	10.750
369	Front End Loader(2-1/2 CY and Less).....	7.458
372	Front End Loader (Over 2-1/2 CY).....	7.669
375	Hoist.....	8.100

SUBSECTION 2.08
MINIMUM WAGE SCALE
CITY OF AMARILLO, TEXAS

<u>A.G.C.</u> <u>Index No.</u>	<u>CLASSIFICATION</u>	<u>RATE PER HOUR</u>
390	Motor Grader Operator, Fine Grade.....	\$ 10.343
393	Motor Grader Operator.....	9.835
396	Pavement Marking Machine.....	9.150
397	Planer Operator.....	10.458
402	Roller, Steel Wheel (Plant Mix Pavements).....	6.828
405	Roller, Steel Wheel (Other-Flat or Tamping).....	6.474
408	Roller, Pneumatic (Self-Propelled).....	6.455
411	Scrapers (17 CY and Less).....	7.546
413	Scrapers (Over 17 CY).....	7.655
419	Side Boom.....	6.350
422	Tractor, Crawler (150 HP and Less).....	7.290
425	Tractor, Crawler (Over 150 HP).....	10.750
428	Tractor, Pneumatic.....	7.422
500	Reinforcing Steel Setter (Paving).....	7.926
503	Reinforcing Steel Setter (Structures).....	9.086
509	Steel Worker (Structural).....	9.000
515	Spreader Box Operator.....	7.332
---	Barricade Servicer Work Zone.....	6.500
600	Truck Driver-Single Axle Light.....	6.592
603	Truck Driver-Single Axle, Heavy.....	6.791
606	Truck Driver-Tandem Axle or Semitrailer.....	7.130
609	Truck Driver-Lowboy-Float.....	8.868
612	Truck Driver-Transit Mix.....	6.891
706	Welder.....	11.827

Welders: Rate for the craft performing the operation to which welding is incidental.

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 (29 CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

Contractor shall comply with State and Federal laws applicable to such work.

The above are minimum rates. Bidders shall base their bid on rates they expect to pay if in excess of those listed. The Owner will not consider claims for extra payment to the Contractor on account of payment of wages higher than above specified.

Any work performed by any laborer, worker or mechanic in excess of forty (40) hours per week shall be paid for at one and one-half (1-1/2) times the regular rate.

The City of Amarillo minimum wage scale is the Department of Labor General Wage Decision No. TX96-28 published 3/15/96.

**SUBSECTION 2.09
WORKERS' COMPENSATION INSURANCE COVERAGE**

A. DEFINITIONS:

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

2. Duration of the Project: Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City of Amarillo.

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

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payrolls amounts and filing of any coverage agreement,s, 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 City of Amarillo prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Amarillo showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on the project, and provide to the City of Amarillo:

1. A certificate of coverage, prior to that person beginning work on the project, so the City of Amarillo will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

- G. The Contractor shall notify the City of Amarillo in writing by certified mail or personal delivery, within then (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 Workers' 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.
 - 1. The Contractor shall furnish the following information to all persons providing services on projects requiring coverage:

REQUIRED WORKERS' COMPENSATION COVERAGE

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

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

- I. The Contractor shall contractually require each person with whom it contracts to provide services on the project, to:
 - 1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all the employees of the person providing services on the project, for the duration of the project;
 - 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage ends during the duration of the project;
 - 4. Obtain from each other person with whom it contracts, and provide the Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - 6. Notify the City of Amarillo in writing by certified mail or personal delivery, within ten (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 City of Amarillo that all employees of the Contractor 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.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Amarillo to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Amarillo.

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