

BID PROPOSAL

To: Pecan Plantation Owners Association
Granbury, Texas

Board Members:

Pursuant to the Advertisement for Bids, Invitation to Bid/Instructions to Bidders, General Clauses and Conditions, Special and General Provisions and Requirements and the Plans and Specifications (hereinafter referred to as the "Specifications"), the undersigned Bidder hereby proposes to do all the work and furnish all necessary superintendence, labor, machinery, equipment, tools and materials, and to complete all the work, upon which he bids, as provided by the Specifications and binds himself, on acceptance of this bid to execute a contract and any other required bonds and related documents, according to the Pecan Plantation Owners Association standard forms, for performing and completing the said work within the required time, and furnish all guarantees, for the price stated in the following Schedule of Bid Items for the following project to-wit:

PECAN PLANTATION PAVEMENT IMPROVEMENTS

It is understood that the quantities of work shown in the following Schedule of Bid Items are approximate only and are subject to increase or decrease and the undersigned bidder offers to do the work at the unit price as stated in said Schedule of Bid Items.

The undersigned further agrees that the unit prices quoted include all items of work required as necessary for the accomplishment of the projected work and these items include all work indicated on the Specifications for which no specific pay items have been established.

Project Number: _____

SCHEDULE OF BID ITEMS

PECAN PLANTATION PAVEMENT IMPROVEMENTS

For acquisition, delivery, installation, materials, labor, cleanup, incidentals and guarantee, all per plans and specifications, complete and in place. In the event of additions/deletions to the contract items, the price per unit shall be used to determine change order amounts. Item numbers are TxDOT item numbers. These items refer to TxDOT specification adopted by the Texas Department of Transportation, June 1, 2005 and specification items listed and dated as shown in the plans and following specifications, shall govern on this project. Please refer to the technical specifications for payment information.

ITEM No.	EST QTY	UNIT	DESCRIPTION WITH UNIT PRICES WRITTEN IN WORDS	UNIT PRICE (IN FIGURES)	TOTAL (IN FIGURES)
105	66,230	SY	Remove pavement & Stabilized base As shown on the plans, work fully performed, complete and in place for the sum of <u>Four</u> Dollars <u>NINETY</u> Cents Per Unit	\$ <u>4.90</u>	\$ <u>324,527.00</u>
247	11,309	CY	Flexible Base Grade 3, In Place As shown on the plans, work fully performed, complete and in place for the sum of <u>FIFTY EIGHT</u> Dollars <u>NINETEEN</u> Cents Per Unit	\$ <u>5.819</u>	\$ <u>658,070.11</u>
260	63,675	SY	Lime Treatment Road Mix As shown on the plans, work fully performed, complete and in place for the sum of <u>THREE</u> Dollars <u>SIXTY ONE</u> Cents Per Unit	\$ <u>3.61</u>	\$ <u>229,846.75</u>
260	860	TON	Lime Treatment Road Mix Type Slurry As shown on the plans, work fully performed, complete and in place for the sum of <u>ONE HUNDRED TWENTY</u> Dollars <u>No</u> Cents Per Unit	\$ <u>120.00</u>	\$ <u>103,200.00</u>

ITEM No.	EST QTY	UNIT	DESCRIPTION WITH UNIT PRICES WRITTEN IN WORDS	UNIT PRICE (IN FIGURES)	TOTAL (IN FIGURES)
340	44,920	TON	Dense Graded Hot Mix Type D 2" As shown on the plans, work fully performed, complete and in place for the sum of: <u>FOURTY NINE</u> Dollars <u>FOUR</u> Cents Per Unit	\$ <u>4904</u>	\$ <u>2,202,876.80</u>
500	1	LS	Mobilization As shown on the plans, work fully performed, complete and in place for the sum of: <u>THIRTY TWO THOUSAND</u> Dollars <u>NONE</u> Cents Per Unit	\$ <u>200,000.00</u>	\$ <u>200,000.00</u>
502	8	MO	Barricades Signs & Traffic Handling As shown on the plans, work fully performed, complete and in place for the sum of: <u>FOUR THOUSAND</u> Dollars <u>NONE</u> Cents Per Unit	\$ <u>4000.00</u>	\$ <u>32,000.00</u>
1000	75,900	SY	Driveway & Intersection Treatment As shown on the plans, work fully performed, complete and in place for the sum of: <u>ONE</u> Dollars <u>EIGHTY ONE</u> Cents Per Unit	\$ <u>181</u>	\$ <u>137,379.00</u>
460	120	LF	Corrugated Metal Pipe As shown on the plans, work fully performed, complete and in place for the sum of: <u>SEVENTY FIVE</u> Dollars <u>NONE</u> Cents Per Unit	\$ <u>75.00</u>	\$ <u>9000.00</u>

ITEM No.	EST QTY	UNIT	DESCRIPTION WITH UNIT PRICES WRITTEN IN WORDS	UNIT PRICE (IN FIGURES)	TOTAL (IN FIGURES)
467	2	EA	Safety End Treatment Type II As shown on the plans, work fully performed, complete and in place for the sum of: <u>FIVE THOUSAND</u> Dollars <u>NO</u> Cents Per Unit	\$ 5000 ⁰⁰	\$ 10,000 ⁰⁰
110	1141	CY	Unclassified Excavation As shown on the plans, work fully performed, complete and in place for the sum of: <u>TEN</u> Dollars <u>SIXTY THREE</u> Cents Per Unit	\$ 1043	\$ 12,128 ⁰³
Total Base Bid of Items "1" through "16", complete and in place, for the sum of: <u>THREE MILLION</u> <u>NINE HUNDRED NINETEEN THOUSAND FORTY NINE</u> Dollars <u>NINE</u> Cents (written) LUMP SUM					\$ 3,919,049 ⁰⁹ (figures) LUMP SUM

NOTE: Show amount in both written form and figures. In case of discrepancy between the written amount and figure amount, the written amount shall govern. In case of discrepancy between the unit price and the total base bid (LUMP SUM), the unit price shall govern. The dollar amount for unit pricing will be rounded to the nearest penny.

Bidder must submit a bid for all alternates. Failure to do so may result in the Association deeming such bid to be incomplete and disqualifying same.

All substitutions as an "OR EQUAL" must be approved in writing by the Association at least five (5) working days prior to bid opening.

It is understood that the quantities of work shown in the schedule of bid items are approximate only and are subject to increase or decrease and the undersigned bidder offers to do the work at the unit price as stated in the schedule of bid items.

The undersigned further agrees that the unit prices quoted include all items of work required as necessary for the accomplishment of the projected work and these items include all work indicated on the Plans and Specifications for which no specific pay items have been established.

It is understood and agreed that the selection of Base or Alternate Bid(s) shall be at the complete discretion of the Association and without recourse by the bidder. The right is reserved by the Association as is advantageous to the Association, to reject any and all bids, award a contract based upon submitted bids, or to re-bid the contract and to waive any and all formalities. Bidder understands and agrees that the unit prices provided above shall be used for all additions and deletions from the accepted option.

The undersigned bidder declares that he has personally inspected the site where the work is to be performed and that he has informed himself of all:

- (1) surface and subsurface conditions, constraints, and facilities which may in any way affect the work, in terms of cost, time, and/or construct ability;
- (2) quantities, types, and natures of materials to be incorporated into the work;
- (3) types and specialties of equipment, tools, labor, and superintendent required to perform the work;
- (4) Other matters which in any way will affect the work and/or the performance of the work.

TIME

It shall be the sole responsibility of the Bidder to calculate the total number of calendar days necessary to complete in full the work. Bidder's calculations to establish contract time shall include but not be limited to the following considerations:

- | | |
|---|---|
| A. Foul weather days | H. Coordination with utility franchises |
| B. Weekends | I. Potential utility conflicts with proposed work |
| C. Holidays | J. Reporting of utility conflicts |
| D. Access conditions | K. Inspection coordination |
| E. Storage conditions | L. Reworking of failures |
| F. Traffic control, phasing, and sequencing | M. Material delivery condition |
| G. Construction production | N. Subsurface soils and ground water conditions |

Extensions to contract time for unforeseeable delays must meet the conditions described in GP 7.5 of the General Provisions and must be requested within seven (7) calendar days of the occurrence.

ADVISEMENT

Bidder is advised no construction activity shall occur on Sundays. Normal working hours are weekdays between the hours of 8:00 am to 6:00 pm and on Saturdays between the hours of 9:00 am and 5:00 pm. Upon considering these hours and any and all other conditions not so named affecting the contract time, Bidder shall determine the total number of calendar days to complete in full the work. Bidder shall then submit, as a part of his bid, that total number of calendar days. If awarded the Contract, that number of days submitted shall become a part of this Contract, which the Bidder shall execute along with all other required documents. Bidder's calculations for contract time shall be included under the Bidder's bid surety.

Bidder shall include as a minimum the following number of days in the computation of contract time. The following is normal days per month with rainfall compiled by the State Climatologist, based on National Weather Service records.

January	5 days	May	5 days	September	6 days
February	5 days	June	4 days	October	4 days
March	5 days	July	4 days	November	4 days
April	5 days	August	4 days	December	5 days

The undersigned bidder agrees to commence the work on or before the date so stated in the written Notice to Proceed and to diligently perform all of the work and to substantially complete the work within:

THREE HUNDRED SIXTY / 360 calendar days.
(written) (figure)

Time shall commence on the first day of move-in, but in no case later than the date so stated in the written Notice to Proceed.

Bidder submits as guarantee that he will execute and issue the required contracts, bonds, insurance, and other required agreements and documents, as set forth under the contract, and general and special provisions of agreement, cashier's check or bid bond payable in full without conditions and upon demand to the Pecan Plantation Owners Association in the amount of:

5% G.A.B. Dollars (\$ _____), representing 5% of the Bidder's total base bid price.

Bidder understands and agrees that: 1) should he fail to execute and issue the contract, bonds, insurance, other agreements, and other documents as set forth under the general and special provisions of agreement pertinent to this bid; or 2) if no performance and payment bond is required, should he fail or refuse to deliver all goods, materials, equipment and/or services in accordance with the bid documents, the Association will cash or demand payment under the bid bond for payment of agreed upon liquidated damages. Bidder understands and agrees that, for bidding purpose only, liquidated damages shall be 5% of the Bidder's bid, and that upon execution of the Contract, liquidated damages shall be as stated in the General Provisions.

Bidder acknowledges receipt and incorporation into the bid, the Association's "General Provisions" applicable to all construction/demolition Contracts, a complete copy of which is on file in the office of the Association Purchasing Agent.

Addenda: Bidder acknowledges receipt and incorporation into the bid of addenda as listed below:

Addendum No. 1 dated 5/29

Addendum No. 4 dated 5/19

Addendum No. 2 dated 5/13

Addendum No. 5 dated 5/20

Addendum No. 3 dated 5/16

Addendum No. ___ dated _____

Contact information for checking status of project:

Contact Name MORTY MURPHY
Telephone 940-320-6340

Title Bus. Manager
Fax 940-320-6340

CONTRACTOR SIGNATURE CERTIFYING BID (REQUIRED)

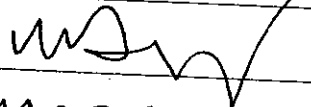
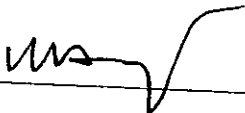
Bidder (Type Firm Name) JRJ PAVING CO.
Print/Type Name of Authorized Representative MORTY MURPHY
Title of Authorized Representative BUS. MANAGER
Address 2277 MASCH BRANCH RD.
City, State, and Zip DENVER, TX. 76207
Phone 940-320-6340
Fax 940-320-6340

Date: 5/20/05
Signature of Authorized Representative [Signature]

SEAL (If bidder is a Corporation)

Non-collusion Statement

The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

Name of Company: JTI POYING, LP.
Address: 2277 MUSCH BRANCH RD.
DENTON, TX 76207
Phone: 940-320-6340
Fax: 940-320-6346
Bidder (Signature): 
Bidder (Print Name): MARTY MURPHY
Position with Company: BUSINESS MANAGER
Signature of Company Official
Authorizing This Bid: 
Company Official
(Printed Name): MARTY MURPHY
Official Position: BUSINESS MANAGER

SALES TAX INFORMATION

If the bidder elects to operate under a separated contract as defined and required by the State Sales and Use Tax, Rule 3.291 (b) (4) and Rule 3.291 (e) (reference, Texas Tax Code, Chapter 151) by obtaining the necessary permit or permits from the State Comptroller's office allowing the purchase of materials for incorporation in this project without having to pay the Limited Sales and Use Tax at the time of purchase, the Bidder shall identify separately from all other charges the total agreed contract price for materials incorporated into the project. Total materials shall include only materials physically incorporated into the realty.

If the bidder operates under a "separated contract," the Purchasing division will furnish the Bidder with an exemption certificate for the applicable materials.

In order to comply with the requirements of Rule 3.291E.(1-5), Bidder shall obtain a sales tax permit.

It shall be necessary that the Bidder issue resale certificates to suppliers.

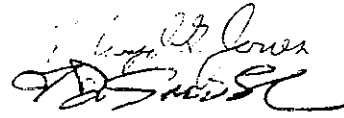
Sales tax application for a sales tax permit and information regarding resale certificates may be obtained by writing to:

Comptroller of Public Accounts
Capitol Station
Austin, Texas 78774

The Bidder may also receive information or request sales tax permit applications by calling the State Comptroller's toll free number, 1-800-252-5555.

Subcontractors are eligible for sales tax exemption if the subcontract is made in such a manner that the charges for materials is separated from all other charges. The procedure described above will effect a satisfactory separation. When subcontracts are handled in this manner, the Bidder shall issue a resale certificate to the subcontractor, who, in turn, must issue a resale certificate to his supplier.

CONTRACT



THIS AGREEMENT is made and entered into this June 10, 2005, by and between the Pecan Plantation Owners Association, of the County of Hood and State of Texas, acting through _____, thereunto duly authorized so to do, Party of the First Part, hereinafter termed ASSOCIATION, and JRJ Paving, LP, of the City of Denton, of the County of Denton and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the mutual covenants hereinafter set forth, the ASSOCIATION and CONTRACTOR agree as follows:

I. DESCRIPTION OF WORK

The CONTRACTOR shall perform all of the work as specified in the contract documents such work generally described as the reconstruction and rehabilitation of approximately 32 miles of roadway phased over three years. Other ancillary items include: temporary traffic control and erosion control.

PECAN PLANTATION PAVEMENT REHABILITATION

Plans and Specifications prepared by:

WILSON & COMPANY ENGINEERS & ARCHITECTS, Inc.

All work shall be performed at CONTRACTOR'S own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, bonds and other accessories and services necessary to complete the work, in accordance with the contract documents.

II. CONTRACT DOCUMENTS

The contract documents shall consist of this written agreement, provisions of the Contract including general, special, and all other provisions, advertisement for bid, instruction to bidders, bidder's bid form, all addenda issued prior to award of contract, all plans, drawings, technical specifications and all other documents identified as pertaining to this agreement all of which has been identified by the ASSOCIATION and the CONTRACTOR. The Contract documents constitute the entire agreement between the ASSOCIATION and CONTRACTOR, and all are as fully a part of the contract as if attached to or repeated in this agreement. The Contract documents may be altered, amended or modified only as provided in the general or special provisions.

III. TIME OF COMMENCEMENT, COMPLETION AND LIQUIDATED DAMAGES

The work to be performed under this contract shall be commenced by CONTRACTOR upon final execution of this contract and notice from ASSOCIATION to proceed. All work to be performed under this contract shall be substantially completed within 360 ^{Days} Calendar of the date of commencement of the work, subject to extensions of time provided in accordance with the contract documents.

Time is of the essence in this contract and it is understood by CONTRACTOR and ASSOCIATION that actual damages caused by the failure of CONTRACTOR to complete the work within the stated time are impractical or extremely difficult to fix or ascertain, and that per diem deduction from the contract price shall be retained by the ASSOCIATION as payment by CONTRACTOR of liquidated damages, and not as penalty for such failure. Such liquidated damages to be assessed and retained as set forth in the contract documents.

IV. CONTRACT PRICE

ASSOCIATION shall pay the CONTRACTOR for the performance of the work, subject to additions and deductions by change order or as otherwise provided in the provisions of the contract, in current funds the contract sum of Three Million Nine Hundred & \$ 3,919,049.09 Nineteen Thousand, Forty Nine (words) Dollars & 09/100 (numbers)

IN WITNESS WHEREOF, the ASSOCIATION AND CONTRACTOR have executed this Agreement in the year and day first above written.

PECAN PLANTATION OWNERS ASSOCIATION CONTRACTOR

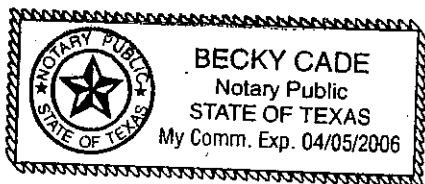
By: _____
Ron Hamel, ASSOCIATION President
Lloyd S. Jones V.P.
A.D. Smith V.P.

By: JRJ Paving, LP
Signature: _____
Printed name: Marty Murphy

ATTEST:
By: _____
Mary Scott 6.M.
Mary Scott, ASSOCIATION Secretary

Printed title: Manager / Estimating

Acknowledgment Denton
State of Texas, County of ~~Hood~~
Before me the undersigned authority on this day personally appeared MARTY MURPHY known to be the person whose name is subscribed to the foregoing document and known to me to be the MANAGER/ESTIMATING (title) of JRJ PAVING, LP (company name) and acknowledged to me that (s)he executed said document with full authority to do so and for the purposes and consideration expressed therein. Given under my hand and seal of office the



14th day of June, 2005
Becky Cade
Notary Public in and for the State of Texas

APPROVED AS TO FORM:
By: _____
Lloyd S. Jones V.P.
ASSOCIATION Attorney or Designee
Lloyd S. Jones V.P.

PERFORMANCE BOND

Bond No.: 08802836 (by Surety)

STATE OF TEXAS)
)
COUNTY OF HOOD)

KNOW ALL MEN BY THESE PRESENTS:

THAT JRJ Paving, LP, of the City Denton, County of Denton State of Texas (as Principals), and Surety, authorized under the laws of the State of Texas to act as Surety on bonds for principals ("Surety") are held and firmly bound unto the Pecan Plantation Owners Association (the "Association") in the penal sum of \$Three Million, Nine Hundred Ninety and 09/100 (\$3,919,049.09) an amount not less than 100% of the approximate total amount of the Contract as evidenced in the Bid) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents;

WHEREAS the Principal has entered into a certain written contract with the Association, dated the June 10, 2005 to which said Contract is hereby referred to and made a part hereof and 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 fully and faithfully executes the work and performance of the Contract in accordance with the Plans, Specifications and Contract Documents, including any extensions thereof, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, 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 V.T.C.A. Government Code Chapter 2253, Public Work Performance and Payment Bonds, as amended, and Article 53.201 of the Property Code, and all liabilities on this Bond shall be determined in accordance with the provisions of said articles to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the Bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the Surety and that no change, extension of time, alteration or addition to the terms of the Contract, or to the work performed thereunder, or the Plans, Specifications or Drawings accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

Surety agrees that the bond provides for the repairs and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of completion and acceptance of the improvement by the Association.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this 10th day of June, 2005.

PRINCIPAL

[Handwritten Signature]

Typed or Printed Name

Title
JRJ Paving, LP

Company
2277 N. Masch Branch Rd.

Address
Denton, TX 76207

City, State, and Zip

SURETY

[Handwritten Signature]

Typed or Printed Name
Robbi Morales

Attorney-in-fact
Title

Colonial American Casualty and Surety Company
Company

2711 N. Haskell Ave., Suite 800
Address
Dallas, TX 75204

City, State, and Zip

SURETY'S ~~HOOD~~ COUNTY REGISTERED AGENT FOR SERVICE (REQUIRED):

DALLAS

Don E. Cornell
Type or Printed Name

2711 N. Haskell Ave., Suite 800
Street Address (P.O. Box is not acceptable)

Dallas, TX 75204
City, State, and Zip

214/989-0000

~~Hood~~ County Telephone No.
Dallas

APPROVED AS TO FORM:

PECAN PLANTATION OWNERS ASSOCIATION

Association Attorney or Designee

ATTEST:

Association Secretary, Mary Scott

PAYMENT BOND

Bond No.: 08802836

(by Surety)

STATE OF TEXAS

)

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HOOD

)

THAT JRJ Paving, LP, of the City of Denton, County of Denton, State of Texas, (as Principal), and Surety, authorized under the laws of the State of Texas to act as Surety on bonds for principals ("Surety") are held and firmly bound unto the Pecan Plantation Owners Association (the "Association") in the penal sum of Three Million, Nine Hundred Ninety Thousand, Fourty Nine and 09/100 \$3,919,049.99 (an amount not less than 100% of the approximate total amount of the Contract) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS the Principal has entered into a certain written contract with the Association, dated the 10th day of June, 2005, to which said Contract is hereby referred to and made a part hereof and as fully and to the same extent as if copied at length herein;

NOW, THEREFORE, the condition of this obligation is such that the bond guarantees the full and proper protection of all claimants supplying labor and material in the prosecution of the work provided for in said Contract and for the use of each claimant, and that conversely should the Principal faithfully perform said Contract and in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said Contract agreed to by the Principal, and according to the true intent and meaning of said Contract, and the claims and specifications hereto annexed, 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 V.T.C.A. Government Code Chapter 2253, Public Work Performance and Payment Bonds, as amended, and Article 53.201 of the Property Code, and all liabilities on this bond shall be determined in accordance with the provisions of said articles to the same extent as if they were fully copied at length herein.

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the 10th day of June, 2005

PRINCIPAL

[Signature]

Typed or printed Name

Title

JRJ Paving, LP

Company

2277 N. Masch Branch Rd.

Address

Denton, TX 76207

City, State, and Zip

SURETY

[Signature]

Typed or printed Name

Robbi Morales

Attorney-in-fact

Title

Colonial American Casualty and Surety Company

Company

2711 N. Haskell Ave., Suite 800

Address

Dallas, TX 75204

City, State, and Zip

SURETY'S ~~HOOD~~ COUNTY REGISTERED AGENT FOR SERVICE (REQUIRED):
DALLAS

Don E. Cornell

Type or Printed Name

2711 N. Haskell Ave., Suite 800

Street Address (P.O. Box is not acceptable)

Dallas, TX 75204

City, State, and Zip

214/989-0000

~~HOOD~~ County Telephone No.

Dallas

APPROVED AS TO FORM:

PECAN PLANTATION OWNERS ASSOCIATION

Association Attorney or Designee

ATTEST:

Association Secretary, Mary Scott

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Jerry P. ROSE, Don E. CORNELL, Robbi MORALES, Lisa M. BONNOT, Anuj JAIN, Chris J. KUTTER and Luke J. NOLAN, JR.**, all of Dallas, Texas, EACH its true and lawful agent and Attorney-in-Fact to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Jerry P. ROSE, Don E. CORNELL, Robbi MORALES, Lisa M. BONNOT, Kathleen DAY, Sheila YOUNG, Christopher J. KUTTER, Luke J. NOLAN, Anuj JAIN, dated July 31, 2002.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 19th day of April, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY



T. E. Smith

T. E. Smith Assistant Secretary

By:

Paul C. Rogers

Paul C. Rogers Vice President

State of Maryland }
 City of Baltimore } ss:

On this 19th day of April, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Dennis R. Hayden

Dennis R. Hayden Notary Public
 My Commission Expires: February 1, 2005



ZURICH

THIS IMPORTANT DISCLOSURE NOTICE IS PART OF YOUR BOND

Fidelity and Deposit Company of Maryland, Colonial American Casualty and Surety Company, Zurich American Insurance Company, and American Guarantee and Liability Insurance Company are making the following informational disclosures in compliance with The Terrorism Risk Insurance Act of 2002. No action is required on your part.

Disclosure of Terrorism Premium

The premium charge for risk of loss resulting from acts of terrorism (as defined in the Act) under this bond is \$ waived. This amount is reflected in the total premium for this bond.

Disclosure of Availability of Coverage for Terrorism Losses

As required by the Terrorism Risk Insurance Act of 2002, we have made available to you coverage for losses resulting from acts of terrorism (as defined in the Act) with terms, amounts, and limitations that do not differ materially as those for losses arising from events other than acts of terrorism.

Disclosure of Federal Share of Insurance Company's Terrorism Losses

The Terrorism Risk Insurance Act of 2002 establishes a mechanism by which the United States government will share in insurance company losses resulting from acts of terrorism (as defined in the Act) after a insurance company has paid losses in excess of an annual aggregate deductible. For 2002, the insurance company deductible is 1% of direct earned premium in the prior year; for 2003, 7% of direct earned premium in the prior year; for 2004, 10% of direct earned premium in the prior year; and for 2005, 15% of direct earned premium in the prior year. The federal share of an insurance company's losses above its deductible is 90%. In the event the United States government participates in losses, the United States government may direct insurance companies to collect a terrorism surcharge from policyholders. The Act does not currently provide for insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year.

Definition of Act of Terrorism

The Terrorism Risk Insurance Act defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

But, no act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

These disclosures are informational only and do not modify your bond or affect your rights under the bond.



Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company's toll-free telephone number for information or to make a complaint at:

1-800-654-5155

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

**P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771**

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning the premium or about a claim, you should first contact Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

DIVISION 1 PROPOSAL REQUIREMENTS AND OTHER GENERAL CONDITIONS

PURPOSE

The purpose of this document is to accomplish the following:

- provide a common framework for public works construction,
- simplify the bidding process for both local governments and contractors,
- provide a continuing amendment process to meet the changing demands for new technologies, new materials and improved methods, and
- decrease construction costs for public works projects.

It is not the intent of these specifications to create or otherwise establish or designate any particular class or group of persons or products that will or should be especially protected or benefited by the terms of these standard specifications.

Nor is it the intent of these specifications to exclude alternative materials or prohibit alternative construction methods.

ITEM 1.0. DEFINITIONS

The following words and expressions, or pronouns used in their place, shall wherever they appear in this contract be construed as follows, unless a different meaning is clear from the context:

Addendum, Bulletin or Letter of Clarification: Any additional contract provisions, or change, revisions or clarification of the contract documents issued in writing by the OWNER, to prospective bidders prior to the receipt of bids.

Contract or Contract Documents: The written agreement covering the performance of the work. The contract and contract documents include the advertisement, instructions to bidders, proposal, addendum, specifications, including the general, special and technical conditions, provisions, plans or working drawings — and any supplemental changes or agreements pertaining to the work or materials therefor; and bonds and any additional documents incorporated by reference in the above.

CONTRACTOR: The person, persons, partnership, firm, corporation, association or organization, or any combination thereof, entering into the contract for the execution of the work, acting directly or through a duly authorized representative.

Other CONTRACTORS: Any contractor, other than the CONTRACTOR or his subcontractors, who has a direct contact with the OWNER for work on or adjacent to the site of the work.

Contract Work: Everything expressly or impliedly required to be furnished and done by the CONTRACTOR by any one or more parts of the contract documents, except "extra work" as hereinafter defined; it being understood that, in case of any inconsistency between any part or parts of this contract, the OWNER shall determine which shall prevail in accordance with Item 1.20. hereof.

Engineer: The term "Engineer" means the Engineer or his duly authorized representative. The Engineer shall be understood to be the engineer of the OWNER, and nothing contained in the contract documents shall create any contractual or agency relationship between the Engineer and the CONTRACTOR.

Extra Work: Work other than that which is expressly or impliedly required by the contract documents at the time of the execution of the contract.

Change Order: A written order to the CONTRACTOR authorizing and directing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or the contract time.

Contract Price: The total monies payable to the CONTRACTOR under the terms and conditions of the contract documents. When used in such context, it may also mean the unit price of an item of work under the contract terms.

OWNER'S Representative: The Engineer or other duly authorized assistant, agent, engineer, inspector or superintendent acting within the scope of the particular duties instructed to him.

Drawings or Contract Drawings: Only those drawings specifically entitled as such and as specified in the contract, or

in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.

Inspector: Any representative of the OWNER designated to inspect the work.

Major Item: A major item is any line item of the work to be performed which amounts to 5 percent or more of the total contract amount.

Materialman or Supplier: Any subcontractor contracting with the CONTRACTOR, or any of his subcontractors, to fabricate or deliver or who actually fabricates or delivers, materials, supplies or equipment to be consumed or incorporated into the work.

Notice: Written notice effective the date of the postmark thereon, or if hand delivered, effective the date of hand delivery.

OWNER: The Pecan Plantation Owners Association identified throughout the contract documents or the entity as specifically identified in the contract. The term OWNER means the OWNER or its authorized representative.

Payment Bond: The approved form of security furnished by the CONTRACTOR and his sureties for the protection of all claimants supplying labor and materials in the prosecution of the work.

Performance Bond: The approved form of security furnished by the CONTRACTOR and his sureties conditioned upon the faithful performance of the work in strict accordance with the plans, specifications and contract documents.

Proposal: The written statement or statements duly submitted to the OWNER by the person, persons, partnership, company, firm, association or corporation proposing to do the work contemplated, including the approved form on which the formal bids for the work are to be proposed.

Plan or Plans: All the drawings pertaining to the contract and made a part thereof, including any supplementary drawings or addenda as the Engineer may issue in order to clarify other drawings, or for the purpose of showing changes in the work hereinafter authorized, or for showing details not shown therein.

Specifications or Contract Specifications: All of the general, special and technical conditions or provisions, and all addendum or supplements thereto.

Site: The area upon or in which the CONTRACTOR'S operations are carried on, and such other areas adjacent thereto as may be designated as such by the OWNER.

Subcontractors: Any persons, firm or corporation, other than employees of the CONTRACTOR, who or which contracts with the CONTRACTOR to furnish, or who actually furnishes, labor and/or materials and equipment at or about the site.

Sureties: The corporate bodies which are bound by such bonds as are required with and for the CONTRACTOR. The sureties engaged to be responsible for the entire and satisfactory fulfillment of the contract, and for any and all requirements as set out in the specifications, contract or plans.

The Work: All work including the furnishing of all labor, materials, tools, equipment, required submittals and incidentals to be performed by the CONTRACTOR under the terms of the contract.

Directed, Required, Approved and Words of Like Import: Whenever they apply to the work or its performance, the words "directed," "required," "permitted," "ordered," "designated," "established," "prescribed" and words of like import used in the contract, specifications or upon the drawings shall imply the direction, requirement, permission, order, designation or prescription of the OWNER; and "approved," "acceptable," "satisfactory" and words of like import shall mean approved by, acceptable to or satisfactory to the OWNER. Equal: Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in the "or equal" clause.

Special Provisions or Conditions: The special clauses, setting forth conditions or requirements peculiar to the specific project involved, supplementing the standard or general specifications and taking precedence over any conditions or requirements of the standard or general specifications with which they are in conflict.

Working Time, Completion Time or Contract Time: The time set forth in the contract for the performance and completion of the work contracted for. The time may be expressed as calendar days, working days or a specific date.

Calendar Day or Days: Any successive days of the week or month, no days being excepted.

Working Day: A working day is defined as a calendar day not including Saturdays, Sundays or those legal holidays as specified in the list prepared by the OWNER for contract purposes, in which weather or other conditions not under the control of the CONTRACTOR shall permit the performance of the principal units of work underway for a continuous period of not less than seven hours. Nothing in this definition shall be construed as prohibiting the CONTRACTOR from working on Saturdays if he so desires and permission of the OWNER has been granted. Work on Sundays shall not be permitted except in cases of extreme emergency and then only with the written permission of the OWNER. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as week days. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the contract.

Abbreviations: Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as follows:

ABBREVIATIONS

AASHTO American Association of State Highway and Transportation Officials
Lb. Pound or Pounds
AATCC American Association of Textile Chemists and Colorists
LF. Linear foot or feet
Lin. Linear
ANSI American National Standards Institute **LOI** Loss on Ignition
API American Petroleum Institute **LSG** Lone Star Gas Co.
AREA American Railway Engineering Assn. **m** Meter
ASA American Standards Association **Max.** Maximum
Asph. Asphalt
MH Manhole
ASTM American Society for Testing and Materials
Min. Minimum
mm Millimeter
AT&SF Atchinson, Topeka and Santa Fe Railroad
Mono. Monolithic
No. Number
Ave. Avenue
OD Outside Diameter
AWS American Welding Society % Percent
AWWA American Water Works Association **PI** Plasticity Index
Bldv. Boulevard **psi** Pounds per Square Inch
C Centigrade
PVC Polyvinyl Chloride
CI Cast Iron **R** Radius
CL Center Line
Reinf. Reinforced or reinforcing

Rem. Remove
cm Centimeter **Rep.** Replace
CO Cleanout **R/W,**
Conc. Concrete
R of W,
Cond. Conduit
ROW Right-of-Way
Corr. Corrugated
Sani., San. Sanitary
Cu. Cubic
Sec. Second
Culv. Culvert
Sq. Square
CY Cubic Yard
St. Street or Storm
Dia. Diameter
Std. Standard
Str. Strength
Dr. Driveway
SWBT Southwestern Bell Telephone Company
Elev. Elevation
SY Square Yard
F Fahrenheit
Ft. or ' Foot or Feet
TPL Texas Power & Light Company
Gal. Gallon
TxDOT, Texas Department of Transportation
Hr. Hour
Vert. Vertical
Vol. Volume
ID Inside Diameter
In. or " Inch or Inches **Yd.** Yard

ITEM 1.1. PROPOSAL FORM

The OWNER shall furnish bidders with proposal forms which shall state the general location and description of the contemplated work and which shall contain an itemized list of the items of work to be done or materials to be furnished, and upon which bid prices are asked. The proposal form shall specify the form and amount of the proposal guaranty.

ITEM 1.2. QUANTITIES IN PROPOSAL FORM

The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished, and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the CONTRACTOR only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications; and it is understood that the quantities may be increased or decreased as hereinafter provided, without in any way invalidating the bid prices.

ITEM 1.3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF THE WORK

Bidders are advised that the plans, specifications and other documents on file as stated in the advertisement shall constitute all the information which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, contract and bond forms carefully; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make an intelligent proposal.

No information given by the OWNER or any official thereof, other than that shown on the plans and contained in the specifications, proposals and other contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting his bid, represents and warrants: that he has prepared his bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that he has reviewed, studied and examined the bid prior to the signing and submission of same; and that he was cognizant of the terms of his proposal, verified his calculations and found them to be correct and agrees to be bound thereby.

ITEM 1.4. PREPARATION OF PROPOSAL

The bidder shall submit his proposal on the forms furnished by the OWNER. All blank spaces in the form shall be correctly filled in and the bidder shall state the prices, both in words and numerals, for which he proposes to do the work contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly. In cases of discrepancy between the price written in words and price written in figures, the price written in words shall govern. If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent. If the proposal is submitted by an association or partnership, the name and address must be given and the proposal signed by a duly authorized member of the association or partnership. If the proposal is submitted by a corporation, the corporate name and business address must be given and the proposal signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the proposal must be properly certified and must be in writing and submitted with the proposal. The proposal shall be executed in ink. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

ITEM 1.5. PROPOSAL GUARANTY

No proposal shall be considered unless it is accompanied by a cashier's check on any state or national bank or acceptable bidder's bond, payable unconditionally to the OWNER. The cashier's check or bidder's bond shall be in the amount of not less than five percent of the total amount of the bid. The proposal guaranty is required by the OWNER as evidence of good faith and as a guarantee that if awarded the contract, the bidder shall execute the contract and furnish the required bonds and evidence of insurance within 10 days after the award of said contract or pay the damages as set forth below. The said bidder's bond shall be conditioned that, if the proposal is withdrawn after the bids have been opened or the CONTRACTOR refuses to execute the contract in accordance with his proposal and provide the required surety bonds, the CONTRACTOR and the surety shall become liable to the OWNER for the amount of the bidder's bond. If a bidder's bond is used, the surety thereon shall designate an agent in the OWNER'S county to whom requisite notices may be delivered and upon whom service of process may be had.

In the event a cashier's check is submitted along with the proposal of the bidder, and the CONTRACTOR does not execute the contract and provide the required surety bonds within 10 days after award of said contract, or withdraws his bid after bids have been opened, the OWNER shall be entitled to the proceeds of such check.

ITEM 1.6. FILING OF PROPOSALS

No proposal shall be considered unless it is filed at the place and within the time limit for receiving proposals as stated in the advertisement. Each proposal shall be in a sealed envelope, plainly marked with the word "Proposal" and the name or description of the project as designated in the advertisement.

ITEM 1.7. WITHDRAWING PROPOSALS

Proposals filed with the OWNER can be withdrawn or modified and re-deposited prior to the time set for opening proposals. Request for non-consideration of proposals must be made in writing addressed to the OWNER prior to the time set for opening proposals. After other proposals are opened and publicly read, the proposal for which non-consideration is properly requested may be returned unopened. The proposal may not be withdrawn after the bid opening has commenced. The bidder, in submitting the same, warrants and represents that his bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid shall not and cannot be withdrawn after opening because of any mistake committed by the bidder; provided, however, that any bidder may withdraw his bid 60 days after the actual date of opening thereof, should no award have been made to such bidder.

ITEM 1.8. OPENING PROPOSALS

The proposals filed with the OWNER shall be opened at the time stated in the advertisement, or any subsequently issued addendum, and publicly read aloud, and shall thereafter remain on file with the OWNER. No contract shall be awarded based on such proposals until after at least two days have elapsed.

ITEM 1.9. IRREGULAR PROPOSALS

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, unbalanced values or conditions not called for, unauthorized alternate bids or other irregularities of any kind. The OWNER may reject any proposal containing any such irregularity. The OWNER, however, reserves the right to waive any irregularities and to make the award in the best interest of the OWNER.

The bidder or CONTRACTOR shall not take advantage of any error in the bidding or contract documents. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown on or mentioned in both. In case of any apparent difference between the drawings and specifications, or any other apparent error which the bidder or CONTRACTOR may discover, he shall refer the matter at once to the OWNER as to which, in accordance with the intent of the contract documents, shall govern. The OWNER shall have the right to correct any error discovered.

ITEM 1.10. REJECTION OF PROPOSALS

The OWNER reserves the right to reject any or all proposals; and all proposals submitted are subject to this reservation. Proposals shall be rejected for any of the following specific reasons:

- (a) proposal received after the time limit for receiving proposals as stated in the advertisement or any subsequently issued addendum;
- (b) proposal unaccompanied by the required bid security;
- (c) proposal constituting a non-responsive bid;
- (d) proposal containing unsolicited conditions or qualifications.

ITEM 1.11. DISQUALIFICATION OF BIDDERS

Bidders may be disqualified and their proposal not considered for any of the following specific reasons:

- (a) reason for believing collusion exists among the bidders;
- (b) reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated;
- (c) the bidder or his surety being currently in any litigation against the OWNER, or where such litigation is contemplated or imminent, in the sole opinion of OWNER;
- (d) the bidder being in arrears on any existing contract or having defaulted on a previous contract;
- (e) lack of competency, responsibility or financial capability as revealed by the bid questionnaires, financial statement, etc.;
- (f) uncompleted work which in the judgment of the OWNER shall prevent or hinder the prompt completion of additional work if awarded;
- (g) failure of bidder to use OWNER'S form of bid bond in submitting his bid, or submission of a cashier's check drawn on a state or national bank not located in the OWNER'S jurisdictional area;
- (h) unbalanced value of any bid items.

ITEM 1.12. CONSIDERATION OF CONTRACT

After proposals are opened, the proposals shall be tabulated for comparison on the basis of the bid prices and quantities shown in the proposal. Until final award of the contract, the OWNER reserves the right to reject any or all

proposals, to waive technicalities or irregularities at its option, to re-advertise for new proposals or proceed to do the work otherwise in the best interests of the OWNER. Each bidder shall be furnished a copy of the bid tabulation upon request.

ITEM 1.13. AWARD OF CONTRACT AND COMMENCEMENT OF WORK

The award, if made, shall be to the lowest responsible bidder within 90 days after the opening of proposals; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the contract. Following award and execution of the contract and required surety bonds, the CONTRACTOR shall commence work within 10 days from the date specified in a written work order to be issued by the OWNER. No work shall commence prior to the issuance of such work order or before the required insurance has been obtained by the CONTRACTOR, with certificates filed with the OWNER evidencing the required coverage to be in force. Should the OWNER unreasonably delay the issuance of the work order through no fault of the CONTRACTOR, the CONTRACTOR shall be entitled only to an equitable extension of contract time, the contract amount to remain unchanged.

ITEM 1.14. RETURN OF PROPOSAL GUARANTY

The OWNER shall normally return the proposal guaranties accompanying all proposals within 10 working days after bid opening except for the three apparent low proposals. The three apparent low proposal guaranties shall be retained by the OWNER until the required contract and surety bonds have been executed, after which they shall be returned.

ITEM 1.15. SURETY BONDS

(a) Contractor Surety. With the execution and delivery of the contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required, performance and payment bonds in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended and Article 7.19-1 of the Insurance Code, as amended. These required surety bonds are set forth in Item 1.21.1. The sureties shall be listed in the most current Federal Register Treasury List. The OWNER reserves the right to reject any and all sureties.

(b) Developer Surety. In order to insure that it might not incur liabilities, a city may require, before it gives approval of the plans for development, that the OWNER of said development shall provide sufficient surety to guarantee that claims against such development, in the event of default, shall be satisfied. Claimants may also seek recovery by other means.

ITEM 1.16. NOTICE TO PROCEED

Upon receipt of the executed contract and the required surety bonds, a notice to proceed shall be issued indicating the date upon which the contract time shall start and the projected date of completion.

ITEM 1.17. EXECUTION OF CONTRACT

The person or persons, partnership, company, firm, association or corporation to whom a contract is awarded shall within 10 working days after receipt of the contract sign the necessary agreements entering into the required contract with the OWNER. No contract shall be binding on the OWNER until all authorized signatures required by law have been affixed and the executed contract delivered to the CONTRACTOR.

ITEM 1.18. FAILURE TO EXECUTE CONTRACT

The failure of the bidder to execute the contract or provide the required statutory surety bonds within 10 working days after the contract is awarded shall constitute a breach of his proposal and the OWNER may annul the award and retain the proceeds of the bid security. In the event the OWNER should re-advertise for bids, the defaulting CONTRACTOR shall not be eligible to bid.

ITEM 1.19. PRIORITY OF CONTRACT DOCUMENTS

In case of conflict between contract documents, priority of interpretation shall be in the following order: signed agreement (or contract), performance and payment bonds, proposal, special provisions (or conditions), advertisement for bids (or invitation to bidders, or request for proposals), project (or contract) drawings, The Specification adopted by the Texas Department of Transportation June 2004, standard drawings, referenced specifications. (Reference Items 1.20.1., 1.20.3., 1.39., and 1.41.)

ITEM 1.20. CORRELATION AND INTENT OF DOCUMENTS

The contract documents are complementary and what is called for by any one shall be as binding as if called for by all. The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the contract documents. It is not intended to mention every item of work in the specifications which can be adequately shown on the drawings nor to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable there from as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the contract, shall affect or modify any of the terms, conditions or obligations contained in the contract documents.

1.20.1. CONTRACT DRAWINGS AND SPECIFICATIONS

The OWNER shall furnish the CONTRACTOR, without charge, such copies of the contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and specifications shall be accessible at all times to the OWNER at the job site.

The plans, these specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the contract. All requirements occurring in any of them is binding. In cases of discrepancies, figure dimensions shall govern over scaled dimensions, plans shall govern over specifications, and special provisions shall govern over both general and standard specifications.

1.20.2. SUPPLEMENTAL DRAWINGS AND SPECIFICATIONS

In order to carry out the intent of the contract documents and to assist the CONTRACTOR in performing his work, the OWNER, after the execution of the contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the contract documents and reasonably inferable there from. Therefore, no extra costs shall be allowed by the OWNER on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the contract documents, incurring extra costs, unless the CONTRACTOR has first brought the matter, in writing, to the OWNER'S attention for adjustment before proceeding with the work covered by such.

If the OWNER shall decide that there is no departure from the requirements of the contract documents, the CONTRACTOR shall then proceed with the work as shown, specified or directed. If the OWNER shall decide that extra work is involved, he shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued in accordance with Item 1.37. herein.

1.20.3. ERRORS AND CORRECTIONS IN DRAWINGS AND SPECIFICATIONS

The CONTRACTOR shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications; and the Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the contract documents. In case of any errors, omissions or discrepancies in the drawings or specifications, the CONTRACTOR shall promptly submit the matter to the OWNER who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the CONTRACTOR without this determination and instructions shall be at the CONTRACTOR'S own risk and expense. The work is to be made complete as intended by the contract documents.

1.20.4. EXISTING STRUCTURES

The plans show the general locations of all known surface and subsurface structures. The locations of many gas mains, water mains, conduits, sewers, other utilities, etc., however, are unknown, and the OWNER assumes no responsibility for failure to show any or all of these structures on the plans or to show them in their exact locations. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades; or requires the building of special work, provisions for which are not made in the plans and proposal, in which case the provisions in these specifications for extra work shall apply.

ITEM 1.21. CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this contract to him, the CONTRACTOR represents and warrants:

- (a) that he is financially solvent, and sufficiently experienced and competent to perform the work;
- (b) that the facts stated in the proposal and the information given by him pursuant to the bidding documents are true and correct in all respects;
- (c) that he has read, understood and complied with all the requirements set forth in the bidding documents;
- (d) that he is familiar with and understands all laws and regulations applicable to the work; and
- (e) unless otherwise specifically provided for in the contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this contract, in the manner and within the time herein prescribed.

By executing the contract, the CONTRACTOR represents that he has visited the site of work, has fully familiarized himself with the local and on-site conditions under which the work is to be performed and has correlated his observation with the requirements of the contract documents. In addition, the CONTRACTOR represents that he has satisfied himself as to subsurface conditions at the site of the work. Information, data and representations contained in the contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that he shall make no claims for damages, additional compensation or extension of time against

the OWNER because of encountering actual conditions in the course of the work which vary or differ from conditions or information contained in the contract documents. All risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

1.21.1. SURETY BONDS

With the execution and delivery of the contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required, the surety bonds specified hereunder. Without exception, the OWNER'S bond forms must be used, and exclusive venue for any lawsuit in connection with such bonds shall be specified as the county in which the OWNER'S principal office is located. Such surety bonds shall be in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended, and Article 7.19-1 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the contract price with or without notice to the surety, but in no event shall a change which reduces the contract amount reduce the penal amount of such bonds.

(a) Performance Bond. A good and sufficient bond in an amount not less than 100 percent of the approximate total amount of the contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the work and performance of the contract in accordance with the plans, specifications and contract documents, including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the contract documents.

(b) Payment Bond. A good and sufficient bond in an amount not less than 100 percent of the approximate total amount of the contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the work provided for in said contract and for the use of each claimant.

(c) Sureties. No sureties shall be accepted by the OWNER who are now in default or delinquent on any bonds or who are interested in any litigation against the OWNER. All bonds shall be made on forms furnished by the OWNER and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the OWNER. The sureties shall be listed in the most current Federal Register Treasury List. Each bond shall be executed by the CONTRACTOR and surety. Each surety shall designate an agent resident in the OWNER'S jurisdictional area acceptable to the OWNER to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. The OWNER reserves the right to reject any and all sureties.

(d) Additional or Substitute Bonds. If at any time the OWNER is or becomes dissatisfied with any surety, then upon the performance or payment bond, the CONTRACTOR shall, within five days after notice from the OWNER to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the OWNER.

ITEM 1.22. CONTRACTOR'S RESPONSIBILITIES

1.22.1. PERFORMANCE OF THE WORK

In addition to those matters elsewhere expressly made the responsibility of the CONTRACTOR, the CONTRACTOR shall have the full and direct responsibility for the performance and completion of the work under this contract and for any act or neglect of the CONTRACTOR, his agents, employees or subcontractors. He shall bear all losses, if any, resulting

on account of the amount and character of the work, or because the conditions under which the work must be done are different from what were estimated or anticipated by him, or because of weather, floods, elements or other causes.

1.22.2. INDEMNIFICATION

The CONTRACTOR and his sureties shall indemnify, defend and save harmless the OWNER and all of its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons or property on account of the operations of the CONTRACTOR, his agents, employees or subcontractors; or on account of any negligent act or fault of the CONTRACTOR, his agents, employees or subcontractors in the execution of said contract; or on account of the failure of the CONTRACTOR to provide the necessary barricades, warning lights or signs; and shall be required to pay any judgment, with cost, which may be obtained against the OWNER growing out of such injury or damage.

The CONTRACTOR likewise covenants and agrees to, and does hereby, indemnify and hold harmless the OWNER from and against any and all injuries, loss or damages to property of the OWNER during the performance of any of the terms and conditions of this Contract, whether arising out of or in connection with or resulting from, in whole or in part, any and all alleged acts or omissions of officers, agents, servants, employees, contractors, subcontractors, licenses or invitees of the OWNER.

1.22.3. SUPERVISION AND CONSTRUCTION PROCEDURES

The CONTRACTOR shall supervise and direct all the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

The CONTRACTOR shall carefully study and compare the contract documents and shall at once report to the OWNER any error, inconsistency or omission he may discover. The CONTRACTOR shall perform no portion of the work at any time without contract documents or, where required, approved shop drawings, product data or samples for such portion of the work.

The CONTRACTOR shall be responsible to the OWNER for the acts and omissions of his employees, subcontractors and their agents, employees and subcontractors performing any of the work under a contract with the CONTRACTOR.

The CONTRACTOR shall not be relieved from his obligations to perform the work in accordance with the contract documents either by the activities or duties of the OWNER in his administration of the contract, or by inspections, tests or approvals required or performed by persons other than the CONTRACTOR.

1.22.4. LABOR AND MATERIALS

Unless otherwise provided in the contract documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

The CONTRACTOR shall at all times enforce strict discipline and good order among his employees and shall not employ on the work site any unfit person or anyone not skilled in the task assigned to him.

1.22.5. PROGRESS SCHEDULE

The CONTRACTOR, immediately after being awarded the contract, shall prepare and submit for the OWNER'S information an estimated progress schedule for the work. The progress schedule shall be related to the entire project to the extent required by the contract documents and shall provide for expeditious and reasonable execution of the work. The progress schedule shall be updated upon request by the OWNER.

1.22.6. PERFORMANCE OF THE WORK

The CONTRACTOR shall begin the work to be performed under this contract not later than 10 days from the date specified in the work order and shall conduct the work in such a manner and with sufficient equipment, material and labor as is necessary to insure its completion within the working time. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, and it shall be the CONTRACTOR'S responsibility to execute the work in the most expeditious manner.

Work shall be done only during the regular and commonly accepted and prescribed working hours. No work shall be done on nights, Sundays or regular holidays unless permission is given by the OWNER. The rate of progress shall be such that the whole work shall be performed and the premises cleaned up in accordance with the contract within the working time established in the contract, unless an extension of time is made in the manner hereinafter specified.

ITEM 1.23. COMPLIANCE WITH LAWS

The CONTRACTOR shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

The CONTRACTOR shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions.

All work required under this contract shall comply with all requirements of law, regulation, permit or license. If the CONTRACTOR finds that there is a variance, he shall immediately report this to the OWNER for resolution.

ITEM 1.24. PROTECTION OF WORK AND OF PERSONS AND PROPERTY

1.24.1. PROTECTION OF WORK

During performance and up to date of final acceptance, the CONTRACTOR shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the CONTRACTOR shall promptly replace or repair such work, whichever the OWNER shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the OWNER'S approval of or failure to prohibit means and methods of construction used by the CONTRACTOR. All risk of loss or damage to the work shall be borne solely by the CONTRACTOR until final completion and acceptance of all work by the OWNER, as evidenced by the OWNER'S issuance of a certificate of acceptance.

1.24.2. PROTECTION OF PERSONS AND PROPERTY

The CONTRACTOR shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site. No separate compensation shall be paid to the

CONTRACTOR for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property.

The CONTRACTOR shall assume all duties owed by the OWNER to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the CONTRACTOR shall at his own cost and expense provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, lights, signs and other precautionary measures for the protection of persons or property as may be prudent or necessary, or as are required by law. The CONTRACTOR'S responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs and lights and other precautionary measures shall not cease until the project shall have been completed and accepted by the OWNER, and shall cease when the certificate of acceptance is issued by the OWNER as mentioned in Item 1.51.

If the OWNER discovers that the CONTRACTOR has failed to comply with the applicable federal and state law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the OWNER may order the CONTRACTOR to take such additional precautionary measures as required by law to be taken to protect persons and property.

In addition, the CONTRACTOR shall be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such damage, the OWNER may order the damaged portion immediately removed and replaced by and at the cost and expense of the CONTRACTOR.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas Department of Transportation.

1.24.3. TRENCH SAFETY

The CONTRACTOR shall be responsible for complying with state laws and federal regulations relating to trench safety, including those which may be enacted during the performance under this contract. The CONTRACTOR shall be responsible for selecting an appropriate method of providing trench safety after due consideration of the job conditions, location of utilities, pavement conditions and other relevant factors. Slope-back methods which may result in unnecessary displacement of utilities and/or destruction of pavement may not be used without permission from the OWNER. The CONTRACTOR shall be responsible for providing to the OWNER an acceptable trench safety plan signed and sealed by a Professional Engineer qualified to do such work and registered in Texas. Devices used to provide trench safety such as trench shields and shoring systems will be likewise certified by professional engineers registered in the State of Texas or by a professional engineer registered in the state of manufacture of the shield.

1.24.4. PAYMENT FOR TRENCH SAFETY

Payment for trench safety shall be by the lineal feet of trench exceeding a depth of five (5) ft. Excavation for slope-back methods shall be subsidiary to the trench safety pay item including replacement and re-compaction. Excess excavation for other trench safety methods is also subsidiary to the trench safety pay item. Costs relating to the preparation of the trench safety plan including geotechnical investigation, testing and report preparation fees are all subsidiary to the pay item for trench safety. Should trench safety measures be required during contract performance where no pay item has been provided, then the CONTRACTOR shall immediately notify the OWNER and, if directed to do so, provide trench safety under the provisions of Item 1.37.3. and/or 1.38. Should the OWNER fail to authorize the work as provided for in 1.37.3. and 1.38., then the CONTRACTOR shall proceed under the provisions of Items 1.39. and 1.40. Trench safety requirements are mandatory and may not be waived.

1.24.5. PAYMENT FOR SPECIAL SHORING

Payment for special shoring, if any, shall be based on the square feet of shoring used.

ITEM 1.25. PAYMENT FOR LABOR AND MATERIAL; NO LIENS

The CONTRACTOR for himself or any of his subcontractors shall pay all indebtedness which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any subcontractor shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

ITEM 1.26. INSURANCE

1.26.1. CONTRACTOR'S INSURANCE

Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the contract the CONTRACTOR and each subcontractor at their own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. Certificates of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, nonrenewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. A model Certificate of Insurance is illustrated in Appendix A.2. Coverage shall be of the following types and not less than the specified amounts:

(a) workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease — each employee, \$500,000 disease-policy limit.

(b) commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring CONTRACTOR'S (or subcontractor's) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$2,000,000
Products — Components/Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

Fire Damage (any one fire)	\$ 500,000
Medical Expense (any one person)	\$ 50,000

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with OWNER.

(c) comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence; for bodily injury, death or property damage. Such insurance shall include coverage for loading and unloading hazards.

1.26.2. OWNER'S PROTECTIVE LIABILITY INSURANCE

CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this contract an OWNER'S protective liability insurance policy naming the OWNER and the Engineer as insured's for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR'S liability insurance with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

1.26.3. "UMBRELLA" LIABILITY INSURANCE

If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring CONTRACTOR for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insured's.

1.26.4. RAILROAD PROTECTIVE INSURANCE

When required in the Special Provisions, CONTRACTOR shall obtain, maintain and present evidence of railroad protective insurance (RPI). The policy shall be in the name of the railroad company having jurisdiction over the right-of-way involved. The minimum limit of coverage shall meet the specifications provided by the railroad company. The OWNER shall specify the amount of RPI necessary.

1.26.5. POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

(a) Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:

- (1) each policy shall name the OWNER as an additional insured as to all applicable coverage;
- (2) each policy shall require that 30 days prior to the cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to OWNER by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to OWNER is required;
- (3) the term "OWNER" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the OWNER and individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the OWNER;

- (4) the policy phrase "other insurance" shall not apply to the OWNER where the OWNER is an additional insured on the policy; and
- (5) all provisions of the contract concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

(b) Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:

- (1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final;
- (2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
- (3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.

(c) CONTRACTOR agrees to the following:

- (1) CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the OWNER, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
- (2) companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
- (3) approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability; and
- (4) no special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the contract price and the contract unit prices. Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

ITEM 1.27. MATERIALS AND WORKMANSHIP; WARRANTIES AND GUARANTEES

Unless otherwise expressly provided in the contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR'S compliance with these requirements.

1.27.1. "OR EQUAL" CLAUSE

Whenever a material or article required is specified or shown on the plans, by using the name of a proprietary product or of a particular manufacturer or vendor, any material or article which the Engineer determines shall perform adequately the duties imposed by the general design or which the Engineer deems to be of similar appearance (in cases where appearance is of importance) shall be considered equal and satisfactory, provided the material or article

so proposed is of equal substance and function. Authorization for any substitution of materials or articles must be obtained by the CONTRACTOR from the Engineer before proceeding with such substitution.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the Engineer shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the Engineer.

1.27.2. MATERIALS AND EQUIPMENT

The CONTRACTOR shall be free to secure the approved materials, equipment and articles from sources of his own selection. However, if the OWNER finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work; the OWNER shall have the right to require the original source of supply changed by the CONTRACTOR. The CONTRACTOR shall have no claim for extra cost or damage because of this requirement.

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this contract shall be new unless otherwise specified in the contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR's sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

1.27.3. WORKMANSHIP

The CONTRACTOR shall promptly correct or replace all work rejected by the OWNER as defective or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated, installed or completed. The CONTRACTOR shall bear all costs of correcting such rejected work, including costs incurred for additional services made necessary thereby.

1.27.4. SPECIAL WARRANTY

If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the contract documents, any of the work is found to be defective or not in accordance with the contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the contract. The OWNER shall give such notice promptly after discovery of the condition. The CONTRACTOR shall remove from the site all portions of the work which are defective or nonconforming and which have not been corrected unless removal is waived in writing by the OWNER.

1.27.5. SUBCONTRACTORS' AND MANUFACTURERS' WARRANTIES

All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the Engineer, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

1.27.6. CORRECTED WORK WARRANTY

Any work repaired or replaced, pursuant to this section, shall be subject to the provisions of this section to the same extent as work originally performed.

1.27.7. RIGHTS AND REMEDIES

The rights and remedies of the OWNER provided in this section are in addition to, and do not limit, any rights or remedies afforded to the OWNER by law or any other provision of the contract documents, or in any way limit the OWNER'S right to recovery of damage due to default under the contract.

ITEM 1.28. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Shop drawings are drawings, diagrams, schedules and other data specially prepared for the work by the CONTRACTOR or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the work. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work shall be judged.

The CONTRACTOR shall provide, review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the OWNER or any separate CONTRACTOR, all shop drawings, product data and samples required by the contract documents.

By approving and submitting shop drawings, product data and samples, the CONTRACTOR represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or shall do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents.

As the Engineer's review is only for general conformance with the requirements of the contract documents, the CONTRACTOR shall not be relieved of responsibility for any deviation from the requirements of the contract documents by the Engineer's approval of shop drawings, product data or samples unless the CONTRACTOR has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The CONTRACTOR shall not be relieved from responsibility for errors or omissions in the shop drawings, product data or samples by the Engineer's approval thereof. The CONTRACTOR shall direct specific attention, in writing or on resubmitted shop drawings, product data or samples, to revisions other than those requested by the Engineer on previous submittals.

The CONTRACTOR shall be responsible for delays caused by rejection of the submittal of inadequate or incorrect shop drawings, product data or samples. The CONTRACTOR shall be responsible for seeing that any "approved" copies of shop drawings bearing the approval of the Engineer are allowed on the job site. The CONTRACTOR shall be responsible for providing all copies of approved shop drawings necessary for the construction operations.

The CONTRACTOR shall keep adequate records of submittal and approvals so that an accurate up-to-date record file is maintained at the job site at all times.

No portion of the work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the Engineer. All such portions of the work shall be in accordance with approved submittals.

ITEM 1.29. MEANS AND METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the contract drawings, specifications or bulletins, the means and methods of construction shall be such as the CONTRACTOR may choose; subject, however, to the OWNER'S right to prohibit means and methods proposed by the CONTRACTOR which in the OWNER'S judgment:

- (a) shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
- (b) shall cause unnecessary or unreasonable inconvenience to the public; or
- (c) shall not produce finished work in accordance with the requirements of the contract documents; or
- (d) shall not assure the work to be completed within the time allowed by the contract.

The OWNER'S approval of the CONTRACTOR'S means or methods of construction, or the OWNER'S failure to exercise his right to prohibit such means or methods, shall not relieve the CONTRACTOR of his responsibility for the work or of his obligation to accomplish the result intended by the contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the CONTRACTOR against the OWNER.

1.29.1. SANITARY PROVISIONS

The CONTRACTOR shall establish and enforce among his employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such a manner and at such points as shall be approved by the OWNER, and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER'S jurisdiction shall be strictly complied with.

1.29.2. PUBLIC CONVENIENCE AND SAFETY

Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, at his own expense, provide all material and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the OWNER. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from the monies due or to become due the CONTRACTOR. The CONTRACTOR shall notify the OWNER when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The CONTRACTOR shall, when directed by the OWNER, keep any street or streets in condition for unobstructed use by emergency services.

Where the CONTRACTOR is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams, his responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

Where the work passes over or through private property, the OWNER shall provide such right-of-way. The CONTRACTOR shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of their property along or adjacent to the work. The CONTRACTOR shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the contract documents or caused by agents or employees of the OWNER) by reason of any negligent act or omission on the part of the CONTRACTOR, his employees, agents or subcontractors, or at any time due to defective work or materials, or due to his failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

When and where any such damage or injury is done to public or private property on the part of the CONTRACTOR, he shall restore or have restored at his own cost and expense such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding or otherwise restoring as may be directed, or he shall make good such damage or injury in a manner acceptable to the property owner or the Engineer. In case of failure on the part of the CONTRACTOR to restore such property or make good such damage or injury, the OWNER may, upon 48 hours' written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the CONTRACTOR under his contract; or where sufficient contract funds are unavailable for this purpose the CONTRACTOR or his surety shall reimburse the OWNER for all such costs.

ITEM 1.30. SUPERVISION BY CONTRACTOR

The status of the CONTRACTOR is that of an independent CONTRACTOR under Texas law and the work under this contract shall be under the direct charge and superintendence of the CONTRACTOR. Except where the CONTRACTOR is an individual and gives his personal superintendence to the work, the CONTRACTOR shall provide a competent superintendent or general foreman on the work site at all times during progress with full authority to act for him. The CONTRACTOR shall also provide an adequate staff for the coordination and expediting of his work.

The superintendent and staff shall be satisfactory to the OWNER. The superintendent or general foreman shall not be changed during this contract except with the written consent of the OWNER or unless the superintendent or general foreman proves unsatisfactory to the CONTRACTOR and ceases to be in his employ.

If the superintendent should be or become unsatisfactory to the OWNER, he shall be removed by the CONTRACTOR upon written direction of the OWNER, and in such event, the CONTRACTOR shall not be entitled to file a claim for any additional working time or money from the OWNER.

ITEM 1.31. EMPLOYEES

The CONTRACTOR shall employ only competent, efficient workmen and shall not use on the work any unfit person or one not skilled in the work assigned to him and shall at all times maintain good order among his employees.

Whenever the OWNER shall inform the CONTRACTOR in writing that, in his opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the OWNER may orally require immediate removal of an employee for cause, to be followed by written confirmation.

ITEM 1.32. WORKING AREA; COORDINATION WITH OTHER CONTRACTORS; FINAL CLEANUP

The CONTRACTOR shall confine his equipment, storage of materials and construction operations to the area shown on the contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the OWNER, and shall not unreasonably encumber the site or public right-of-way with his construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the CONTRACTOR. Other contractors of the OWNER may enter upon and use such portions of the area and for such items as determined by the OWNER are necessary for all purposes required by their contracts. The CONTRACTOR shall give to such other contractors all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the CONTRACTOR for his use shall be provided by him at his own cost and expense.

Upon completion of the work and before final acceptance and final payment shall be made, the CONTRACTOR shall completely clean and remove from the site of the work surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at the CONTRACTOR'S sole cost.

1.32.1. CONSTRUCTION STAKES

Unless otherwise expressly provided in the contract drawings or specifications, the OWNER or his representative shall furnish and set all lines, grades, bench marks, centerlines and measurements necessary to the proper performance and control of the work contracted for under these specifications. The OWNER or his representative shall furnish the CONTRACTOR with all necessary information relating to the lines and grades. Such stakes or markings as the OWNER or his representative may establish either for his own use or the CONTRACTOR'S guidance shall be preserved by the CONTRACTOR until authorized by the OWNER or his representative to be removed. The CONTRACTOR shall be charged for the cost of replacing stakes which he has disturbed.

If the contract drawings or specifications stipulate that the CONTRACTOR is to provide construction stakes, the CONTRACTOR shall provide competent staff or employ a qualified survey firm. After completion of staking, the CONTRACTOR shall furnish survey field notes and cut sheets to the OWNER or his representative for review. However, review of survey field notes and cut sheets shall in no way relieve the CONTRACTOR of liability for incorrectly setting stakes. When not listed as a separate pay item in the contract, construction staking shall be considered as incidental work, and the cost thereof shall be included in such pay items as are provided in the contract.

1.32.2. RAILWAY CROSSINGS

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal.

ITEM 1.33. OTHER CONTRACTORS; OBLIGATION TO COOPERATE

The OWNER may award other contracts for additional work on this project, and the CONTRACTOR shall fully cooperate with such other contractors and shall coordinate and fit his work to be done hereunder to such additional work as may be contracted by the OWNER. At the time of bidding, prospective bidders shall be advised of other planned contract work which is expected to affect the work area. The CONTRACTOR shall not commit or permit any act which shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the CONTRACTOR that another contractor is failing to coordinate his work with the work under this contract as directed by the OWNER, the OWNER shall promptly investigate the charge and take such necessary action as the situation may require. However, the OWNER shall not be liable to the CONTRACTOR for damages suffered by the CONTRACTOR due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the OWNER. Should any interference occur between contractors, the Engineer may furnish the CONTRACTOR with written instructions designating priority of effort or change in methods, whereupon the CONTRACTOR shall immediately comply with such direction. In such event, the CONTRACTOR shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the contract price shall be due the CONTRACTOR.

ITEM 1.34. OWNER'S RIGHT TO TEMPORARILY SUSPEND WORK

1.34.1. REASONS FOR SUSPENSION

The OWNER shall have the right by written order to temporarily suspend the work, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required:

- (a) in the interest of the OWNER generally,
- (b) due to government or judicial controls or orders which make performance of this contract temporarily impossible or illegal,
- (c) to coordinate the work of separate contractors at the job site,
- (d) to expedite the completion of a separate contract even though the completion of this particular contract may be thereby delayed,
- (e) because of weather conditions unsuitable for performance of the work, or
- (f) because the CONTRACTOR is proceeding contrary to contract provisions or has failed to correct conditions considered unsafe for workmen.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the providing of suitable drainage about the work and erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written direction from the Engineer and shall proceed with the work promptly when notified by the Engineer to resume operations.

1.34.2. NO ADDITIONAL COMPENSATION

No additional compensation shall be paid to the CONTRACTOR for such suspension under Item 1.34.1.(f) above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, he shall be entitled to:

(a) an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and

(b) the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the contract requirements, such costs, if any, to be determined on the basis set forth in Item 1.38. herein; and

(c) where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item 1.38.

ITEM 1.35. USE OF COMPLETED PORTIONS OF WORK

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice.

Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER. The provisions in the last two paragraphs above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the contract work. In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Section 1.36.; no claim, however, for additional compensation may be filed.

ITEM 1.36. DELAYS; EXTENSION OF TIME; LIQUIDATED DAMAGES

The CONTRACTOR shall be entitled to an extension of working time under this contract only when claim for such extension is submitted to the OWNER in writing by the CONTRACTOR within seven days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. In adjusting the contract working time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions or delays of subcontractors due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the contract should require work and materials in greater amounts or quantities than those set forth in the contract, requiring more time for completion than the anticipated time, then the contract working time shall be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

No adjustment to working time shall be made if, concurrently with the equitable cause for delay, there existed a cause for delay due to the fault or negligence of the CONTRACTOR, his agents, employees or subcontractors; and no adjustment shall be made to the contract price and the CONTRACTOR shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in adjustment to the working time hereunder, including delays caused by the acts or negligence of the OWNER. Notwithstanding any other provision of

the contract documents, all claims for extension of working time must be submitted in accordance with Item 1.36., and no act of the OWNER shall be deemed a waiver or entitlement of such extension.

1.36.1. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE ON TIME

The time of completion is the essence of this contract. For each calendar day that any work shall remain uncompleted after the time specified in the proposal and the contract, or the increased time granted by the OWNER, or as equitably increased by additional work or materials ordered after the contract is signed, the sum per day given in the following schedule, unless otherwise specified in the special provisions, shall be deducted from the monies due the CONTRACTOR:

Amount of Contract (\$)	Amount of Liquidated Damages (\$)
Less than 5,000.00	60.00 Per Day
5,000.00 to 14,999.99	80.00 Per Day
15,000.00 to 24,999.99	100.00 Per Day
25,000.00 to 49,999.99	120.00 Per Day
50,000.00 to 99,999.99	160.00 Per Day
100,000.00 to 1,000,000.00	240.00 Per Day
More than 1,000,000.00	500.00 Per Day

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the CONTRACTOR shall be in default after the time stipulated in the contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or his surety shall pay any additional amounts due.

ITEM 1.37. CHANGE OR MODIFICATION OF CONTRACT

1.37.1. INCREASED OR DECREASED QUANTITIES OF WORK

The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable, and such changes shall not be considered as waiving or invalidating any conditions or provisions of the contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

The OWNER reserves the right to decrease the work under this contract. Payment to the CONTRACTOR for the contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the contract, except as provided below.

When the quantity of work to be done or of materials to be furnished under any major item of the contract is more than 125 percent of the quantity stated in the contract, then either party to the contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the contract.

When the quantity of work to be done or of materials to be furnished under any major item of the contract is less than 75 percent of the quantity stated in the contract, then either party to the contract, upon demand, shall be entitled to negotiate for revised consideration on the work performed.

Any revised consideration shall be paid for as is hereinafter provided under Item 1.38. The foregoing notwithstanding, the total original contract shall not be increased more than 25 percent or reduced by more than 25 percent without the written consent of the CONTRACTOR.

1.37.2. ALTERATION OF PLANS AND SPECIFICATIONS

The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract and bonds. Such changes shall be issued by the Engineer.

1.37.3. EXTRA WORK

When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the Engineer. Payment for extra work shall be made as hereinafter provided in Item 1.38.

ITEM 1.38. PAYMENT FOR EXTRA WORK

The extra work done by the CONTRACTOR as authorized and approved by the Engineer shall be paid for in the manner hereinafter described, and the compensation thus provided shall be accepted by the CONTRACTOR as payment in full for all labor, materials, tools, equipment and incidentals and all superintendents' and timekeepers' services, all insurance, bond and all other overhead expense incurred in the performance of the extra work. Payment for extra work shall be made by one of the following methods:

- (a) Method "A" — by unit prices agreed on in writing by the Engineer and approved by the OWNER before said extra work is commenced, subject to all other conditions of the contract.
- (b) Method "B" — by lump sum price agreed on in writing by the Engineer and the CONTRACTOR and approved by the OWNER before said extra work is commenced, subject to all other conditions of the contract.
- (c) Method "C" — by actual field cost of the work plus 15 percent as described herein below, agreed on in writing by the Engineer and the CONTRACTOR, and approved by the OWNER before said extra work is commenced, subject to all other conditions of the contract.

In the event extra work is to be performed and paid for under method "C," the actual field cost of the work shall include the wages of all workmen, foremen, timekeepers, mechanics and laborers; the cost of materials, supplies, trucks, rental on machinery and equipment, only for the time actually employed or used on such extra work; all power, fuel, lubricants, water and similar operating expenses; and rateable proportion of premiums on construction and maintenance bonds, public liability and workers' compensation and all other insurance required by law or ordinances. The Engineer shall direct the form in which the accounts of actual field cost shall be kept and shall specify in writing the method of doing work and the type and kind of machinery and equipment to be used. The 15 percent of the actual field cost to be paid to the CONTRACTOR shall cover and compensate him for profit, overhead, general supervision and field office expense, and all other elements of cost and expense not embraced within the actual field cost as herein specified. The CONTRACTOR shall give the Engineer access to all accounts, bills and vouchers relating thereto.

ITEM 1.39. DISPUTED WORK AND CLAIMS FOR ADDITIONAL COMPENSATION

If the CONTRACTOR is of the opinion that (a) the work necessary or required to accomplish the result intended by this contract, or (b) any work ordered to be done as contract work by the OWNER is extra work or additional work and not contract work, or (c) any determination or order of the OWNER violates the terms and provisions of this contract, the CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of his contentions with respect thereto and request a final determination thereof.

Such determination of the OWNER shall be given in writing to the CONTRACTOR. If the OWNER determines that the work in question is extra work and not contract work, or that the order complained of requires performance by the CONTRACTOR beyond that required by the contract or violates the terms and provisions of the contract, thereupon the OWNER shall cause either (a) the issuance of a written order covering the extra work as provided for in Item 1.37. hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the contract.

If the OWNER determines that the work in question is contract work and not extra work, or that the determination or order complained of does not require performance by the CONTRACTOR beyond that required by the contract or violate the terms and provisions of the contract, he shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve his right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within 20 calendar days after receiving the OWNER'S determination and direction, notify the OWNER in writing that the work is being performed, or that the determination and direction is being complied with, under protest.

If the CONTRACTOR fails to so appeal to the OWNER for a determination or, having so appealed, should the CONTRACTOR thus fail to notify the OWNER in writing of his protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefor. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the CONTRACTOR due to a court order against the OWNER, or due to the OWNER'S failure to secure right-of-way at the time required or because of a conflict of a utility with the work, shall not be cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of contract working time only.

In addition to the foregoing requirements, the CONTRACTOR shall, upon notice from the OWNER, produce for examination and audit at the CONTRACTOR'S office, by the representatives of the OWNER, all his books and records showing all of his acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the CONTRACTOR may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the CONTRACTOR, the OWNER shall be released from all claims arising under, relating to or by reason of this contract, except for the sums to be due under the payment provisions of this contract. It is further stipulated and agreed that no conduct on the part of the OWNER or any agent or employee of the OWNER shall ever be construed as a waiver of the requirements of this section, when such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the contract documents; and in any action against the OWNER to recover any sum in excess of the contract amount, the CONTRACTOR must allege and prove strict compliance with the provisions of this section .

In connection with the examination provided for herein, the OWNER, upon demand therefore, shall also produce for inspection by the CONTRACTOR such records as the OWNER may have with respect to such disputed work or work performed under protest pursuant to order of the OWNER, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the CONTRACTOR'S claim.

ITEM 1.40. PERFORMANCE OF EXTRA OR DISPUTED WORK

While the CONTRACTOR or his subcontractor is performing extra work in accordance with the OWNER'S written order, the cost of which is to be determined by Method "C" set forth in Item 1.38. hereof, or is performing disputed work or complying with a determination or order under protest in accordance with Item 1.39. hereof, the CONTRACTOR shall daily furnish the OWNER'S representative at the site with three copies of verified statements showing:

(a) the name and number of each workman employed on such extra work or engaged in complying with such determination or order, the character of extra work each is doing and the wages paid to him, including the rate and amount of payroll taxes, contributions for insurance, and federal social security; and

(b) the nature, cost and quantity of any materials, plant equipment or construction equipment furnished or used in connection with the performance of such extra work or in complying with such determination or order, and from whom purchased or rented.

A copy of such statements shall be signed by the OWNER'S representative, noting thereon any items in question, and shall be returned to the CONTRACTOR within two working days after submission. This signature shall not be construed as the OWNER'S agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by OWNER representatives.

The CONTRACTOR and his subcontractors, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of his books, vouchers, records, daily job diaries and reports, canceled checks, etc. showing the nature and quantity of labor, materials and equipment actually used in the performance of the extra work; the amounts expended therefore; and the costs incurred for insurance premiums and other items of expense directly chargeable to such extra work. The CONTRACTOR must permit the OWNER'S representatives to make extracts there from or copies thereof as may be desired.

Failure of the CONTRACTOR to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such extra work.

ITEM 1.41. AUTHORITY OF THE ENGINEER

All work shall be performed in a good and workmanlike manner and to the satisfaction of the Engineer. The Engineer shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, mutual rights between contractors under these specifications and suspension of the work. He shall determine the amount and quality of work performed and materials furnished, and his decisions and estimates shall be final. His estimate in such event shall be a condition precedent to the right of the CONTRACTOR to receive money due him under the contract.

1.41.1. OWNER'S REPRESENTATIVES

Where the contract documents indicate that determinations, directions or approvals shall be made by the OWNER or "Owner's representatives," this shall mean the OWNER acting directly, or through duly authorized persons acting within the limit of authority delegated to them. Any determination, direction or approval of such authorized representatives shall be subject to review by the OWNER'S representative.

1.41.2. OWNER'S REPRESENTATIVE'S FINAL DETERMINATION

The OWNER'S representative's determinations shall be final relative to the proper performance of the work and the materials used, and the CONTRACTOR is bound thereby.

It is hereby covenanted and agreed between the two parties of this contract that the OWNER'S representative shall review and determine all disputes, controversies or claims of either party in relation to this contract or its performance. Such determination shall be made in writing by the OWNER'S representative within a reasonable time and shall be final and conclusive upon both the CONTRACTOR and the OWNER. It is further covenanted and agreed between the two parties to the contract that the determination by the OWNER'S representative shall be a condition precedent to the right of any legal action at law or in equity that either party may have against the other.

ITEM 1.42. INSPECTION AND TESTS

The CONTRACTOR shall furnish the OWNER with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the OWNER may be ordered removed and replaced at the CONTRACTOR'S expense.

1.42.1. REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the CONTRACTOR'S expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR'S risk and shall be considered unauthorized and at the option of the OWNER may not be measured and paid for and may be ordered removed at the CONTRACTOR'S expense. Upon failure of the CONTRACTOR to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized or condemned work or materials immediately after receiving notice from the OWNER, the OWNER shall, after giving written notice to the CONTRACTOR, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the CONTRACTOR. Alternatively, the OWNER may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the contract.

1.42.2. FINAL INSPECTION

The OWNER shall make final inspection of all work included in the contract as soon as practicable after the work is completed and ready for acceptance. If the work is not acceptable to the OWNER at the time of such inspection, he shall inform the CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made.

1.42.3. SAMPLES AND TESTS OF MATERIALS

Unless otherwise stipulated in the contract documents, initial testing of all materials, construction items or products incorporated in the work shall be performed at the direction and expense of the OWNER, including initial compaction and density tests deemed necessary.

In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove out test shall be made as directed by the OWNER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER to make any tests of materials shall in no way relieve the CONTRACTOR of his responsibility of furnishing materials conforming to the contract documents. Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials. The CONTRACTOR shall

provide such facilities as the OWNER may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made. The CONTRACTOR shall furnish adequate samples without charge.

The inspections and tests made by the OWNER, its inspectors or agents, shall ordinarily be made without cost to the CONTRACTOR unless otherwise expressly specified in the contract documents. The CONTRACTOR shall furnish without additional cost to the OWNER such materials for testing as may be reasonably necessary. Retesting after failure to pass tests shall be at the expense of the CONTRACTOR. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and tests resulting there from shall be borne by the CONTRACTOR. The OWNER shall judge what is extra inspection and shall determine the additional cost incurred thereby and payable by the CONTRACTOR.

ITEM 1.43. NO WAIVER OF RIGHTS OR ESTOPPEL

The OWNER, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefor from:

(a) showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the CONTRACTOR or any other person under this contract, or from showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect or improperly made in any particular, or that the work or the materials or any parts thereof do not in fact conform to the contract requirements; and

(b) demanding the recovery from the CONTRACTOR of any overpayments made to him, or such damages as the OWNER may sustain by reason of the CONTRACTOR'S failure to perform each and every part of this contract in strict accordance with its terms; or both.

ITEM 1.44. CONTRACTOR DEFAULT: OWNER'S RIGHT TO SUSPEND WORK AND ANNUL CONTRACT

The work or any portion of the work under contract shall be suspended immediately on written order of the OWNER declaring the CONTRACTOR to be in default. A copy of such notice shall be served on the CONTRACTOR'S surety. The contract may be annulled by the OWNER for any good cause or causes, among others of which special reference is made to the following:

(a) failure of the CONTRACTOR to start the work within 10 days from date specified in the written work order issued by the OWNER to begin the work;

(b) substantial evidence that the progress of the work being made by the CONTRACTOR is insufficient to complete the work within the specified working time;

(c) failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the work;

(d) substantial evidence that the CONTRACTOR has abandoned the work or discontinuance of the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so;

(e) substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the work;

- (f) deliberate failure on the part of the CONTRACTOR to observe any requirements of these specifications or to comply with any orders given by the Engineer as provided for in these specifications;
- (g) failure of the CONTRACTOR to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the OWNER;
- (h) substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of work under contract;
- (i) repeated and flagrant violations of safe working procedures;
- (j) the filing by the CONTRACTOR of litigation against the OWNER prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the CONTRACTOR shall discontinue the work or such part thereof as the OWNER shall designate, whereupon the surety may either at its option assume the contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue and perform the same or, with the written consent of the OWNER, sublet the same, provided, however, that the surety shall exercise its option within two weeks after the written notice to discontinue the work has been served upon the CONTRACTOR and upon the surety or its authorized agents. The surety in such event shall assume the CONTRACTOR'S place in all respects and shall be paid by the OWNER for all work performed by it in accordance with the terms of the contract, but in no event shall such payments exceed the contract amount, regardless of the cost to the surety to complete the work.

All monies remaining due the CONTRACTOR at the time of his default shall thereupon become due and payable to the surety as the work progresses, subject to all terms of the contract. In case the surety does not, within the hereinabove specified time, exercise its obligation to assume the contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue, then the OWNER shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the CONTRACTOR hereto agrees that the OWNER shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the CONTRACTOR for the purpose of his work and to procure other tools, equipment and materials for the completion of the same and to charge to the account of the CONTRACTOR the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the OWNER out of such monies as may be due or may at any time thereafter become due the CONTRACTOR under and by virtue of the contract or any part thereof.

The OWNER shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract if the same had been completed by the CONTRACTOR, then in such case the OWNER may pay the CONTRACTOR the difference in the cost, provided that the CONTRACTOR shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the contract if the same had been completed by the CONTRACTOR, the CONTRACTOR and his surety shall pay the amount of the excess to the OWNER on notice from the OWNER for excess due including any costs incurred by the OWNER, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the OWNER by contract or otherwise under the provisions of this section, the CONTRACTOR shall continue the remainder of the work in conformity with the terms of the contract and in such manner as not to hinder or interfere with the performance of workmen employed as above provided by the OWNER or surety.

ITEM 1.45. SUSPENSION BY COURT ORDER AGAINST THE OWNER

The CONTRACTOR shall suspend such part or parts of the work pursuant to a court order issued against the OWNER and shall not be entitled to additional compensation by virtue of such court order; neither shall the CONTRACTOR be liable to the OWNER in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the CONTRACTOR.

ITEM 1.46. SUBCONTRACTS

The CONTRACTOR shall not make any subcontract for performing any portion of the work included in the contract without written notice to the OWNER. This contract having been made pursuant to the bid submitted by the CONTRACTOR and in reliance with the CONTRACTOR'S personal qualifications and responsibility, the OWNER reserves the right to withhold approval of any subcontractor which the OWNER may deem would not be in the OWNER'S best interest.

The CONTRACTOR shall, as soon as practicable after signing the contract, submit a separate written notice to the OWNER identifying each proposed subcontractor. Upon request of the OWNER, the CONTRACTOR shall promptly furnish additional information tending to establish that any proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this contract.

If the OWNER determines that any proposed subcontractor is unacceptable, he shall so notify the CONTRACTOR, who may thereupon submit another proposed subcontractor unless the CONTRACTOR decides to do the work himself. Disapproval by the OWNER of any proposed subcontractor shall not provide a basis for any claim by the CONTRACTOR.

If an approved subcontractor fails to properly perform the work undertaken, he shall be removed from the job upon request of the OWNER, following notification to the CONTRACTOR in writing of the request for removal and the reasons therefore.

Each subcontract entered into shall provide that the provisions of this contract shall apply to such subcontractor and his officers and employees in all respects as if he and they were employees of the CONTRACTOR. The OWNER'S decision not to disapprove of any subcontract shall not relieve the CONTRACTOR of any of his responsibilities, duties and liabilities hereunder. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence or defaults of his subcontractors and of such subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the CONTRACTOR to the extent of his subcontract.

The CONTRACTOR agrees to bind each subcontractor and each subcontractor agrees to be bound by the terms of the contract documents insofar as applicable to his work. The CONTRACTOR and each subcontractor jointly and severally agree that nothing in the contract documents or otherwise shall create or be deemed to create any rights in favor of a subcontractor against the OWNER; nor shall be deemed or construed to impose upon the OWNER any obligation, liability or duty to a subcontractor; or to create any contractual relation whatsoever between a subcontractor and the OWNER. The provisions contained herein shall likewise apply to any sub-subcontracts.

ITEM 1.47. ASSIGNMENTS

The CONTRACTOR shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the OWNER.

The CONTRACTOR shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this contract or his claim thereto without the prior written consent of the surety company and the written approval of the OWNER.

The approval of the OWNER of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments.

The approval by the OWNER of any assignment, transfer or conveyance shall not operate to release the CONTRACTOR or surety hereunder from any of the contract and bond obligations, and the CONTRACTOR shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of his assignees, their agents and employees, as if they were his own.

ITEM 1.48. CLAIMS AGAINST OWNER AND ACTION THEREON.

No claim against the OWNER under the contract or for breach of the contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the contract or in any court action except pursuant to the provisions of Items 1.38., 1.39. and 1.40., and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections.

ITEM 1.49. OWNER'S OFFICERS, EMPLOYEES OR AGENTS

1.49.1. CLAIM AGAINST OFFICERS, EMPLOYEES OR AGENT OF THE OWNER.

No claim whatsoever shall be made by the CONTRACTOR against any officer, employee or agent of the OWNER for or on account of, anything done or omitted to be done in connection with this contract.

1.49.2. FINANCIAL INTEREST IN ANY CONTRACT BY OWNER'S OFFICERS, EMPLOYEES OR AGENTS

No officer, employee or agent of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER or be financially interested, directly or indirectly, in the sale to the OWNER of any land, materials, supplies or services, except on behalf of the OWNER as an officer or employee. Any willful violation of this article shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this article with the knowledge, expressed or implied, of the persons, partnership, company, firm, association or corporation contracting with the OWNER shall render the contract involved voidable by the OWNER.

ITEM 1.50. PATENTS

The CONTRACTOR shall pay all royalties and license fees and shall provide, by suitable legal agreement with the patentee or OWNER, for the use of any design, device, material or process covered by letters, patent or any copyright. The CONTRACTOR shall indemnify, defend, hold and save the OWNER and its officers, employees and agents harmless from all liability and claims for infringement of any patent or copyright.

In the event that any claims, suit or action at law or in equity of any kind whatsoever is brought against the OWNER, or its officers, employees or agents involving any such patents, copyrights or license rights, then the OWNER shall have the right to and may retain from any money due or to become due to the CONTRACTOR such sum deemed necessary by the OWNER for its protection until such claim or suit shall have been settled and satisfactory evidence to that effect shall have been furnished the OWNER.

ITEM 1.51. MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally or, if the CONTRACTOR be a corporation, upon any officer or director thereof.

ITEM 1.54. UNLAWFUL PROVISIONS DEEMED STRICKEN

If this contract contains any unlawful provisions not an essential part of the contract and which shall not appear to have been a controlling or material inducement to the making thereof, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful part shall be considered stricken from the contract without affecting the remainder of the contract.

ITEM 1.55. ALL LEGAL PROVISIONS INCLUDED

It is the intent and agreement of the parties to this contract that all legal provisions of law required to be inserted herein shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

ITEM 1.56. 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, age or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age 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 or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) the CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin or age.
- (c) the CONTRACTOR shall 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 said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) the CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work. During the course of the work, the CONTRACTOR shall submit to the Engineer, on a monthly basis, a breakdown by minority group of all employees at the site of the work.

ITEM 1.57. TERMINATION FOR CONVENIENCE OF THE OWNER

1.57.1. NOTICE OF TERMINATION

The performance of the work under this contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by mailing a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States Mail by the OWNER. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.

1.57.2. CONTRACTOR ACTION

After receipt of a notice of termination, and except as otherwise directed by the Engineer, the CONTRACTOR shall:

- (a) stop work under the contract on the date and to the extent specified in the notice of termination;
- (b) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion the work under the contract as is not terminated;
- (c) terminate all orders and subcontract to the extent that they relate to the performance of work terminated by the notice of termination;
- (d) transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the Engineer:
 - (1) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
 - (2) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the OWNER.
- (e) complete performance of such part of the work as shall not have been terminated by the notice of termination; and
- (f) take such action as may be necessary, or as the Engineer may direct, for the protection and preservation of the property related to its contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.

At a time not later than 30 days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the Engineer a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Engineer. Not later than 15 days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Engineer upon removal of the items, or, if the items are stored, within 45 days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

1.57.3. TERMINATION CLAIM

Within 60 days after notice of termination, the CONTRACTOR shall submit his termination claim to the Engineer in the form and with the certification prescribed by the Engineer. Unless one or more extensions in writing are granted by

the Engineer upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

1.57.4. AMOUNTS

Subject to the provisions of Item 1.57.3., the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto, provided that such agreed amount or amounts shall never exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item 1.57.5. hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

1.57.5. FAILURE TO AGREE

In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Item 1.57.4., upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits.

1.57.6. DEDUCTIONS

In a riving at the amount due the CONTRACTOR under this section, there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this contract; (b) any claim which the OWNER may have against the CONTRACTOR in connection with this contract; and (c) the agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

1.57.7. ADJUSTMENT

If the termination hereunder be partial prior to the settlement of the terminated portion of this contract, the CONTRACTOR may file with the Engineer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

1.57.8. NO LIMITATION OF RIGHTS

Nothing contained in this section shall limit or alter the rights which the OWNER may have for termination of this contract under Item 1.44. hereof entitled "CONTRACTOR Default; OWNER'S Right to Suspend Work and Annual Contract" or any other right which OWNER may have for default or breach of contract by CONTRACTOR.

ITEM 1.58. STATE AND LOCAL SALES AND USE TAXES

The OWNER qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act. Therefore, the CONTRACTOR shall not pay such taxes

which would otherwise be payable in connection with the performance of this contract. The CONTRACTOR shall issue an exemption certificate in lieu of the tax on the purchase, rental or lease of:

(a) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and

(b) all materials, supplies, equipment and other tangible personal property used or consumed by the CONTRACTOR in performing the contract with the OWNER.

Materials and supplies "used in the performance of a contract" include only those materials actually incorporated into the property being improved and those supplies directly used to incorporate such materials into the property being improved. Overhead supplies and supplies used indirectly or only incidental to the performance of the contract with the OWNER are not included in the exemption.

Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the CONTRACTOR must name the OWNER and the project for which the equipment, material and supplies are being purchased, leased or rented.

ITEM 1.59. VENUE AND GOVERNING LAW

The parties herein agree that this contract shall be enforceable in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the contract documents shall be construed in accordance with the laws and court decisions of the State of Texas.

ITEM 1.60. NO WAIVER OF LEGAL RIGHTS

Inspection by the Engineer; any order, measurement, quantity or certificate by the Engineer; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or his agents and the Engineer or his assistants, discovered in the work after the final payment has been made.

Neither final acceptance of the work nor final payment shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship, and the CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting there from. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

ITEM 1.61. OBLIGATION TO PERFORM FUNCTIONS

Any failure or neglect on the part of OWNER, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the contract documents nor render OWNER liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

ITEM 1.62. SUCCESSORS AND ASSIGNS

Subject to the limitations upon assignment and transfer herein contained, this contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

ITEM 1.63. HEADINGS

The title and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope of intent of any of the provisions of this contract.

SECTION TS

TECHNICAL SPECIFICATIONS

Bid Item 105-Remove Stabilized Base. This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 105 and shall include the complete removal of chip seal, and base to depth as shown on the plans. This item will be paid for on the square yard basis and shall include all costs associated with the excavation, removal and disposal of material.

Bid Item 247 Flexible Base Grade 3, In Place. This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 247. This item will be paid for at the unit price of Cubic Yards, in place as shown on the typical sections.

Bid Item 260 Lime Treatment Road Mix Type Subgrade Preparation. This bid item shall be in accordance with TxDOT Standard Specification for Construction Maintenance of Highways, Street and Bridges, 2004. This item is intended to cover all costs associated with the preparation of the subgrade for lime stabilization.

Item 260.4A is amended to require the existing chip seal to be pulverized and mixed with the existing base in accordance with item 260.4B. This item will be paid for on the square yard basis and shall cover all costs for pulverizing, mixing and grading such that it meets the gradation requirements 260.

Bid Item 260 Lime Treatment Road Mix Type Slurry Mix. This bid item shall be in accordance with TxDOT Standard Specification for Construction Maintenance of Highways, Street and Bridges, 2004 Item 260. This item is intended to cover all costs for application of the lime slurry including mixing, compaction, finishing and curing. Lime Slurry shall be applied at a rate of 27 pounds per square yard.

This item will be paid for on the Ton basis.

Item 500-Mobilization. This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 500.

Bid Item 502 Barricades Signs & Traffic Handling. This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 502. It shall include the cost of all traffic control including advanced warning signs, one-way traffic control and flagging operations. This item will be paid for on a monthly basis.

Bid Item 530 Driveway/Intersection Treatment. This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 530 and the typical driveway treatments as shown on the construction documents. This item shall be paid for on the Square Yard basis.

Item 5249-Temporary Sediment Control (Install & Remove). This bid item shall be in accordance with TxDOT Standard Specifications for Construction Maintenance of Highways, Street and Bridges, 2004 Item 5249. General details have been provided to assist the contractor with the development of the erosion control plan. The plan shall be submitted to Pecan Plantation for approval prior to beginning construction. This item shall be paid for on a lump sum basis and shall include all costs associated with the design, installation and maintenance, removal and disposal of erosion control measures.