

THE CITY OF SCHERTZ TEXAS

CHELSEA DRIVE DRAINAGE CHANNEL IMPROVEMENTS

#12-ENG-34-D-01



FORD ENGINEERING INC
AUGUST 16, 2012
FEI PROJECT NO. 1124.8413



CITY OF SCHERTZ, 10 COMMERCIAL PLACE, SCHERTZ, TEXAS 78154

CONTRACT DOCUMENTS

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The City of Schertz Standard Specifications and Technical Specifications for construction dated March 2011 or latest edition applicable to this project are to be utilized. These specifications are available from the City of Schertz Public Works Department or from the City of Schertz Web Site.

TECHNICAL SPECIFICATIONS

DIVISION 1 GENERAL REQUIREMENTS

| | |
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| 01110 | Summary of Work <u>INCLUDED HEREIN</u> |
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| 01330 | Submittal Procedures |
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| 01575 | Stabilized Construction Exit |
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| 01580 | Project Identification Signs |
| 01581 | Excavation in Public Way Permit Signs |
| 01610 | Basic Product Requirements |
| 01630 | Product Substitution Procedures |
| 01725 | Field Surveying |
| 01731 | Cutting and Patching |
| 01732 | Procedures for Water Valve Assistance (with Attachments) |
| 01740 | Site Restoration |
| 01755 | Starting Systems |
| 01770 | Closeout Procedures |
| 01782 | Operation and Maintenance Data |
| 01785 | Project Record Documents |

DIVISION 2 SITEWORK

| | |
|-------|--|
| 02081 | Cast-in-Place Concrete Manholes |
| 02082 | Pre-cast Concrete Manholes |
| 02083 | Fiberglass Manholes |
| 02084 | Frames, Grates, Rings, and Covers |
| 02085 | Valve Boxes, Meter Boxes, and Meter Valves |
| 02086 | Adjusting Manholes, Inlets, and Valve Boxes to Grade |
| 02221 | Removing Existing Pavements and Structures |
| 02222 | Abandonment of Sewer |
| 02233 | Clearing and Grubbing |
| 2260 | Trench Safety System |
| 2261 | Channel Excavation |
| 02315 | Roadway Excavation |
| 02316 | Excavation and Backfill for Structures |
| 02317 | Excavation and Backfill for Utilities |
| 02319 | Borrow |
| 02320 | Utility Backfill Materials |
| 02321 | Cement Stabilized Sand |
| 02330 | Embankment |
| 02447 | Auguring Pipe and Conduit |
| 02448 | Pipe and Casing Auguring for Sewers |
| 02465 | Drilled Shaft Foundations |
| 02476 | Caisson for Lift Station |
| 02501 | Ductile Iron Pipe and Fittings |
| 02502 | Steel Pipe and Fittings |
| 02503 | Copper Tubing |
| 02505 | High Density Polyethylene (HDPE) Solid and Profile Wall Pipe |
| 02506 | Polyvinyl Chloride Pipe |
| 02511 | Water Lines |
| 02512 | Water Tap and Service Line Installation |
| 02513 | Wet Connections |

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| 02514 | Disinfection of Water Lines |
| 02515 | Hydrostatic Testing of Pipelines |
| 02516 | Cut, Plug and Abandonment of Water Lines |
| 02518 | Steel Pipe and Fittings for Large Diameter Water Lines |
| 02520 | Fire Hydrants |
| 02521 | Gate Valves |
| 02522 | Butterfly Valves |
| 02523 | Pressure Reducing Valves |
| 02524 | Air Release and Vacuum Relief Valves |
| 02525 | Tapping Sleeves and Valves |
| 02527 | Polyurethane Coatings on Steel or Ductile Iron Pipe |
| 02528 | Polyethylene Wrap |
| 02531 | Gravity Sanitary Sewers |
| 02532 | Sanitary Sewer Force Mains |
| 02533 | Acceptance Testing for Sanitary Sewers |
| 02534 | Sanitary Sewer Service Stubs or Reconnections |
| 02611 | Reinforced Concrete Pipe |
| 02612 | Pre-cast Reinforced Concrete Box Sewers |
| 02621 | Geotextile for Drainage Structures |
| 02631 | Storm Sewers |
| 02632 | Cast-In-Place Inlets, Headwalls and Wingwalls |
| 02633 | Pre-cast Concrete Inlets, Headwalls and Wingwalls |
| 02642 | Corrugated Metal Pipe |
| 02711 | Asphalt Treated Base |
| 02712 | Cement Stabilized Base Course |
| 02713 | Flexible Base |
| 02714 | Flexible Base Course for Temporary Roads, Detours, Shoulders, and Driveways |
| 02716 | Geogrid Reinforcement for Payments |
| 02741 | Asphaltic Concrete Pavement |
| 02742 | Prime Coat |

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| 02743 | Tack Coat |
| 02751 | Concrete Paving |
| 02752 | Concrete Pavement Joints |
| 02753 | Concrete Pavement Curing |
| 02754 | Concrete Driveways |
| 02761 | Colored Concrete for Medians and Sidewalks |
| 02762 | Blast Cleaning of Pavement |
| 02764 | Raised Pavement Markers |
| 02765 | Temporary and Removable ReflectORIZED Pavement Markings |
| 02767 | Thermoplastic Pavement Markings |
| 02771 | Curb, Curb and Gutter, and Headers |
| 02772 | Concrete Medians and Directional Islands |
| 02775 | Concrete Sidewalks |
| 02811 | Landscape Irrigation |
| 02893 | Traffic Signal Construction |
| 02911 | Topsoil |
| 02915 | Tree Planting |
| 02921 | Hydromulch |
| 02922 | Sodding |
| 02925 | Flexible Growth Medium |
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| 03315 | Concrete for Utility Construction |
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DIVISION 4 MASONRY

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| 04061 | Mortar |
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DIVISION 5 METALS

DIVISION 6 WOOD AND PLASTICS

DIVISION 7 THERMAL AND MOISTURE PROTECTION

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DIVISION 13 SPECIAL CONSTRUCTION

DIVISION 14 CONVEYING EQUIPMENT

DIVISION 15 MECHANICAL

DIVISION 16 ELECTRICAL

CITY OF SCHERTZ INVITATION TO BID

The City of Schertz is accepting sealed bids for the construction of “**CHELSEA DR DRAINAGE CHANNEL IMPROVEMENTS**”:

Sealed bids should be **received by the Purchasing Director** located at 10 Commercial Place, Building #1, Schertz, Texas 78154 **by 10:00 a.m. (CST) on September 13, 2012** via hand delivery. ****No fax or E-mail bids will be accepted.** Sealed Bids will then be opened and read aloud in the City of Schertz Public Works Conference Room located at 10 Commercial Place, Building #2, Schertz, Texas 78154. Sealed Bids must be submitted with one (1) original and four (4) copies and be clearly marked in a sealed envelope as “*CHELSEA DR DRAINAGE CHANNEL IMPROVEMENTS #12-ENG-34-D-01*”. Bids submitted after the aforementioned date and time will not be accepted.

Interested vendors/contractors may attend a Pre-Bid meeting on September 4, 2012 at 11:00 AM (CST) in the City of Schertz Public Works Conference Room located at 10 Commercial Place, Building #2, Schertz, Texas 78154. Contractors must obtain copies of the contract documents, plans, and specifications from Ford Engineering, Inc., 10927 Wye Drive, Suite 104, San Antonio, Texas 78217. A non-refundable fee of \$100 (One hundred dollars) is required to obtain a copy of the plans. **ONLY CHECKS ACCEPTED.** Questions in reference to Bid procedures may be directed to the Purchasing Department, 210-619-1160, or questions in reference to the Project may be directed to Mark Hill, Ford Engineering, at 210-590-4777.

All documents, including Addendums to this project, will be placed on the City of Schertz website at www.schertz.com/Purchasing.

The City of Schertz reserves the right to reject any or all bids and to select the bid deemed in the best interest of the City of Schertz from among those received.

INSTRUCTIONS TO BIDDERS

1. Sealed bids, **one original and two copies**, will be received by The City of Schertz, Texas, at the place and the time specified in the Invitation to Bidders. No bids may be withdrawn after the scheduled bid opening time without the written consent of the City Purchasing Manager. All bids received after the time set for the bid opening will be returned unopened.
2. Each bid must be accompanied by Certified or Cashier's Check or an approved Bid Bond in the amount of not less than five percent (5%) of the total bid, payable without recourse to the City of Schertz, Texas. Surety shall provide a copy of the Power of Attorney authorizing the Executing Agent the authority to execute the bid bond documents and bind the Surety to the bid bond conditions. Surety shall also provide evidence that the Surety is authorized to provide service in the State of Texas at the amount on the bid bond. Contractor agrees that bid bonds shall be with insurance companies or sureties that are A.M. Best Rated "B+" or better. Bid Bonds, Certified or Cashier's checks will be retained for the first, second, and third lowest bidders until the contract is executed.
3. Bids must be submitted on the proposal form attached and shall be sealed in an envelope plainly marked on the outside with job number, the date and time of the bid opening, and the name of material or services bid on. Samples, when required, must be submitted within the time specified at no expense to the City of Schertz. If not destroyed or used up during testing, samples will be returned upon request at the Bidder's expense.
4. Bids will be prepared in accordance with the following:
 - (a) The Bidder shall thoroughly examine the drawings, specifications, schedule, instructions and all other documents.
 - (b) Bidder shall make all investigations necessary to inform himself thoroughly regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance by the Bidder of conditions that exist, or that may hereafter exist, as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations to fulfill in every detail the requirements of the contract documents, will be accepted as the basis for varying the requirements of the City of Schertz or the compensation to the Contractor.
5. Bids will be prepared in accordance with the following:
 - (a) The Bidder shall furnish all information required by the bid form. The Bidder shall print or type his name and manually sign the schedule and each continuation sheet on which any entry is made
 - (b) Pursuant to Section 151.311 of the Texas Tax Code, as amended, in order for the CITY to continue to benefit from its status as a State Sales and Use Tax Exempt Organization, construction contracts must be awarded on a "separated contract" basis. A "separated

contract" is one that distinguishes the value of the tangible personal property (materials such as pipe, bricks, lumber, concrete, paint, etc.) to be incorporated into the project from the total contract price. Under the "separated contract" format, the contractor in effect becomes a "seller" to the City of Schertz of materials that are to be physically incorporated into the project realty. As a "seller", the contractor will issue a "Texas Certificate of Resale" to the supplier in lieu of paying the sales tax on materials at the time of purchase. The contractor will also issue a "Certificate of Exemption" to the supplier demonstrating that the personal property is being purchased for resale and that the resale is to a department of the City of Schertz, which is a sales tax exempt entity. Contractors should be careful to consult the most recent guidelines of the State Comptroller of Public Accounts regarding the sales tax status of supplies and equipment that are used and consumed during project work but that are not physically incorporated into the project realty. Contractors that have questions about this law are asked to inquire with the State Comptroller of Public Accounts, Tax Administration Division, State of Texas, Austin, Texas 78774 (512) 463-4934. Bidders will not include any federal taxes in bid prices since the City of Schertz, is exempt from payment of such taxes. "Texas Certificates of Exemption", "Texas Certificates of Resale" and "Texas Sales Tax Permits" are forms available to the contractor through the regional offices of the State Comptroller of Public Accounts.

6. Any catalogue or manufacturer's reference used in describing an item is merely descriptive and not restrictive unless otherwise noted, and is used only to indicate type and quality of material. When items proposed differ in any way from those specified, Bidders are required to state exactly what they intend to furnish. Otherwise, they shall be required to furnish the items as specified.
7. The work shall be done and completed in accordance with the following Contract Documents as furnished by the City of Schertz:

- The Invitation to Bidders
- The Instructions to Bidders
- The Proposal
- The Payment Bond
- The Performance Bond
- The General Conditions of the Contract
- The Special Conditions of the Contract
- The Construction Specifications
- The Standard Drawings
- Addenda
- Change Orders

8. The successful Bidder will be required to execute the standard City of Schertz Contract Agreement, Performance and Payment Bonds as outlined in the General Conditions. These forms will be prepared and furnished by the City of Schertz. Surety shall provide a copy of the Power of Attorney authorizing the Executing Agent the authority to execute the bond documents and bind the Surety to the bond conditions. Surety shall also provide evidence that the Surety is authorized to provide service in the State of Texas at the amount on the Bond. Contractor agrees that all Performance and Payment Bonds required shall be with insurance companies or sureties that are A.M. Best Rated "B+" or better. If the contract amount does not exceed \$25,000.00, then the Performance and Payment Bonds will not be required.

9. In all cases, the written unit price in the proposal shall govern. Where there is an error in the extension, the City of Schertz will extend the written unit price and make any corrections necessary. Any error will be corrected, and the correct amount will be the basis for determining the bid position.
10. Bidders are advised that estimated quantities of anticipated requirements during the contract period are not calculated with certainty. It is the policy of the City of Schertz, however, as a matter of prudent buying and contracting, to establish in advance of actual purchase or performance of the work, the price of the work which is anticipated, and the price on certain items calculated on the maximum number of a particular item which it might need during a contract period. Bidders are advised that during such period, the City of Schertz may determine not to purchase any of the items or may delete any or all of the work listed in a bid proposal or invitation. Under such a contract, the City of Schertz's only commitment is to purchase the items from or proceed with the work by the successful Bidder at the price bid if the City of Schertz should, in fact, decide to purchase such items during the contract period or proceed with such work as proposed. On all bids, the City of Schertz reserves the right to reject a bid, which in the City of Schertz's judgment is "unbalanced." An "unbalanced bid" is defined as one in which a particular item or a class of items is bid at a figure sufficiently less than or higher than either general market price or Bidder's cost, so as to make the Bidder low on the overall bid but high on a significant number of other items. The City of Schertz reserves the right to exercise its judgment and reject such a bid as unqualified. If such an unbalanced bid is nevertheless accepted by the City of Schertz and the contract awarded, the City of Schertz reserves the right to delete any or all of such items from the purchases to be made or work to be done.
11. The City of Schertz will provide all necessary rights-of-way or easements for the project.
12. No owner, stockholder, partner, officer, or employee of the Bidder, or any person who has a financial interest in this contract in any way, whether direct or indirect, shall be an officer or employee of the City of Schertz at the time of bidding on this contract, or during the life of this contract. Any violations of this provision will render the bid or contract void.
13. The Contractor will establish a local address and telephone number and file that information with the City Purchasing Manager prior to starting work. The Contractor's local address and telephone number will be maintained until the work is completed and accepted by the owner.
14. In case of ambiguity, duplication or obscurity in the bids, the City of Schertz reserves the right to construe and apply the meaning thereof. City of Schertz reserves the right to reject any and all bids and to waive formalities.
15. The City of Schertz reserves the right, subject to the Contractor's approval, to extend, any annual contract for an additional period of not more than one year, subject to the same terms and conditions as enumerated in the invitation and instruction to Bidders and at a price or prices not to exceed the prices quoted.
16. It is anticipated that the contract will be awarded within **60** days after bid opening to the lowest responsible Bidder whose bid, conforming to the invitation for bids, is most advantageous to the City of Schertz. Bidders are advised that the awarding of contracts on a bid basis is a requirement

of state law and city charter. The purposes of such requirements are: (1) to prevent the historic abuses of negotiated purchases; (2) to enable the City of Schertz to use its purchasing power to buy at the lowest possible prices for the benefit of the system and the public; and (3) to enable the City of Schertz to award the contract to other than the low Bidder when, in the City of Schertz's judgment, the low Bidder is not qualified. Bidders are advised that it is not the intention of the City of Schertz, necessarily, to award contracts on the basis of differences in the bids other than differences in basic "price of the item." The City of Schertz reserves the right to take whichever action as may, in the judgment of the City of Schertz, to be its best interest as follows:

- (1) Reject all bids:
- (2) Award the bids by the drawing of lots; or
- (3) Award the bids on the basis of differences other than price.

Bidders are advised that the awarding of bids is a matter solely within the jurisdiction of the City of Schertz. In the event a Bidder wishes to protest the award recommended by the Engineer, the City of Schertz invites such Bidder to notify the management of the City of Schertz and to appear at a meeting of the Schertz City Council for a public hearing prior to the award. The City of Schertz reserves the right to accept any items or groups of items in this bid. Execution of written acceptance of a bid by the City of Schertz shall constitute an award.

17. The City of Schertz may reject the apparent low Bidder when: (a) the Bidder misstates or conceals any material fact in the bid, or if (b) the Bidder does not conform with the law or the bid, or if (c) the bid is conditional, or if (d) the bid is unbalanced, or when (e) the lowest Bidder is not, in the City of Schertz's judgment, qualified, or when (f) the lowest bid is not, in the City of Schertz's judgment, the lowest and best bid, or if (g) the Bidder fails to acknowledge in the final bid price of the proposal and include signed copies thereof, any and all addenda issued prior to bid opening. As a courtesy to Bidders, every attempt will be made by the City of Schertz to notify Bidders of any and all addenda issued; however, it is the full responsibility of each Bidder to verify the existence of and include with their proposal, any and all addenda issued by the City of Schertz. The City of Schertz reserves the right to reject any and all bids, to accept any bids, or parts thereof, considered by the City of Schertz to be to its best interest, and to waive formalities or irregularities.
18. Before submitting a bid, the Bidder should examine carefully the Proposal, Plans, Specifications, Special Conditions, General Conditions, and the form of the contract to be entered into for the work contemplated. He shall examine the site of the work and satisfy himself as to the conditions which will be encountered relating to the character, quality and quantity of work to be performed and materials to be furnished. Such examinations shall include the arrangement and condition of existing structures and facilities, the procedure necessary for maintenance of uninterrupted operation of existing facilities, the availability and cost of labor, and facilities for transportation, handling and storage of materials and equipment.

The submission of a bid by the Bidder shall be conclusive evidence that he has complied with these requirements. The borings, profiles, existing underground utilities, and water elevations shown on the plans were obtained for the use of the City of Schertz in the preparation of the plans, and the Bidder is hereby cautioned that the City of Schertz neither assumes nor implies any responsibility for the accuracy of this data.

19. The Bidder in preparing his proposal, shall take cognizance of the difficulty of distinguishing between boulders and large rock, the difficulty of accurately classifying all material encountered in making the subsurface investigations, the possible erosion of stream channels and banks after survey data has been obtained, and the unreliability of water elevations other than those for the date recorded. Claims for additional compensation due to variations between conditions actually encountered during construction and as indicated in the plans will not be allowed.
20. All contracts in excess of \$100,000 with contractors or suppliers having 15 or more employees will include the clauses listed below:
 - (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will assure that employees or applicants for employment are treated in a fair and equitable manner in such actions which 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 will post in conspicuous places for the benefit of the employee and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 - (b) Upon request, the Contractor will furnish to the City of Schertz all information and reports and will permit access to the books, records, and accounts for the purposes of an investigation to ascertain compliance with rules and regulations set forth by this organization.
 - (c) If a Contractor is found not to be in compliance with the nondiscrimination clause of this contract, the contract may be canceled, terminated, or suspended in all or in part and the Contractor may be debarred from further contracts with the City of Schertz .
 - (d) All Bidders or prospective Contractors or Subcontractors will be required to submit a statement in writing signed by an authorized official or agent in behalf of the company to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin.

The Contractor shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, dated 24 September 1965 or as amended and with Section 3 of the Housing and Urban Development Act of 1968 covering opportunities for business and lower financed HUD assisted projects.

21. Approval of Plans and/or Specifications by the Engineer shall not constitute an assumption of liability by the City of Schertz or the Engineer for any inaccuracy of computation or deficiency of design therein.
22. Bidder shall not offer, confer, or agree to confer any benefit or gift to any City of Schertz Employee, Officer, or Council Member of the City of Schertz.

23. To assist the City of Schertz in performing the bidder evaluation and subsequent recommendation of award, the apparent low bidder shall submit the following items within seven (7) days of the bid opening:
- (a) Financial resources, i.e., Dunn & Bradstreet report or similar.
 - (b) An information packet on company showing experience, organization and equipment.
 - (c) A statement regarding ability to complete the project within the schedule, taking into account existing commitments.
 - (d) Record of performance on three (3) similar projects completed within the last 5 years including name of project, amount of project, project duration, name, address, and telephone number of contact person for each project.

BID PROPOSAL

PROPOSAL of _____, a corporation

A partnership consisting of _____

An individual doing business as _____

TO THE CITY OF SCHERTZ:

Pursuant to Instructions and Invitations to Bidders, the undersigned proposes to furnish all labor and materials as specified and perform the work required for the CHELSEA DR DRAINAGE CHANNEL IMPROVEMENTS, Project No. 1124.8413 in accordance with the Plans and Specifications for the following prices to wit:

BASE BID UNIT PRICES FOR:

| ITEM NO. | ITEM DESCRIPTION (UNIT PRICE TO BE WRITTEN IN WORDS) | UNIT | QTY | UNIT PRICE IN FIGURES | TOTAL IN FIGURES |
|----------|--|------|-------|-----------------------|------------------|
| 1 | TPDES -Storm Water Pollution Prevention Plan _____ Dollars and _____ Cents | ls | 1 | \$ _____ | \$ _____ |
| 2 | Mobilization _____ Dollars and _____ Cents | ls | 1 | \$ _____ | \$ _____ |
| 3 | Remove Concrete Riprap _____ Dollars and _____ Cents | sy | 1,538 | \$ _____ | \$ _____ |
| 4 | Channel Excavation _____ Dollars and _____ Cents | cy | 169.0 | \$ _____ | \$ _____ |

| ITEM NO. | ITEM DESCRIPTION (UNIT PRICE TO BE WRITTEN IN WORDS) | UNIT | QTY | UNIT PRICE IN FIGURES | TOTAL IN FIGURES |
|----------|--|------|-------|-----------------------|------------------|
| 5 | Concrete Riprap (thickness) _____ Dollars and _____ Cents | sy | 1,538 | \$ _____ | \$ _____ |
| 6 | Hydromulch _____ Dollars and _____ Cents | acre | 0.0 | \$ _____ | \$ _____ |
| 7 | Erosion Control Matting (type) _____ Dollars and _____ Cents | sy | 144 | \$ _____ | \$ _____ |

TOTAL BASE BID

\$ _____

1. Complete the additional requirements of the Proposal which are included on the following pages.
2. Bidder must return pages P-1 through P-4 with this bid. Any and all Addenda which are issued by the City of Schertz with appropriate signatures acknowledging receipt shall be attached to and made part of this bid.
3. The Work included in this bid shall be Substantially Complete as defined in the General Conditions within **90 calendar days from the issuance of the Notice to Proceed.**

ADDITIONAL BIDDER INFORMATION

Complete the additional requirements of the Proposal. All blanks must be filled in for the bid to be considered responsive. If a question is not applicable, put the words "not applicable" in the space provided.

1. What similar public works projects has your company completed?

| Owner | Owner' Phone Number | Project Description | Date Completed | Contract Amount |
|-------|---------------------|---------------------|----------------|-----------------|
| | | | | |
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PROPOSAL

Accompanying this proposal is a Bid Bond or Certified or Cashier's, Check on a State or National Bank payable to the Order of the City of Schertz, Texas for _____ dollars (\$_____), which amount represents five percent (5%) of the total bid price. Said bond or check is to be returned to the bidder unless the proposal is accepted and the bidder fails to execute and file a contract within 10 calendar days after the award of the Contract, in which case the check shall become the property of said City of Schertz, Texas, and shall be considered as payment for damages due to delay and other inconveniences suffered by said City of Schertz, Texas due to the failure of the bidder to execute the contract. The City of Schertz, Texas reserves the right to reject any and all bids.

It is anticipated that the Owner will act on this proposal within **30** calendar days after the bid opening. Upon acceptance and award of the contract to the undersigned by the Owner, the undersigned shall execute standard City of Schertz, Texas Contract Documents and make Performance and Payment Bonds for the full amount of the contract within **10** calendar days after the award of the Contract to secure proper compliance with the terms and provisions of the contract, to insure and guarantee the work until final completion and acceptance, and the guarantee period stipulated, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

It is anticipated that the Owner will provide written Authorization to Proceed within **10** days after the award of the Contract.

The Contractor hereby agrees to commence work under this Contract immediately after issuance by the City of Schertz, Texas of the written Authorization to Proceed and to complete the work within **90calendar days** from the Notice to Proceed. Under no circumstances shall the work commence prior to Contractor's receipt of City of Schertz, Texas issued, written Authorization to Proceed.

The undersigned certifies that the bid prices contained in the proposal have been carefully checked and are submitted as correct and final.

In completing the work contained in this proposal the undersigned certifies that bidder's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin and that the bidder will

Signed:

Company Name

Authorized Company Signature

Name Printed

Address

City , State, Zip

Telephone

CONTRACT

STATE OF TEXAS §
COUNTY OF GUADALUPE § KNOW ALL MEN BY THESE PRESENTS:

That this Agreement made and entered into this _____ day of _____, A.D., 2012, by and between **THE CITY OF SCHERTZ, COUNTY OF GUADALUPE, STATE OF TEXAS**, Acting through its Contracting Officer, First Party, hereinafter termed the Owner, and, _____ of the City of _____, County of _____, State of _____, Second Party, hereinafter termed the Contractor.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned to be made and performed by said First Party, (Owner), the said Second Party, (Contractor), hereby agrees with the First Party to commence and complete the construction of certain improvements at the prices set forth in the Contractor's Proposal for the City of Schertz Job No _____ the same being designated as **CHELSEA DR DRAINAGE CHANNEL IMPROVEMENTS**.

The Contractor shall perform all work shown on the Plans and described in the Specifications and shall meet all requirements of this Agreement. The General and Special Conditions of the Agreement, and such Orders and Agreements for Extra Work as may subsequently be entered by the above named parties to this Agreement.

The Contractor shall not offer, confer or agree to confer any benefit or gift to any City of Schertz employee.

The Contractor hereby agrees to commence work under this Contract within seven (7) days after issuance by the CITY of the written Authorization To Proceed. Under no circumstances shall the work commence prior to the Contractor's receipt of the CITY's issued, written Authorization To Proceed. Computation of Contract Time will begin upon actual commencement of Work by the Contractor during the seven (7) calendar day period referenced above, or upon the eighth (8th) calendar day (assuming the eighth day is a day upon which Work may lawfully and Contractually be performed), *whichever occurs first*. All work specified in these Contract Documents shall be completed within **90** calendar days.

It is agreed and understood by the Owner and the Contractor that the provisions of Article 2368a, Vernon's Annotated Civil Statutes of Texas apply to this contract. The terms of the aforementioned state law are incorporated herein by reference. Contractor and Owner Agree that as a public body, Owner is authorized by such state law to negotiate change orders up to and including the amount of \$25,000.00 acting by and through its duly designated administrative officer. It is agreed and understood that any change orders which increase the work of the contract in excess of 25% of the bid contract price, must be subject of a supplemental agreement approved by the City Council of Schertz, or its designee, as in case of original contracts. The work of the contract may be decreased over 25% with the consent of the Contractor.

The Owner agrees to pay the Contractor in current funds, and to make payments on account, for the performance of the work in accordance with the Contract, at the prices set forth in the Contractor's Proposal, subject to additions and deductions, all as provided in the General Conditions of the Agreement.

The following documents, together with this Contract, comprise the Agreement, and they are as fully a part thereof as if herein repeated in full:

- The Invitation to Bidders
- The Instructions to Bidders
- The Proposal
- The Payment Bond
- The Performance Bond
- The General Conditions of the Contract
- The Special Conditions of the Contract
- The Construction Specifications
- The Standard Drawings
- Addenda
- Change Orders

The Plans designated **CHELSEA DR DRAINAGE CHANNEL IMPROVEMENTS, Sheets 1 thru 5**, inclusive.

In witness thereof of the Parties of these presents have executed this Agreement in the Year and day of first above written.

CITY OF SCHERTZ
OWNER

By _____
City Manager

Contractor

By _____

Title _____

Contractor hereby acknowledges and understands that this Contract is subject to Section 151.311 of the Texas Tax Code, as amended. The following amount of money represents that part of the total contract price representative of the value of tangible personal property which is to be incorporated into the project realty, or which is otherwise exempt from taxation under Section 151.311 of said Code: \$_____

STATUTORY PERFORMANCE BOND
Pursuant to Vernon's Texas Government Code
Title 10, Chapter 2253. as amended
(Penalty of this Bond must be 100% of Contract Award)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called "Principal"), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized under the laws of the State of Texas to act as surety, on bonds for principals (hereinafter called "Surety"), are held and firmly, bound unto **THE CITY OF SCHERTZ, GUADALUPE COUNTY, TEXAS** (hereinafter called "Owner/Obligee"), in the amount of _____ Dollars (\$ _____), for the payment whereof. Principal and Surety, firmly bind themselves, and their heirs, administrators executors. successors and assigns, jointly, and. severally, by these presents:

WHEREAS, principal has entered into a certain written contract with the Owner/Obligee, dated the _____ day of _____, 2012, consisting of _____ (hereinafter called "the Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

NOW, THEREFORE, IF Principal shall repair any and all defects in said work occasioned by and resulting from defect in materials furnished by, or workmanship of, Principal in performance of the work covered by the Contract, occurring during a period of within 12 months from the date of the Contract Completion Certification, therein this obligation shall be null and void: otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 10, Chapter 2253, as amended, of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of this Chapter, to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, or other waiver or amendment of the terms of the Contract or to the work thereunder, nor any change in the method or amount of payments stipulated to be made by Owner/Obligee under the Contract, shall relieve Surety of its obligations hereunder, and Surety, hereby waives notice of any such change, extension of time, waiver or amendment of the terms of the Contract or to the work thereunder. The bond shall be automatically extended in time, without formal and separate amendment, to cover full and faithful performance of the Contract in the event of modification of the Contract regardless of the length of time involved.

IN WITNESS THEREOF, Principal and Surety have signed and sealed this instrument on the _____ day of _____, 2012.

| | |
|--------------------|-----------------|
| _____ Principal | _____ Surety |
| By _____ | By _____ |
| Title _____ | Title _____ |
| Address _____ | Address _____ |
| _____ | _____ |

Name, Address and Telephone of Resident Agent of Surety:

STATUTORY PAYMENT BOND
Pursuant to Vernon's Texas Government Code
Title 10, Chapter 2253. as amended
(Penalty of this Bond must be 100% of Contract Award)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called "Principal"), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized under the laws of the State of Texas to act as surety, on bonds for principals (hereinafter called "Surety"), are held and firmly, bound unto **THE CITY OF SCHERTZ, GUADALUPE COUNTY, TEXAS** (hereinafter called "Owner/Obligee"), in the amount of _____ Dollars (\$ _____), for the payment whereof. Principal and Surety, firmly bind themselves, and their heirs, administrators executors, successors and assigns, jointly, and. severally, by these presents:

WHEREAS, principal has entered into a certain written contract with the Owner/Obligee, dated the _____ day of _____, 2012, consisting of _____ (hereinafter called "the Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 10, Chapter 2253, as amended, of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of this Chapter, to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, or other waiver or amendment of the terms of the Contract or to the work thereunder, nor any change in the method or amount of payments stipulated to be made by Owner/Obligee under the Contract, shall relieve Surety of its obligations hereunder, and Surety, hereby waives notice of any such change, extension of time, waiver or amendment of the terms of the Contract or to the work thereunder. The bond shall be automatically extended in time, without formal and separate amendment, to cover full and faithful performance of the Contract in the event of modification of the Contract regardless of the length of time involved.

IN WITNESS THEREOF, Principal and Surety have signed and sealed this instrument on the _____ day of _____, 2012.

| | |
|--------------------|-----------------|
| _____ Principal | _____ Surety |
| By _____ | By _____ |
| Title _____ | Title _____ |
| Address _____ | Address _____ |
| _____ | _____ |

Name, Address and Telephone of Resident Agent of Surety:

GENERAL CONDITIONS

ARTICLE 1. CONTRACT DEFINITIONS:

Wherever in these General Conditions or in other parts of the Contract Documents, the following terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

1. ACPA - American Concrete Pipe Association.
2. ANSI - American National Standards Institute,
3. ASTM - American Society for Testing Materials.
4. AUTHORIZATION TO PROCEED - (Work Project Authorization) A written notice given by OWNER to CONTRACTOR establishing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
5. AWWA - American Water Works Association.
6. BIDDER - An individual, partnership, corporation, etc., submitting a proposal.
7. CITY COUNCIL - The duly elected members of the council of the City of Schertz, Texas.
8. CONDITIONAL LETTER OF APPROVAL - The date certified in writing by the OWNER when the Construction of the Project is sufficiently completed in accordance with the Contract Documents.
9. CONSTRUCTION OBSERVER/INSPECTOR - "COI", The authorized representative of the OWNER assigned by the OWNER to observe and inspect any or all parts of the Project and the materials to be used therein.
10. CONSULTANT - A person registered as a professional engineer pursuant to Article 3271a, Vernon's Texas Civil Statutes employed to provide professional engineering services and having overall responsibility for the design of a project or a significant portion thereof, together with administrative supervision of any subconsultants Consultant may retain. The term "Consultant", unless the context clearly indicates otherwise, means an engineer in private practice retained for a specific project under a contractual agreement with the OWNER.
11. CONTRACT - The signatory Agreement (Standard Form) between the OWNER and the CONTRACTOR governing the furnishing of material and performance of the Work. The Contract will include the Contract Documents.
12. CONTRACT DOCUMENTS - The Contract Documents consist of Bidding Documents such as: the Advertisement or Invitation to Bid, the Instructions to Bidders, the CONTRACTOR's completed Bid Proposal form, the Addenda, the Contract, the Conditions of the Contract (General, Supplemental and Special Conditions), the Plans, the Specifications, the Change Orders, the Payment and Performance Bonds.
 - (a) The Contract Documents form the complete CONTRACT, which represents the entire and integrated agreement between the OWNER and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

13. CONTRACT SUM - The total compensation payable to the CONTRACTOR for performing the Work as originally contracted or as subsequently adjusted by Change Orders.
14. CONTRACT TIME - The total time allowed the CONTRACTOR for completion of the Work. Contract Time will commence as per paragraph 8.1 and shall include the number of days set forth in the Contract plus any extended days granted under the provisions of Paragraph 6.1.
15. CONTRACTOR - The individual, partnership, corporation, etc., contracting with the OWNER to complete the Work.
16. ENGINEER - The person, firm or corporation named as such in the Agreement.
17. CHANGE ORDER - A written order issued by the OWNER to the CONTRACTOR authorizing additions, deletions, or revisions to the Work to be performed by CONTRACTOR within the general scope of construction services outlined in the Contract Documents.
18. HAZARDOUS MATERIAL(s)/SUBSTANCE - Pursuant to Section 26.263 of the Water Code hazardous material means any material/substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq.) regulated pursuant to Section 311 of the Federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.) or designated by the Commission.
19. INSTRUCTIONS TO BIDDERS - OWNER Instructions of a general nature outlining the duties and responsibilities of a prospective bidder.
20. LABORATORY - The testing laboratories of the OWNER or any other testing laboratory that may be designated or approved by the OWNER.
21. MAJOR BID ITEM - Any individual Bid Item submitted by CONTRACTOR that constitutes five percent (5%) minimum of the total Contract Sum proposed by the successful low bidder CONTRACTOR or, the dollar amount shown in the Special Conditions as constituting a "Major Bid Item", whichever is less. In spite of the general criteria above, the OWNER and Consultant reserve the right to identify or exclude specific Bid Items as being "Major", in the Special Conditions for each Project.
22. MINORITY BUSINESS ENTERPRISE - (hereinafter referred to as MBE) a corporation, partnership, sole proprietorship or any other such legal entity which is owned, operated and controlled by a minority group member(s) who, when combined, have 51 percent ownership. The minority group member(s) must have operational and managerial control, interest in capital and earnings commensurate with the percentage of minority ownership. For purposes of the SMWBP, the following are recognized as minority groups:
 1. African-Americans - persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian or West Indian.
 2. Hispanic Americans - persons of Mexican, Puerto Rican, Cuban, Spanish, or Central or South America origin.
 3. American Indians - persons having no less than 1/16 percentage origin in any of the American Indian tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal documents.
 4. Asian-Pacific Americans - persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 5. Asian-Indian Americans - includes persons whose origins are from India, Pakistan, Bangladesh and Sri Lanka.

6. Disabled Individual - persons (1) with one or more disabilities as defined by the Americans with Disabilities Act (ADA) and amendments thereto, (2) having a record of such disabilities and (3) regarded as having such disabilities.
23. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) - A conveyance or system of conveyances (including roads with drainage systems, municipal streets catch basins, curbs, gutters, ditches, man-made channels or storm drains:
 1. Owned or operated by a State, City, town, borough, county, district association or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waters, storm water or other wastes including special districts under State law such as a sewer district, flood control district or drainage district or similar entity or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to water of the United States;
 2. Designated or used for collection or conveying storm water.
 3. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
 24. NEMA - National Electrical Manufacturers Association.
 25. NFPA - National Fire Protection Association
 26. NON-HAZARDOUS MATERIAL(S)/SUBSTANCES - Any material(s)/substance which is not designated as hazardous pursuant to Definition 18 herein and the continued presence of such on the site is determined by the OWNER's representative not to be detrimental to the completion of the Project.
 27. OWNER - City of Schertz, Texas.
 28. OWNER'S REPRESENTATIVE - The duly authorized representative of the OWNER.
 29. PAYMENT BOND - The security furnished by the CONTRACTOR, through the Surety, in the full amount of the Contract Sum for the protection of all persons supplying labor and material in the prosecution of the Work who properly follow statutory requirements for perfecting claims against such security. If the contract amount does not exceed \$25,000, a Payment Bond is not required.
 30. PERFORMANCE BOND - The security furnished by the CONTRACTOR, through the Surety, in the full amount of the Contract Sum as a guaranty that the Work will be faithfully performed and completed and that the OWNER will be saved harmless from all costs and damages which the OWNER may suffer by reason of the CONTRACTOR's default or failure to perform the Work. If the contract amount does not exceed \$25,000, a Performance Bond is not required.
 31. PLANS - The Plans, drawings, details and supplemental drawings, or reproductions thereof, produced and sealed by the ENGINEER and approved by the OWNER, showing the location, character, dimensions and details of the Work and which are a part of the Contract. Plans include standard details issued and sealed by the Engineer or his representative.
 32. PROJECT - Work site and Work elements with all appurtenances and construction to be performed thereon under the Contract.
 33. PROPOSAL - The offer of the bidder, made out on the prescribed forms, giving prices for performing the work described in the plans and specifications.
 34. SAMPLES - Physical examples furnished by the CONTRACTOR to OWNER to illustrate intended or anticipated materials, equipment or workmanship, and to assist OWNER and ENGINEER in the establishment of workmanship and quality standards by which the Work will be judged.

35. SEPARATED CONTRACT - A contract in which the agreed contract price is divided into a separately stated agreed contract price for materials and a separately stated agreed contract price for skill and labor. If prices of materials and labor are separately stated the fact that the charges are added together and a sum total given is irrelevant. Cost-plus contracts are generally regarded as separated contracts.
36. SEQUENCE OF CONSTRUCTION - The logical and proper order in which the CONTRACTOR shall accomplish the Work by OWNER directed stages and phases, as shown in the Contract Documents, unless OWNER orders otherwise by a properly executed Change Order.
37. SHOP DRAWINGS - Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are furnished by the CONTRACTOR and prepared by CONTRACTOR, first-tier or sub-tier subcontractors, manufacturer, supplier or distributor, and which illustrates and details some portion of the Work.
38. SMALL, MINORITY AND WOMAN BUSINESS - (hereinafter referred to as SMWB) includes all those business enterprises inclusive of sole proprietorships, partnerships, corporations and all other such legal entities that are either classified as small, or are owned, operated and controlled by minority group members, women, or disabled individuals.
39. SMALL BUSINESS ENTERPRISE - (hereinafter referred to as SBE) a corporation, partnership, sole proprietorship or other such legal entity which is independently owned and operated and which is less than 20 percent of the U.S. Small Business Administration (SBA) size standard for a small business, except in cases where the reduced definition drops below \$1 million average gross receipts (as based on three years of sales) or less than 100 employees.
40. SPECIFICATIONS - The specific instructions to the CONTRACTOR as to the requirements for materials, equipment, certain construction procedures, standards and quality of workmanship for the Work and performance of related services and forming a part of the Contract.
41. SUBSTANTIAL COMPLETION - When construction of the project or a specified part thereof is sufficiently completed in accordance with the Contract Documents so that the Project, or specified part thereof could be utilized for the OWNER's purposes for which it is intended.
42. SUPERINTENDENT - The on project site representative of the CONTRACTOR authorized to communicate with the OWNER's representative, pursuant to the terms of the contract. The Superintendent or his designee shall supervise and direct the construction Work.
43. SUPPLEMENTARY CONDITIONS - The part of the Contract Documents, which amends or supplements these General Conditions.
44. SURETY - The corporate body licensed to conduct business in the State of Texas that provides assurance that the CONTRACTOR, or his substitute will faithfully perform the Work covered by the Contract and make payment of any due, unpaid, eligible labor and supply claims arising thereunder.
45. THD TEST METHOD - (TX DOT) Materials and Test Division manual outlining testing methods and procedures.
46. UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments and appurtenances thereto, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, sewage and drainage removal, traffic or other control systems.
47. UNIT PRICE WORK - Work to be paid for by OWNER on the basis of CONTRACTOR quoted unit prices in the Bid Proposal based upon OWNER estimated quantities.

- 48. WAGE RATES - The general prevailing wage rate as established by the City Council of the City of Schertz.
- 49. WOMAN BUSINESS ENTERPRISE - (hereinafter referred to as WBE) a corporation, partnership, sole proprietorship or any other such legal entity which is owned, operated and controlled by women who, when combined, have 51 percent ownership. The women must have operational and managerial control interest in capital and earnings commensurate with the percentage of women Ownership.
- 50. WORK - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of CONTRACTOR performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- 51. WRITTEN NOTICE - Shall be considered to have been duly given if delivered in person to an authorized representative of the CONTRACTOR or OWNER, or to an officer of the corporation for whom it is intended, or if delivered at, or sent by registered or certified mail to the last business address known to the person who gives the notice.

ARTICLE II. LEGAL RELATIONSHIPS AND RESPONSIBILITIES

- 2.1 LEGAL RESPONSIBILITIES - The CONTRACTOR in the performance of the Work shall comply with all pertinent Ordinances of the City of Schertz, Texas (OWNER), Laws of the State of Texas, and of the United States, including Rules and Regulations of the United States Department of Labor, pertaining to Occupational Safety and Health Administration standards as presently existing or as may hereinafter be modified or amended.
 - 1. Where construction projects cross or run along state highways, the CONTRACTOR shall comply with governing Texas Department of Transportation Regulations as outlined in State Permits for each crossing. In cases where State Regulations do not apply, City Regulations shall be binding.
 - 2. Where construction projects cross or run along country roads, the CONTRACTOR shall comply with governing County Public Works Regulations as outlined in the County Permit for each crossing.
- 2.2 GENERAL UNDERSTANDING - CONTRACTOR at his own cost and expense shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and secure all required permits and licenses, and shall at his own cost and expense construct build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described and/or referred to in the Contract Documents.
- 2.3 INDEMNIFICATION - CONTRACTOR shall protect the public and OWNER fully by taking reasonable precaution to safeguard persons from death or bodily injury and to safeguard property of any nature whatsoever from damage. Where any dangerous condition or nuisance exists in and around construction sites, equipment and supply storage areas and other areas in anyway connected with the performance of this contract, the CONTRACTOR shall provide and maintain reasonable warning of such danger or nuisance. The CONTRACTOR shall not create excavation, obstructions, or any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this contract unless necessary to its performance, and in that event the CONTRACTOR shall provide and maintain at all times reasonable means of warning of any danger or nuisance created. The duties of the CONTRACTOR in this section shall be nondelegable, and the CONTRACTOR's compliance with the specific recommendations and requirements of the City of Schertz, as to the means of warning shall not excuse the CONTRACTOR from the faithful performance of these duties should such recommendations and requirements not be adequate or reasonable under the circumstances.

In order to protect OWNER from the CONTRACTOR's failure to perform any of the foregoing duties or any of the terms of this contract, the CONTRACTOR shall indemnify and save harmless OWNER and its agents and employees from, all losses, damages, judgments, decrees, and expenses or costs of any nature whatsoever, arising out of or in anyway connected with any claims or actions at law or in equity, brought against OWNER, and its agents and employees for the death or injury to persons or for damage to property caused, or allegedly caused, by any willing acts, negligence, nuisance, or breach of any term or condition of this contract in connection with work to be performed pursuant to said contract, by the CONTRACTOR, his agents, subcontractors, or employees. The CONTRACTOR shall furthermore indemnify and save harmless OWNER and its agents and employees from all demands of subcontractors, workmen, materialmen, or suppliers of machinery and parts thereof, equipment power tools, and supplies incurred in connection with work to be performed under this contract. Property of any description, including property held by OWNER, which shall be damaged in the performance of this contract by the CONTRACTOR, his agents, employees, subcontractors or their employees and subcontractors shall be restored to its condition prior to damage by the CONTRACTOR at the CONTRACTOR's expense.

SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, JUDGEMENTS, DECREES, OR LIABILITY ARISE IN PART FROM THE NEGLIGENCE OF OWNER. IT IS THE EXPRESS INTENTION OF THE CONTRACTOR AND OWNER THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR, TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHERE THE NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DEATH OR DAMAGE THAT RESULTS FROM THE SOLE NEGLIGENCE OF OWNER UNMIXED WITH THE FAULT OF ANY PERSON OR ENTITY.

In any claims against OWNER or its agents or employees by CONTRACTOR, any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by CONTRACTOR, or any subcontractor or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability benefit acts of other employer's benefit acts.

- 2.4 ROYALTIES AND PATENTS - The CONTRACTOR shall pay all royalties and license fees, and defend all suits or claim for infringement of any patent rights and shall save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified; provided, however, if the CONTRACTOR has reason to believe the design, process or product specified constitutes an infringement of a patent, he shall be responsible for such royalties, license fees and loss unless he promptly gives such information to the OWNER.
- 2.5 NO WAIVER OF OWNER RIGHTS - Unless specifically and unambiguously set out in the Contract Documents at the time of bid opening, no observation/inspection or approval by said OWNER or any COI, officer, employee or other representative of the OWNER, or any order, measurement or certificate by said OWNER, or any estimate or payment by the OWNER for any part of said Work, or material or method or equipment, or any extension of time, or any possession of the Work, at any time shall operate as a waiver of any provision or obligation of this Contract or any right or power herein given or reserved to said OWNER, or of any right to claim any indemnity or damages for patent or latent defects in the work or otherwise as herein provided for; nor shall any OWNER waiver of any CONTRACTOR breach of this Contract be deemed as a waiver of any other or subsequent CONTRACTOR breach; and every OWNER right or remedy under the Contract Documents shall be cumulative, and in addition to all other OWNER rights and remedies.
- 2.6 INTEREST IN OWNER CONTRACT PROHIBITED - No officer or employee of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER, or shall be financially interested, directly, in the sale to the OWNER of any land, materials, supplies or service, except on

behalf of the OWNER as an officer or employee. This prohibition extends to City boards and commissions other than those, which are purely advisory.

- 2.7 PREVAILING WAGE RATES (Only if required by Supplemental General Conditions) - On this Contract_full compliance with Article 5159a, Revised Civil Statutes of Texas, as amended, requiring that not less than the general prevailing wage rate (basic hourly and fringe, if applicable) for Work of a similar character, as has been established by the appropriate governmental agency, and a copy of the most recent wage rates and all other administrative policies as incorporated into the Contract Documents, shall be required.
1. Payrolls will be reviewed by the OWNER and the CONTRACTOR will be notified of any discrepancies noted. Any discrepancy in the payrolls may be cause for withholding periodic, interim or final payment to the CONTRACTOR until such discrepancies are properly corrected.
- 2.8 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS/NONDISCRIMINATION CLAUSE – The City of Schertz highly encourages CONTRACTOR’s to implement Affirmative Action practices in their employment programs. This means CONTRACTOR should not discriminate against any employee or applicant for employment because of race, color, national origin religion, sex, age, handicap or political belief or affiliation.
- 2.9 SMALL, MINORITY, AND WOMEN BUSINESS PROGRAM (SMWBP) REQUIREMENTS – The City of Schertz highly encourages CONTRACTOR’s to form joint ventures and/or provide subcontract opportunities to small, minority and woman firms.
- 2.10 STATE SALES TAX - The OWNER qualifies for exemption from state and local sales tax and will furnish the CONTRACTOR with a tax exemption certificate. It is the CONTRACTOR's responsibility to claim exemption from payment of applicable state and local sales taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contract separates the cost of materials and tangible equipment from skill, labor and other associated costs of construction. This is in accordance with the Texas Tax Code to allow tax exemption on the Contract price for materials. Certain construction equipment that is owned or rented by the CONTRACTOR may be subject to State and Local Sales Tax.

ARTICLE III. CONTRACT DOCUMENTS & BONDS

- 3.1 PLANS AND SPECIFICATIONS - The Plans and the accompanying Specifications are essential parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be cumulative and complementary and to provide for a complete Work. In cases of disagreement, figured dimensions shall govern over scaled dimensions, detailed Plan Drawings and accompanying notations shall govern over General Plan Drawings, and Special Conditions shall govern over Specifications, Plan Drawings and General Conditions.
- 3.2 INTENT OF THE CONTRACT DOCUMENTS is to describe a functionally complete Project (or integral component part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by CONTRACTOR whether or not specifically called for by OWNER or it's ENGINEER. When words, which have a well-known technical or trade meaning are used to describe work, materials or equipment such words shall be interpreted in accordance with that meaning. Where phrases "directed by", "ordered by" or "to the satisfaction of" "the ENGINEER" or "the OWNER's Construction Observer/Inspector" (COI) or "the OWNER's Representative occur, it is to be understood that the directions, orders, or instructions to which they relate are within the scope of, and authorized by the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids except as may be otherwise specifically stated.

- 3.3 DISCREPANCY IN CONTRACT DOCUMENTS - If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER or OWNER in writing at once and before proceeding with the Work affected thereby and shall obtain a prompt written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.
- 3.4 PLANS AND SPECIFICATIONS AT THE WORK SITE - The CONTRACTOR shall maintain at the Work site at least one copy of all Plans Specifications, Addenda, approved Shop Drawings and Change Orders, in good order and marked to record all changes to the Plans and/or existing physical conditions made during construction.
1. RECORD DRAWINGS - Each month, as the Work progresses and before monthly payment is made, the CONTRACTOR shall present to the ENGINEER, for review, the current as-built drawings.
 2. Prior to the final payment to the CONTRACTOR, the CONTRACTOR who has control of the Work and is in a position to know how the Project was constructed, shall submit to the ENGINEER, within 10 days after Final Acceptance of the Project, a set of clearly marked Plans and related documents suitable for ENGINEER's use in preparing OWNER's final "Record Drawings" on reproducible mylar for the OWNER's permanent file.
- 3.5 PERFORMANCE BOND - CONTRACTOR shall furnish Performance Bond in favor of OWNER in an amount equal to 100% of the total construction cost under this Contract. Total construction cost are defined as the entire cost of materials and their installation, and include, but are not limited to, the cost of labor, equipment, supplies, materials and additional construction costs. The Performance Bond shall: (1) guarantee the completion of the entire construction herein identified in conformity with the Plans and Specification approved by OWNER, and (2) guarantee the work against defects in workmanship and materials for a period of twelve (12) months after acceptance of the work by the City of Schertz. The bond shall have corporate Sureties that are licensed to conduct business in Texas. CONTRACTOR agrees that all Performance Bonds required by this Section 3.5 shall be with insurance companies or sureties that are A.M. Best Rated "B+" or better. If the surety on any bond furnished by the CONTRACTOR to the OWNER is declared bankrupt or becomes insolvent, or has its right to do business revoked in the State of Texas, then the CONTRACTOR will have ten (10) days to substitute another bond and surety therefor which shall be acceptable to OWNER and which shall be at the expense of the CONTRACTOR.
- 3.6 PAYMENT BOND - CONTRACTOR shall furnish Payment Bond in favor of OWNER in an amount equal to 100% of the total construction cost under this Contract. Total construction costs are defined as the entire cost of materials and their installation, and include, but are not limited to, the cost of labor, equipment, supplies, materials and additional construction costs. The Payment Bond shall be security for the payment of all persons supplying labor and material in the prosecution of the Work provided for in the Contract Documents. The bonds shall have corporate Sureties that are licensed to conduct business in Texas. CONTRACTOR agrees that all Payment Bonds required by this Section 3.6 shall be with insurance companies or sureties that are A.M. Best Rated "B+" or better. If the surety on any bond furnished by the CONTRACTOR to the OWNER is declared bankrupt or becomes insolvent, or has its right to do business revoked in the State of Texas, then the CONTRACTOR will have ten (10) days to substitute another bond and surety therefor which shall be acceptable to OWNER and which shall be at the expense of the CONTRACTOR.
- 3.7 CONTRACTOR AND SURETIES STILL BOUND - No assignment, transfer or subletting, without the written consent of OWNER, and no order of OWNER for or approval of any alterations or modifications in said Specifications, Plans, or Work, and no change in the requirements or order for extra work made by the OWNER as provided in this Contract, shall ever in any manner release or diminish the responsibility of CONTRACTOR or any Surety on any bond of CONTRACTOR, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters. If any Surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in this State, the CONTRACTOR shall within ten (10) days furnish

equivalent substitute forms of security while seeking substitute bonding, to protect the interests of the OWNER and of persons supplying labor or materials in the prosecution of the Work contemplated by the Contract, or may be liable for breach of Contract and default termination.

ARTICLE IV. CONTRACT ADMINISTRATION

4.1 GENERAL ADMINISTRATION - The ENGINEER will provide general administration of the Contract during construction in accordance with the ENGINEER's scope of work as defined in the ENGINEER's Contract with the OWNER.

1. The ENGINEER has the authority to act on behalf of the OWNER to the extent provided in the Construction Contract Documents. The ENGINEER will advise and consult with the OWNER. The OWNER's instruction to the CONTRACTOR may be issued through the ENGINEER but the OWNER reserves the right to issue instructions directly to the CONTRACTOR through other designated OWNER representatives. CONTRACTOR understands that OWNER may modify the authority of such ENGINEER as provided in the terms of its contract relationship with the ENGINEER, and the OWNER shall, in such event be vested with powers formerly exercised by such ENGINEER, provided written notice of such modification shall be immediately served on the CONTRACTOR. Nothing herein shall authorize independent agreements between CONTRACTOR and such ENGINEER, nor shall the ENGINEER be deemed to have a legal relationship with the CONTRACTOR.
2. All oral instructions shall be confirmed expeditiously in writing with copies furnished the ENGINEER, the OWNER's designated representatives, and the CONTRACTOR by the party issuing the oral instruction.
3. Upon the ENGINEER's written recommendation, the OWNER shall have the final authority to reject Work performed by the CONTRACTOR which does not meet the requirements of the contract and to order such Work repaired, removed, or replaced in accordance with Paragraph 5.11.

4.2 ACCESS TO AND OBSERVATION/INSPECTION OF THE WORK The CONTRACTOR shall provide sufficient, safe and proper facilities at all reasonable times for the observation/inspection of the Work by the duly authorized representative of the OWNER. The ENGINEER and the OWNER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress of the executed Work and to determine if the Work is proceeding in accordance with the Contract Documents.

1. On the basis of such visits and on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work and will guard OWNER against defects and deficiencies in the Work which are the responsibility of the CONTRACTOR to prevent and/or cure.
2. No Approval of any phase of the construction Project by any of the OWNER's representatives or observer/inspectors shall relieve the CONTRACTOR from full compliance with the Contract Documents regarding the ultimate Work product. Any additional cost, damages, or delays occasioned by patent or latent defects in the Work, and/or failure to meet the requirements of the Contract Documents, at any Project phase, shall be borne by the CONTRACTOR.

4.3 ASSIGNMENTS AND SUBLETTING - CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, or any portion thereof, or any right, title or interest in, to or under the same, without the previous written consent of the OWNER. CONTRACTOR shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the OWNER under this Contract, without the previous written consent of the OWNER. The CONTRACTOR shall notify the OWNER, by written notification by certified mail to the OWNER, that such assignment, transfer, conveyance or subletting, or other disposition of this contract or any portion thereof, or any right title or interest in, to or under the same, is contemplated. If the

CONTRACTOR does not receive written approval of such contemplated action by the OWNER, within thirty days of receipt of such initial request by the OWNER, such contemplated assignment transfer, conveyance or subletting, or other disposition of this contract or any portion thereof, or any right, title or interest in, to, or under the same, shall be deemed disapproved. In no event shall the OWNER be liable in excess of the consideration of this Contract in the case of any such assignment, transfer, conveyance or subletting of the Work or performance which is subject hereof.

1. The OWNER reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or subletting of a portion of the work without the previous consent and knowledge of the OWNER and by reserving such right the OWNER shall not be deemed to have waived its right to declare a full breach of this Contract for CONTRACTOR's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the OWNER.

4.4 SUBCONTRACTORS - The CONTRACTOR shall upon executing the Contract, notify the OWNER in writing of the names of all proposed first tier subcontractors for the Work.

1. SUBCONTRACTUAL RELATIONS:

By an appropriate written agreement, the CONTRACTOR shall require each subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CONTRACTOR by the terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by these Documents, assumes toward the OWNER and the ENGINEER. Said agreement shall preserve and protect the rights of the OWNER and the ENGINEER under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, the benefit of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR, by these Documents, has against the OWNER. Where appropriate, the CONTRACTOR shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors, The CONTRACTOR shall make available to each proposed Subcontractor, prior to the execution of the Subcontract copies of the Contract Documents to which the Subcontractor will be bound by this paragraph and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

4.6 SEPARATE CONTRACTS

1. The OWNER reserves the right to let other contracts in connection with this Work. The CONTRACTOR shall afford other CONTRACTOR's reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his Work with their work.
2. When separate contracts are awarded for different portions of the Project, "the CONTRACTOR" in the Contract Documents in each case shall be the CONTRACTOR who executes each separate Contract. This CONTRACTOR shall properly connect and coordinate his Work with the work of other CONTRACTOR's. If any part of this CONTRACTOR's Work depends for proper execution or proper results on the work of any other separate CONTRACTOR, this CONTRACTOR shall inspect and promptly report in writing to the ENGINEER and OWNER's Representative any discrepancies or defects he may find in the work of any separate CONTRACTOR that render it unsuitable to achieve proper connection, execution and results. Failure of this CONTRACTOR to so inspect and report obvious discrepancies or defects shall constitute an acceptance of the other CONTRACTOR's work as fit and proper to receive this CONTRACTOR's Work, except as to defects which may develop in the other separate CONTRACTOR's work after the execution of this CONTRACTOR's work.
3. Should this CONTRACTOR negligently cause damage to the work or property of any separate CONTRACTOR on the Project, this CONTRACTOR shall, upon due notice, endeavor to settle with such other CONTRACTOR by agreement. A reciprocal clause shall be placed in the Contract

Documents between the OWNER and the separate CONTRACTOR if involving other OWNER work. If such separate CONTRACTOR sues the OWNER and/or its agents on account of any damage alleged to have been so sustained, the OWNER and/or its agents shall notify this CONTRACTOR who shall defend the OWNER's and/or its agents' interests and CONTRACTOR's own interests in such proceedings and pay all attorney fees, and costs in connection therewith, and if any judgment against the OWNER results therefrom, this CONTRACTOR shall pay or satisfy that judgment.

4.8 CONTRACT TERMINATION

1. **TERMINATION BY CONTRACTOR** - If the Work is stopped by OWNER for a period of ninety (90) consecutive days (working or calendar days depending upon the type of Contract entered into) under an order of any court or other public authority having jurisdiction, or as a result of an act of a higher governmental authority, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CONTRACTOR or a subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the CONTRACTOR, then the CONTRACTOR may upon ten (10) additional days written notice to the OWNER and the ENGINEER, terminate the Contract and recover from the OWNER payment for all Work previously executed and for any loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages related to the Work stoppage. If the Work is re-commenced during the ten (10) day notice period, the CONTRACTOR may not terminate the Contract.
2. **TERMINATION BY OWNER** - If the CONTRACTOR is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, without the consent of the OWNER or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction pertaining to the Work, or otherwise is guilty of a substantial violation of a provision of the Contract Documents warranting OWNER default of CONTRACTOR, then the OWNER may, without prejudice to any right or remedy and after giving the CONTRACTOR and his Surety, if any, ten (10) days written notice, terminate the employment of the CONTRACTOR and/or take possession of the site and of all materials, and may upon order of a court of competent jurisdiction take possession of equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR. Should the Surety fail to pursue completion of the Work with reasonable speed, the OWNER may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional OWNER administration and ENGINEER services made necessary by such default or neglect, in which event no further payment shall then be made by the OWNER until all cost of completing the Work shall have been paid.
3. In the event that OWNER shall be prevented from completing performance of its obligations under this Contract by an act of God or other occurrence whatsoever which is beyond the control of OWNER, then OWNER shall be excused from any further performance of its obligation and undertakings.
4. If the unpaid balance of the Contract sum exceeds the costs of finishing the Work, including compensation for the ENGINEER's additional services made necessary thereby, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR or his surety shall pay the difference to the OWNER. This obligation for payment shall survive the termination of the Contract.

4.9 SUSPENSION OF WORK BY OWNER

1. The OWNER may suspend said Work either partially or totally by his written order whenever, in his opinion, the interest of the OWNER requires the suspension of such Work. In the event that the OWNER suspends Project Work, the CONTRACTOR hereby acknowledges and agrees that so long as the total suspension(s) is (are) for a period not to exceed ten (10) cumulative days

(working or calendar days, depending upon the type of Contract entered into) accruing throughout the entire Contract Time, that the CONTRACTOR is not entitled to request a negotiated adjustment of the Contract Sum nor an extension of the Contract Time. Such right to suspend Project Work for periods not to exceed ten (10) cumulative days (working or calendar days depending upon the type of Contract entered into) accruing throughout the entire Contract Time without compensation to the CONTRACTOR, is expressly reserved by the OWNER.

2. Any total suspension of Project Work by the OWNER that extends beyond ten (10) cumulative days (working or calendar days depending upon the type of Contract entered into) accrued throughout the entire Contract Time, shall entitle the CONTRACTOR to request either a negotiated adjustment of Contract Sum or an extension of Contract Time, or both, as directly attributable to such extended total suspension of Project Work.
3. Any partial suspension of the Work by the OWNER that extends beyond the mutually determined point in time when the ten (10) cumulative days (working or calendar days depending upon the type of Contract entered into) accruing throughout the entire Contract Time, are effectively exceeded, shall entitle the CONTRACTOR to request either a negotiated adjustment of Contract Sum or an extension of Contract Time, or both, as directly attributable to such extended partial suspension of Project Work.
 - a. In the event that the OWNER partially suspends the Work in such a manner that some work is able to continue, the CONTRACTOR and OWNER hereby agree to discuss the impact of the partial suspensions upon dependent Contract Work, and to mutually determine when the ten (10) cumulative days (working or calendar days depending upon the type of Contract entered into) accruing throughout the entire Contract Time and expressly reserved by the OWNER without compensation to the CONTRACTOR, would effectively be exceeded.
 - b. The OWNER's Representative shall have the right to stop the Work whenever such stoppage may be necessary to insure proper execution of the Contract. Such temporary stoppage shall be followed by a Written Order as outlined in Paragraph 4.10.1.
4. The OWNER and the Representative of OWNER shall at any time during the Contract Time have the right to suspend or stop the Work under Section 4.9.1 or Section 4.9.3.2, when the COI of OWNER or any other authorized representative of the OWNER reasonably believes that there exists any dangerous condition, nuisance or safety risk to workers, the general public or property on the site or on property adjacent thereto. Notwithstanding the foregoing provisions of section 4.9, the CONTRACTOR shall not be entitled to any adjustment of the Contract Sum or extension of the Contract Time relating to any suspension of the Work by the OWNER or the Representative of OWNER for any safety reasons under this Section 4.9.4 and the OWNER shall have no other liability of any kind to the CONTRACTOR with respect to any suspension of the Work for safety reasons under this Section 4.9.4.
5. The OWNER and the Representative of OWNER shall at any time during the Contract Time have the right to suspend or stop the Work under Section 4.9.1 or Section 4.9.3.2 when the Representative of OWNER reasonably believes that there exists on the site any environmental condition which could reasonably be expected to result in any liability, costs or expense to the OWNER or the CONTRACTOR arising under any laws, statutes, ordinances, rules and regulations ("Laws") of any governmental, quasi-governmental or regulatory authority which relate to the transportation, storage, placement handling, treatment discharge, generation, production, removal, or disposal (collectively, "Treatment") of any waste, petroleum product (including without limitation, gasoline and diesel fuel), waste products, or any other substance, the Treatment of which is regulated by any Laws (collectively, "Waste"). Notwithstanding the foregoing provisions of section 4.9, the CONTRACTOR shall not be entitled to any adjustment of the Contract Sum or extension of the Contract Time relating to any suspension of the Work by the OWNER or the Representative of OWNER for environmental reasons under this Section 4.9.5., and the OWNER shall have no other liability of any kind to the CONTRACTOR with respect to any suspension of the Work for environmental reasons under this Section 4.9.5. At all

times during the performance of the work by the CONTRACTOR under this Contract the CONTRACTOR will comply with all Laws which relate to the Treatment of any Waste. The CONTRACTOR agrees to (a) give notice to the OWNER immediately upon CONTRACTOR's acquiring knowledge of the existence of any Waste on the site with a full description thereof, (b) promptly comply with any Laws applicable to the CONTRACTOR or the site requiring the removal treatment or disposal of such Waste and provide OWNER with satisfactory evidence with such compliance and (c) provide OWNER within thirty (30) days after demand by OWNER with a bond, letter of credit or similar financial assurance evidencing to the OWNER's satisfaction that adequate funds are available to pay the costs of removing, treating and disposing of such waste.

- 4.10 PROTECTION OF PRIVATE PROPERTY - The OWNER has secured right-of-way and easements, as shown on the plans, to be occupied by the finished construction, with only such additional temporary construction easements as shown for use by the CONTRACTOR in carrying out his Work. The CONTRACTOR shall take proper measures to protect all property within all construction easements, and adjacent or adjoining property which might be injured by any process of construction; and, in case of any injury or damage, he shall restore at his own expense the damaged property to a condition equal to or better than that existing before such injury or damage was done, or he shall make good such injury or damage in a manner acceptable to the private or public owner.
1. The CONTRACTOR shall correct customer complaints for such items as (but not limited to) driveway access, mailboxes, privacy fences, public safety hazards, public nuisances, water and sewer services as specified by the OWNER's Representative.
 2. The CONTRACTOR shall not, except upon procuring written consent from proper private parties, enter or occupy with men, tools, materials, or equipment any privately owned land except for those on easements provided herein by OWNER.

ARTICLE V. CONTRACT RESPONSIBILITIES

- 5.1 OWNER-CONTRACTOR OBLIGATIONS - The OWNER and the CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The CONTRACTOR shall not assign the Contract or sublet it as a whole without the prior written consent of the OWNER, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder, without the prior written consent of the OWNER and in the manner established in Section 4.4 herein.
- 5.2 OWNER'S RESPONSIBILITY - Projects contracted through other outside entities and containing utility work by OWNER shall be managed by the other entity with support by OWNER personnel. CONTRACTOR shall report directly to the other entity. Utility projects contracted through OWNER, which contain secondary street work, shall be managed by OWNER with support by other entity personnel. CONTRACTOR shall report directly to OWNER.
1. The design of this Project was performed by a professionally licensed engineer who is an authorized representative of the OWNER, who will exercise the authority and functions of the OWNER as the Project ENGINEER in the following respects:
 - a. Staking the Work for construction as indicated in Section 5.16.
 - b. Checking of shop drawings furnished by the CONTRACTOR in compliance with Paragraph 5.13 herein.
 - c. Consultation and advice during construction and rendering those decisions requiring interpretation of the Plans and Specifications.
 - d. Review of the monthly and final quantity and pay estimates as prepared by CONTRACTOR.

- e. Provide the OWNER with a final set of "Record Drawings" on reproducible Mylar prepared from monthly CONTRACTOR's submittal of marked Plans in accordance with Paragraph 3.4. 1.
 - f. Review laboratory, mill and shop tests of materials and equipment for general compliance with the Plans and Specifications.
 - g. Observation/inspection of the authorized construction, administration for the OWNER, and review of all Work performed for general compliance with the Plans and Specifications.
 - h. Conduct final observation/inspection.
 - i. Determine acceptability of the finally completed Work.
2. Unless otherwise directed in the contract documents, sampling and testing of materials, laboratory inspection of materials and processes shall be performed at the expense of the OWNER in a commercial testing laboratory designated by the OWNER. The CONTRACTOR shall furnish reasonable assistance and material required of him by the OWNER's Representative in obtaining Samples at the expense of the CONTRACTOR.
 - a. All Work on integral components of the Project, (e.g. such as precasting members, steel fabrications, large pump testing, etc.), performed outside of Guadalupe County shall be regulated as follows: Sampling and testing of materials, laboratory inspection of materials and processes shall be performed at the expense of the CONTRACTOR or Supplier by an independent commercial laboratory approved by OWNER or his duly authorized representative. All test reports and shop drawings shall be submitted to the OWNER or his Representative and shall be signed and sealed by a Registered Professional Engineer. All structural members shall be marked or stamped individually with an identifying number for the purpose of cross-referencing all reports.

5.3 CONTRACTOR'S RESPONSIBILITIES

1. The CONTRACTOR shall supervise and direct the Work using the best skill and attention. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for the implementation of safety precautions and for coordinating all portions of the Work under this Contract.
2. In connection with the OWNER's visual observation/inspection of the Work or materials testing contemplated herein, it is clearly understood that the CONTRACTOR is responsible for performing quality control inspection and testing services to assure Project compliance with Contract Documents. The CONTRACTOR shall give the OWNER's Representative reasonable advanced notice of the readiness of any Work for observation/inspection, and when practicable, twenty-four (24) hours notice. If any underground Work is performed without the proper prior notification to the OWNER's Representative, it shall be uncovered for observation/inspection and properly restored at the CONTRACTOR's expense.
3. If the CONTRACTOR, in the course of the Work, finds any discrepancies between the Plans and the physical conditions of the locality, or any errors or omissions in the Plans or the layout as given by survey points and instructions, he shall immediately inform the ENGINEER in writing, and the ENGINEER shall promptly investigate the same. Any Work impacted by the discrepancy performed by CONTRACTOR after such discovery, until authorized, will be done at the CONTRACTOR's risk and/or expense.
4. Contractor's Risk - CONTRACTOR shall be responsible for the complete and timely, performance of the Work under this Contract and compliance with the Contract Documents. CONTRACTOR shall be responsible for the safe storage and inventory control of all materials on the project site and/or within off-site storage facilities either owned or leased by the CONTRACTOR, if any. CONTRACTOR shall protect materials and Work from all theft, loss, vandalism, or damage from any cause whatsoever until final Project completion by

CONTRACTOR and acceptance by OWNER; and shall deliver said Work and improvements to the OWNER in a completed and acceptable condition in accordance with the Contract Documents.

5. It is the intention of the OWNER to be sensitive to the needs and concerns of the citizenry. It is the CONTRACTOR's responsibility to adhere to this policy to the best of his ability. The CONTRACTOR, subcontractor and his employees should, whenever possible, address citizen inquiries about the project, provide names and numbers of OWNER personnel, relay citizen complaints, and provide continuous access to the citizen's property.
- 5.4 SUPERINTENDENT - The CONTRACTOR shall keep on-site for this Project during its progress a competent Superintendent or a designee and any necessary assistants, all satisfactory to the OWNER. Any Superintendent designee shall be identified in writing to the OWNER or his duly authorized representative, promptly after OWNER issued written Authorization to Proceed. The Superintendent or appointed designee shall represent the CONTRACTOR and all directions given to either of them shall be binding. Other Oral directions from the OWNER's representatives involving critical situations or Work elements shall be immediately confirmed in writing by OWNER to the CONTRACTOR. OWNER shall confirm other oral directions on written request in each case. The CONTRACTOR shall give sufficient supervision to the Work, using the best skill and attention.
- 5.5 INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS - The CONTRACTOR shall perform all incidental Work necessary to complete this Contract, including, but not by way of limitation, the following: Shall make and provide all suitable reconnections with existing improvements as are necessarily incidental to the proper completion of the Project; shall provide passageways or leave open such thoroughfares in the Work area as may be reasonably required by OWNER and shall protect and guard same at CONTRACTOR's own risk, and shall continuously maintain the Work area in a clean, safe and workmanlike manner.
- 5.6 CONDITIONS AT SITE
 1. CONTRACTOR declares that prior to the submission of the Bid Proposal on this Contract, the CONTRACTOR has thoroughly examined the locations of the Work to be performed, has become familiar with typical local geophysical conditions at or near this Project, and has read and has thoroughly understood the "Contract Documents" and any other document made available prior to the bid opening, as they may relate to the physical conditions prevalent or likely to be encountered in the performance of the Work at such location(s). CONTRACTOR, by the performance of the above, hereby generally acknowledges that such "Contract Documents" are not obviously deficient and will enable the CONTRACTOR to accomplish the proper performance of the Work at the Project site.
 2. The CONTRACTOR shall promptly, and before such discovered conditions and/or structures are disturbed, notify the OWNER in writing of (1) subsurface or latent physical and/or structural conditions at the site differing materially from those indicated in the Plans, Specifications, and other Contract Documents or (2) newly discovered, unknown physical conditions at the site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the local environs. The OWNER, or designated representative, shall promptly investigate the reported physical and/or structural conditions, and shall determine whether or not the physical and/or structural conditions do materially so differ and thereby cause an increase or decrease in the CONTRACTOR's cost of, and/or the time required for performance of any part of the Work under this Contract. In the event that the OWNER reasonably determines that the physical and/or structural conditions do materially so differ, a negotiated, equitable, adjustment shall be made to either the Contract Time or Contract Sum or both, and a Contract Change Order shall be promptly issued in writing accordingly.
 - a. No claim of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.

- b. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if claimed by the CONTRACTOR after final payment as defined in Section 7.4 herein has been made by the OWNER under the terms of this Contract.

5.7 CONTRACTOR'S INSURANCE REQUIREMENTS

1. Commencing on the date of this Contract, the CONTRACTOR shall, at CONTRACTOR's expense, purchase, maintain and keep in force such insurance as will protect the CONTRACTOR, OWNER and OWNER employees and agents from claims which may arise out of or result from operations under this Contract, whether such operations are performed individually, by any subcontractor, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following:

- a. Workers' Compensation (WC) insurance that will protect the CONTRACTOR, OWNER and OWNER employees and agents from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the work is to be performed. This insurance will be endorsed to provide coverage for multiple jurisdictions and other such indicated coverage (U.W. Longshoremen and Harbor Workers' Admiralty, etc.) as may be applicable. The CONTRACTOR shall provide to OWNER proof of Worker's Compensation Insurance for all persons involved in each project.
- b. Employers' Liability (EL) insurance that will protect the CONTRACTOR, OWNER and OWNER employees and agents for damages because of bodily injury, sickness, disease of vendor's employees apart from that imposed by Workers' Compensation laws. This employer' liability insurance shall have a minimum limit of liability of not less than:

| | |
|---------------|--|
| \$ 500,000.00 | Bodily Injury by Accident |
| \$ 500,000.00 | Bodily Injury by Disease - Each Employee |
| \$ 500,000.00 | Bodily Injury by Disease - Policy Limit |

- c. COMMERCIAL LIABILITY (CL) insurance that will cover the entire scope of work and protect the CONTRACTOR, OWNER and OWNER employees and agents from claims for damages because of bodily injury, personal injury, sickness or death and insurance that will protect the CONTRACTOR, OWNER and OWNER employees and agents from claims for damages to or destruction of tangible property of others, including loss of use thereof. This coverage shall include Broad Form Property Damage and shall cover independent CONTRACTORS and shall not include any exclusions relating to blasting, explosion, collapse of buildings or damage to underground property where applicable.

The minimum limits of liability shall be:

| | |
|----------------|---|
| \$2,000,000.00 | General Aggregate |
| \$1,000,000.00 | Occurrence Limit |
| \$1,000,000.00 | Products/Completed Operations Aggregate |
| \$1,000,000.00 | Personal and Advertising Injury |
| \$ 50,000.00 | Fire Legal Liability |
| \$ 5,000.00 | Medical Expense |
| \$1,000,000.00 | Contractual Liability |

- d. Comprehensive Automobile Liability (AL) insurance that will protect the CONTRACTOR, OWNER and OWNER employees and agents from claims for damages arising out of the maintenance, operation, or use of any OWNER, non-owned or hired vehicles. Minimum limits of liability for bodily injury and property damage combined shall be not less than \$1,000,000.00 each occurrence.
- e. An Umbrella Liability (UL) insurance in the amount of \$2,000,000.00. This policy shall be of an "Occurrence" type and the limit of liability shall be concurrent with and in excess of the

EL, CL, and AL insurance coverage described in paragraphs 5.7.1.b, 5.7.1.c, and 5.7.1.d of this contract.

- f. An OWNER and CONTRACTOR Protective Liability Insurance policy which insures OWNER and OWNER employees and agents with the same coverage specified in paragraph 5.7.1.c.
 - g. In the event, the project contracted for herein requires the building of structures or facilities used for storage, housing equipment or the occupancy of personnel, the CONTRACTOR shall provide Physical Damage Insurance on Builder's Risk Form which insures OWNER for damages to all Property Purchased for, or Assigned to, the Project commencing on the start date through completion. Policy limits shall be in an amount equal to the total construction cost contracted herewith. The policy form shall be an All Risk Builders' Risk form and shall include the flood and earthquake endorsements.
2. Contractor shall issue a waiver of subrogation in favor the OWNER with respect to coverage described in paragraphs 5.7.1.a and 5.7.1.b. CONTRACTOR shall name OWNER as an additional insured with respect to coverage described in paragraphs 5.7.1.c and 5.7.1.d.
 3. CONTRACTOR shall be liable for all Subcontractor's insurance coverage appropriate to their scope of Work, and in the event a Subcontractor is not insured with respect to any and all insurance required by law, including, but not limited to, Automobile Insurance and Workers' Compensation Insurance, then the CONTRACTOR shall endorse the Subcontractor onto the applicable CONTRACTOR policies as another named insured.
 4. The insurance that is required under this Section 5.7 shall be written so that OWNER will be notified in writing in the event of cancellation, restrictive endorsement or non-renewal at least thirty (30) days prior to such action. Certificates of Insurance on the form attached to this Contract shall be filed with the OWNER prior to the execution of this Contract. CONTRACTOR shall be responsible for obtaining Certificates of Insurance from all Subcontractors and upon request, furnish copies to OWNER.
 5. CONTRACTOR is responsible for all deductibles under all of the insurance policies required by this section.
 6. The stated limits of insurance required by this section are MINIMUM ONLY and it shall be CONTRACTORS responsibility to determine what limits are adequate and the length of time the coverage shall be maintained. The minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. The CONTRACTOR is fully responsible for all losses arising out of, resulting from or connected with the construction, and installation of the Facilities, and in support of its operations under this Contract and those of its subcontractors, whether or not said losses are covered by insurance. The OWNER acceptance of Certificates of Insurance that in any respect do not comply with the requirements of this Section 5.7 does not release the CONTRACTOR from compliance herewith. CONTRACTOR shall and will cause Subcontractors to carry any and all insurance required by law, including, but not limited to, Automobile Insurance and Workers' Compensation Insurance.
 7. CONTRACTOR shall and will cause Subcontractors to issue a waiver of subrogation in favor the OWNER and the CITY OF SCHERTZ with respect to coverage described in paragraphs 5.7.1.a and 5.7.1.b. CONTRACTOR shall and will cause Subcontractors to name OWNER as an additional insured with respect to coverage described in paragraph 5.7.1.d. CONTRACTOR agrees that all insurance policies required by this Section 5.7 shall be with insurance companies, firms or entities that are A.M. Best Rated "A-" or better. All insurance policies shall be of an "Occurrence" type.

5.8 SURVIVAL

Any and all representations, conditions and warranties made by CONTRACTOR under this Contract including, without limitation, the provisions of Sections 5.7.1.c, 5.7.1.d and 5.7.1.e of this Contract are

of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by the OWNER whether delivered at the time of the execution, or at a later date shall constitute representations and warranties hereunder.

5.9 MATERIALS & WORKMANSHIP

1. **MATERIALS** - Unless otherwise specified, all materials incorporated in the permanent Work shall be new, and both workmanship and materials shall be of good quality in accordance with Specifications. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the supply or manufacture, and quality of materials supplied.
2. **USE OF MATERIALS WITHIN THE RIGHT-OF-WAY** - The CONTRACTOR, with the approval of the OWNER's Representative and/or Engineer, may use in the Work any suitable stone, gravel, or sand found in the excavation that otherwise meets or exceeds Contract Specifications. The CONTRACTOR shall not over excavate any material from within the right-of-way, which is not within the excavation limits, if any, as may be indicated by the lines and grades, without written authorization from the OWNER.
3. **SALVAGEABLE MATERIAL** - Salvageable material as determined by the Specifications or the OWNER's Representative shall remain the property of the OWNER and shall be relocated and stored at the job site by CONTRACTOR as directed by the OWNER's Representative unless stated elsewhere in the Specifications.
4. **DISPOSAL OF NON-HAZARDOUS WASTE MATERIAL/SUBSTANCES** - The CONTRACTOR shall be responsible for disposing of all non-hazardous material as the term is defined in Article 1 herein including old concrete or any other non-hazardous material which is required to be removed from the project. Such material shall not be deposited in any sanitary sewer, creek, river, water course or municipal separate, storm sewer system (MS4) as the term is defined herein.
5. **DISPOSAL OF HAZARDOUS MATERIAL/SUBSTANCES** - The CONTRACTOR shall be responsible for disposing of all hazardous materials/substances, as that term is defined in Article I herein in accordance with all applicable Federal, State and local laws, and in accordance with any specific instructions set out in the plans and specification herein.
6. **RECLAMATION OF LOW AREAS** - The CONTRACTOR may undertake the reclamation of low areas with the prior approval of the OWNER.
7. **BLOCKAGE OF THE MS4** - The CONTRACTOR shall comply with the provisions of the appropriate City Ordinances. In no event shall the CONTRACTOR block any portion of the MS4 with fill. Should any blockage occur the CONTRACTOR shall remove such fill, at CONTRACTOR's expense, as directed by the OWNER "COI".

5.10 TESTING - The OWNER or the ENGINEER may require special inspection, testing or approval of material or Work for determining compliance with the requirements of the Contract Documents. Upon OWNER-authorized direction of the ENGINEER the CONTRACTOR shall promptly arrange for such special testing, inspection or approval procedure. Should the material or Work fail to comply with the requirements of the Contract Documents, the CONTRACTOR shall bear all costs of the special testing, inspection or approval as well as the cost of replacement of any unsatisfactory material or Work as provided by Paragraph 5.11, otherwise, should the Work prove not defective, the OWNER shall bear such costs and an appropriate Change Order shall be issued. The costs of routine testing required by the OWNER shall be borne by the OWNER, as provided by Paragraph 5.2.3.

5.11 REMOVAL OF DEFECTIVE WORK - If any materials furnished under this Contract fails to perform in the manner such material is expected to perform in accordance with ordinary usage, the CONTRACTOR shall proceed to remove from the Project at his sole expense all such materials, whether worked or unworked, and to remove all portions of the condemned Work.

5.12 EOUAL MATERIALS - It is not the intent of these Specifications to unreasonably limit materials to the product of any particular manufacturer or supplier. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done so as to set a definite standard and/or a reference for comparison as to quality, application, physical conformity, and other characteristics. It is not the intention to discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures that meet or exceed the characteristics of the specified items. CONTRACTOR's substitution of materials, equipment and/or fixtures shall not be made without prior written approval from the ENGINEER and the OWNER.

5.13 SHOP DRAWINGS AND SAMPLES

1. Contractor shall reasonably check and verify all field measurements and after complying with applicable procedures specified in the Contract Documents, CONTRACTOR shall submit (in accordance with the CONTRACTOR's schedule of Shop Drawing submissions submitted to the OWNER and ENGINEER for information purposes); to ENGINEER for review and approval or for other appropriate action, six (6) copies, of all Shop Drawings bearing a stamp or specific written indication that CONTRACTOR has satisfied the CONTRACTOR's responsibilities under the Contract Documents with respect to his review of his submissions. All CONTRACTOR submissions will be clearly identified as required by the ENGINEER. The CONTRACTOR data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information.
2. Contractor shall also promptly submit to ENGINEER for review and approval any Samples required by the Contract Documents. All Samples will be accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission identity of materials, suppliers, and other pertinent data such as catalog numbers, and use for which intended.
 - 2.1 Before CONTRACTOR's submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
 - 2.2 At the time of each CONTRACTOR submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific CONTRACTOR notation to be made on each Shop Drawing submitted to ENGINEER for review, approval, or other appropriate action highlighting each such variation.
 - 2.3 Shop drawings for alternate designs not shown in the plans shall be reviewed and approved by the Engineer and shall not be implemented without an approved Change Order.
3. ENGINEER will review, approve, or take other appropriate action with the Shop Drawings and samples with reasonable promptness so as to cause no delay in the Work. ENGINEER's review, approval, or other appropriate action regarding CONTRACTOR's submissions will be only to check conformity with the design concept of the Project and for compliance with the information contained in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate component item will not indicate approval of the assembly into which the item is functionally integrated. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings to the CONTRACTOR. CONTRACTOR may be required to resubmit as required revised Shop Drawings or Samples for

further review and approval. Contractor shall direct specific attention in writing to any new revisions not specified by CONTRACTOR on previous CONTRACTOR submissions.

4. ENGINEER's review, approval, or other appropriate action regarding Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by Paragraph 5.13.2.2 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for CONTRACTOR errors or omissions in the Shop Drawing submissions or from CONTRACTOR's responsibility to comply with the provisions of Paragraph 5.13.2.1.
5. Where ENGINEER requires by written request an approved CONTRACTOR Shop Drawing or Sample, any related Work performed by CONTRACTOR prior to ENGINEER's review and approval of the affected submission will be at the risk of CONTRACTOR.

5.14 PROGRESS SCHEDULE

1. The CONTRACTOR shall provide a Construction Progress Schedule to the OWNER within ten (10) calendar days after receipt of the Authorization to Proceed. The schedule shall show the order in which the CONTRACTOR proposes to carry out the Work in accordance with the final approved phasing plan, and the anticipated start and completion dates of each phase of the Work. The schedule shall be in the form of a time scaled Work progress chart to indicate the percentage of Work scheduled for completion at various critical milestones.
2. If the CONTRACTOR's operations are materially affected by changes in the Plans or in the amount of Work, or if he has failed to comply with the anticipated progress, the CONTRACTOR shall submit a revised schedule reflecting the change in progress, within ten (10) calendar days of the occurrence of such event. The schedule may also be revised by the CONTRACTOR in response to the reasonable request of the OWNER.
3. The Construction Progress Schedule will be used as the basis for establishing the critical items of Work and analyzing the Contract Time in relation to Work progress.
4. The CONTRACTOR shall submit in conjunction with his monthly request for payment, a copy of the current adjusted Construction Progress Schedule showing the progress of the Work to date. If OWNER determines that the CONTRACTOR is not maintaining his anticipated progress, then the OWNER may withhold approval of the monthly progress payment as outlined in Paragraph 7.3.

5.15 SEQUENCE OF WORK

1. PHASES OF CONSTRUCTION - The CONTRACTOR shall perform the Work as outlined in the Contract Documents, or as shown on the Plans. The CONTRACTOR may submit to OWNER a revised CONTRACTOR Phasing Plan prior to start of construction for review by the OWNER. If the OWNER determines that the revised CONTRACTOR's Phasing Plan is not acceptable as being in the best interest of the OWNER, then the CONTRACTOR shall proceed with the Work in accordance with the OWNER's Phasing Plan at no additional cost to the OWNER.
2. DETOUR ROUTES - A detour route for through traffic as determined by the OWNER may be included in the Plans where the proposed construction is located within the limits of a street designated as "Collector", "Secondary" or "Primary". The CONTRACTOR shall not begin construction of the Project or close any streets until adequate barricades and detour signs have been provided, erected and maintained in accordance with the detour route and details shown on the Plans. The CONTRACTOR shall notify the OWNER's Representative forty-eight (48) hours in advance of closing any street to through traffic. Local traffic shall be permitted the use of streets under construction where feasible.

5.16 CONSTRUCTION STAKES

1. The CONTRACTOR will be supplied with one set of construction stakes delineating the Project and appropriate benchmark information. Detailed transfers of elevation, line and grades to structures and other features of the Work shall be the responsibility of the CONTRACTOR.
2. WATER MAINS - Construction stakes will consist of a single line of stakes with guard stakes showing the stationing, and offset of PI, PC and PT of the pipe alignment.
3. STREETS - Construction stakes will consist of a single line of offset hubs at PC and PT of horizontal and vertical curves and at special features with guard stakes showing the stationing. Hubs will be offset as per contractor's preference within the Right of Way..
4. SANITARY AND STORM SEWERS - Construction stakes will consist of a single line of offset hubs at manhole locations and at other special features with guard stakes showing the stationing, the offset.
5. STRUCTURES – Construction stakes will consist of property corners and one benchmark on the site.
6. LASER BEAMS - The use of Laser Beams for vertical control of water mains and sanitary sewers shall be required and the CONTRACTOR shall make available to the OWNER's Representative a level and rod of sufficient sensitivity to accurately determine differences in elevation between points 300 feet apart with one instrument set-up.
7. CONTRACTOR'S RESPONSIBILITY - When the construction stakes have been set, the preservation of such stakes as to position, elevation and marking shall become the responsibility of the CONTRACTOR. Should any of the original stakes be destroyed by the CONTRACTOR's operations, or by any other non-OWNER related third parties or means whatsoever, the replacement of such stakes by ENGINEER and/or Engineer will be at the expense of the CONTRACTOR. Prompt payment by CONTRACTOR to ENGINEER for replacement staking is expected and OWNER may withhold periodic or final payments to CONTRACTOR to secure said payment.

5.17 PUBLIC UTILITIES

1. OWNER's Responsibility:

The OWNER shall cause to be sent a set of plans to the utilities listed on the plans. The OWNER shall request that the utilities review such plans and specifications to determine and/or verify the location of any utilities within the project site. The utility shall further be requested to communicate in writing the results of such review to the OWNER.

2. Contractor's Responsibility:

- a. The CONTRACTOR is hereby required to become familiar with all the existing utility structures, lines and mains that are known to exist and may be encountered within and/or adjacent to the limits of the work covered by the Contract. While the existence and location of underground utilities indicated on the Plans are taken from the most current utility records available to the OWNER and/or Engineer, the CONTRACTOR understands and acknowledges that the notation of such underground utilities on the Plans does not constitute a guarantee by the OWNER or ENGINEER. CONTRACTOR further understands and acknowledges that OWNER and ENGINEER are under no obligation to indicate the location of private service lines on the Plans.
- b. The CONTRACTOR shall go to the Project site and locate and verify any utilities indicated on the Plans prior to the Commencement of Work. The CONTRACTOR shall further investigate the possible location of any private service lines prior to the Commencement of Work. To facilitate this obligation on the part of CONTRACTOR, the CONTRACTOR shall

communicate with the utilities listed on the plans, call for locations and subsequently visit the project site with a qualified utility representative of each utility listed on the plans, prior to the Commencement of Work. The information resulting from such on-site investigations shall govern over the information notation on the Plans, when and if a conflict between such information arises. In the event such investigations on the part of CONTRACTOR result in a utility location adjustment CONTRACTOR shall not commence work until the completion of such adjustment has been completed.

- c. The CONTRACTOR acknowledges and agrees that maintaining continuity of utility service to utility customers is critical.
 - d. The CONTRACTOR shall be responsible for protecting the integrity of all utilities (public or private) either shown on the Plans or discovered during the CONTRACTOR investigations required in paragraph 5.17.2.b herein. Such method of protection shall first be reviewed and approved by the affected utility.
 - e. The CONTRACTOR shall be responsible for any damages to any utilities (public or private) either shown on the Plans or discovered during CONTRACTOR investigations acquired in paragraph 5.17.2.b herein. Any existing utilities shown on the plans or discovered during CONTRACTOR investigations set out herein which cannot be relocated shall be protected by the CONTRACTOR as part of the original Bid Proposal Price submitted by CONTRACTOR. The CONTRACTOR shall pay for temporary relocation of utilities for the CONTRACTOR's convenience.
 - f. Contractor shall be responsible for damage to utilities not shown on the Plans and not discovered during CONTRACTOR's investigations required in paragraph 5.17.2.b herein when the existence of such a utility or the suspected existence of such a utility should have been anticipated and investigated by the CONTRACTOR, based upon certain physical manifestations observed during the course of construction or other tangible evidence which constitutes common knowledge in the construction industry of the probable existence of a utility. A CONTRACTOR shall not be responsible for damages to utilities not shown on the Plans and not discovered during CONTRACTOR's investigation required herein when, in accordance with the common knowledge in the construction industry, the existence of such utility could not reasonably be anticipated.
3. Temporary clearance of high voltage (600 volts and above) and overhead electrical lines is required prior to the operation of equipment within 10 feet of such lines (Texas Health and Safety Code, sections 752.003 and 752.006). The CONTRACTOR shall bear the expense to obtain the necessary temporary clearance from the high voltage line operator or utility company. Temporary clearance shall be a temporary barrier separating and preventing contact of material, equipment persons, communications with high voltage electrical lines, or temporary de-energizing and grounding or temporary relocation, or raising of the lines.
 4. In the case of sewer, water, gas, electric, telephone, cablevision cable, or any other utility shown on the Plans and/or discovered during the CONTRACTOR's investigations required in paragraph 5.17.2.b herein, the CONTRACTOR will use care in excavating over, under and around such lines and will provide all necessary temporary bridging during construction so as to maintain continuous service of the utility line. The CONTRACTOR shall backfill around the main and complete his construction operations in such a manner as to leave the utility line firmly and securely bedded in its original position without damage to any protective coatings.
 5. In instances where gas or water mains are exposed during construction, the utility company owning or operating the service shall be given at least twenty-four (24) hours notice by the CONTRACTOR prior to backfilling in order that the protective coating on the mains may be inspected and/or repaired by utility company.
 6. BRACING AND SUPPORTING - In areas where utilities are known to be near the project site, and could be damaged by soil movement, slips or cave-ins, the CONTRACTOR shall take all

precautions necessary to protect such utilities from damage and shall pay for the repair of any such damages caused by CONTRACTOR failure to properly protect the utility.

- 5.18 SUBSURFACE CONDITIONS - Reports of explorations and tests of subsurface conditions at the construction site, where applicable, are available for review. The OWNER in order to generally forecast soil conditions at various depths to assist the ENGINEER in designing the Project procured these reports. The logs and descriptive data are NOT PART OF THE CONTRACT DOCUMENTS but are made available for the general information of bidders and neither the OWNER nor the ENGINEER assumes any obligation or responsibility, either specific or implied, for the accuracy or completeness of any information contained therein. Sub-surface conditions along and across the Project site may vary significantly from those shown on the test reports.
- 5.19 WORKING HOURS - No Work, with the exception of such items as curing of concrete, maintenance of barricades, etc., will be allowed by the OWNER between the hours of 6:00 p.m. and 7:00 a.m. of the following day, unless directed by OWNER or requested in writing by CONTRACTOR and approved by the OWNER.
- 5.20 USE OF CITY STREETS RIGHT OF WAY - The CONTRACTOR shall confine the movements of all steel tracked equipment to the limits of the Project and any such equipment will not be allowed to use City streets unless being transported on pneumatic tired vehicles. Any damage to existing City streets caused by the CONTRACTOR's equipment shall be repaired by CONTRACTOR at his own expense upon direction, and in the manner prescribed by City's specifications and the OWNER's "COI".
- 5.21 DAMAGES TO CITY STREETS caused by the CONTRACTOR, within the limits of the project but not within the current phase being constructed, shall be repaired by the CONTRACTOR at his own expense upon direction by the OWNER's "COI".
- 5.22 SANITARY PROVISIONS - The CONTRACTOR shall provide and maintain in a neat, sanitary condition, rest room facilities for the use of his employees and authorized on-site visitors as may be necessary to comply with the requirements and regulations of the City Health Department and of the State Department of Health.
- 5.23 DUST CONTROL - The CONTRACTOR will apply appropriate amounts of water (or other appropriate substance), to the area under construction and on detours as required to maintain sufficient moisture content in the surface layer for dust control.
- 5.24 USE OF EXPLOSIVES - The CONTRACTOR may not employ the use of explosives on this project.
- 5.25 WATER - Unless otherwise provided for in the specifications or Special Conditions, the responsibility shall be upon the CONTRACTOR to provide and maintain an adequate supply of water for construction and on-site domestic consumption. Any connections and piping that the CONTRACTOR deems necessary for providing and maintaining an adequate water supply to the jobsite shall be installed at his expense and at locations approved by the OWNER's Representative. Before final Project acceptance, all temporary connections and piping installed by the CONTRACTOR in accordance with this paragraph shall be removed in a manner satisfactory to the OWNER.
- 5.26 ELECTRICITY - All electric current required by the CONTRACTOR at the jobsite shall be procured by CONTRACTOR. All necessary meters, switches, connections and wiring shall be installed at locations approved by the OWNER. Before final acceptance, all meters, switches, connections and wiring installed by the CONTRACTOR pursuant to this paragraph shall be removed in a manner satisfactory to the OWNER's "COI".
- 5.27 CLEANING
1. The CONTRACTOR shall at all times keep the Project premises safe and free from accumulation of waste materials or rubbish caused by the Work under this Contract.
 2. Upon completion of the Work, and prior to the OWNER's final inspection, the CONTRACTOR shall present the premises in a neat and clean condition, prepared for acceptance by OWNER.

3. Prior to final acceptance of the Work, CONTRACTOR shall reasonably restore the Project site to its pre-Project condition (accounting for such restoration concerns as cosmetic appearance, landscaping, drainage gradients, accessibility, etc.) to the extent permitted by the Project improvements. All of this incidental Work to be performed by CONTRACTOR to the satisfaction of the OWNER.

5.28 ACCESS REQUIREMENTS - The CONTRACTOR shall provide access to residents and businesses affected by the construction of this project to the greatest extent possible.

5.29 SAFETY PRECAUTIONS AND PROGRAMS

1. In the performance of this Contract the CONTRACTOR shall protect the public and the OWNER by taking reasonable precaution to safeguard persons from death or bodily injury and to safeguard property of any nature whatsoever from damage. Where any dangerous condition or nuisance exists in and around construction sites, equipment and supply storage that are in any manner connected with the performance of this Contract, the CONTRACTOR shall provide and maintain reasonable warning of such danger or nuisance. The CONTRACTOR shall not create any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this Contract including, but not limited to, excavations and obstructions, unless necessary to its performance, and in that event the CONTRACTOR shall provide and maintain at all times reasonable means of warning of any danger or nuisance so created. The duties of the CONTRACTOR in this paragraph shall be nondelegable and the CONTRACTOR'S compliance with the specific recommendation and requirements of OWNER as to the means of warning shall not excuse the CONTRACTOR from the faithful performance of these duties should such recommendations and requirements not be adequate or reasonable under the circumstances. The CONTRACTOR shall take reasonable precautions for the safety of and shall provide protection to prevent damage, injury, or loss to:
 - 1.1 All employees on the Work, and all other persons who may reasonably be foreseen to be affected by the Work.
 - 1.2 All the Work and all materials to be incorporated at street crossings, along proposed detour routes, and at material stockpiles. Where directed by the Vice President of Engineering or his duly authorized representative, the CONTRACTOR shall provide and maintain suitable warning signs, barricades and lights, in accordance with the details included in the Contract Documents, to direct traffic around the Work in progress and to assure the safety of the public. The CONTRACTOR shall provide adequate warning signs, barricades, lights and, where necessary, flagmen for the Project or portions of the Project within which operations are being prosecuted in any one day or which will be closed over night.
 - 1.3 Other property at the site or adjacent thereto including but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
2. The CONTRACTOR shall comply with the U.S. Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-596 and all subsequent amendments) and under Section 107 of the Contract Work Hours and Safety Standards Act (Public Law 91-54 and all subsequent amendments). This project is subject to all of the Safety and Health Regulations (CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974 and CFR 29, Part 1910 and all subsequent amendments, General Industry Safety and Health Regulations Identified As Applicable to Construction. CONTRACTOR shall be knowledgeable with the requirements of these regulations and any amendments thereto.
3. Trench excavation protection shall be accomplished as required by the most current provisions of part 1926 subpart P - Excavations, of the Occupational Safety and Health's Standards and interpretations and as further defined in the note(s) on the Plans and other Contract Documents.

4. In any emergency affecting the safety of persons or property, the CONTRACTOR shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the CONTRACTOR resulting from emergency Work shall be considered by OWNER in accordance with Articles VI and VIII for Completion Time.
5. The CONTRACTOR shall provide, at the site, such equipment and medical facilities as are necessary to supply first aid service to anyone who may be injured in connection with the Work. Such equipment shall comply with the most current regulations of the Occupational Safety and Health Administration of the United States Department of Labor.
6. The CONTRACTOR must promptly report in writing to the OWNER all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on or adjacent to the site which caused death, personal injury, or property damage, giving full details and any statements of witnesses. In addition, if death, serious injury, or serious damage is caused, the accident then shall be reported immediately by telephone or messenger to the OWNER.
7. OWNER requires all CONTRACTOR job sites shall be immediately accessible to appropriate local, State and Federal agency safety officials.

ARTICLE VI. CONTRACT CHANGES

- 6.1 Change Orders - The Contract Sum and/or the Contract Time may be increased or decreased only by written Change Order. A Change Order signed by the CONTRACTOR indicates his acceptance and approval thereof including the adjustment in the Contract Sum and/or the Contract Time.

Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the CONTRACTOR for the work or the change defined in the Change Order. By signing the Change Order, the CONTRACTOR acknowledges that the stipulated compensation includes payment for the Work of Change plus all payment for the interruption of schedules, stop work orders, extended overhead, delay, or any other impact, claim or ripple effect and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject of the Change Order. Except as modified by Change Order, all Work performed under a Change Order shall be completed in accordance with these Contract Documents.

- 6.2 The OWNER, without invalidating the Contract, may order changes in the Work within the general scope of the Contract and applicable law consisting of additions, deletions or other revisions and the Contract Sum and/or the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed by CONTRACTOR under the applicable provisions of the Contract Documents.

1. Major Changes In The Work - any significant change in a Major Bid Item constitutes a major change in The Work and shall be implemented by a Change Order that shall be binding on the OWNER and CONTRACTOR. A significant change shall be defined as follows:
 - a) An increase or decrease of twenty-five percent (25%) or more in the number of units of each Major Bid Item as included in the ENGINEER's estimated quantities included in the Bid Documents;
 - b) An increase or decrease of twenty percent (20%) or more in the dollar value of a lump sum, Major Bid Item. Any change in the Contract Sum resulting from a major change in the work, which reflects among other things, quantity changes, market price changes, and any quantity or volume discounts that might apply, shall be determined as specified in Para. 6.4.
2. Minor Changes In The Work - The OWNER's Representative will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be implemented by a written directive and shall be binding on the OWNER and CONTRACTOR. The CONTRACTOR shall carry out any written directive promptly.

a) If the CONTRACTOR does not agree with the OWNER's Representative that a minor change in the work will result in no adjustment in Contract Sum or Contract Time, he must so notify the OWNER in writing, within seven (7) calendar days of issuance of the written directive and prior to beginning any disputed work. If the CONTRACTOR fails to file such written notification he shall waive his rights to file a claim under this section.

6.3 The entire cost of extra Work resulting from Change Orders including the incremental cost of extra Work resulting from any prior Change Orders, modifications, or additions so ordered, shall not cumulatively exceed twenty-five percent (25%) of the original Contract Sum, and provided further that the price is agreed upon in writing by OWNER and CONTRACTOR before materials are furnished or the Work is done.

6.4 Changes or Credits for the Work covered by an approved Change Order shall be determined by one or a combination of the following methods:

1. UNIT PRICE - Submitted by the CONTRACTOR in the original CONTRACTOR Bid Proposal as part of the base bid or as a designated additive or deductive alternate, and if agreed to by the CONTRACTOR and the OWNER, appropriately adjusted either upward or downward to reflect any increases or decreases in the amount of labor, material or equipment as they relate to Major Bid Items.
2. AGREED CONTRACT CHANGES - Lump Sum Agreement between OWNER and CONTRACTOR as to the price, quantity and time for changes in the Work. The CONTRACTOR shall submit an itemized, estimated cost breakdown together with supporting data. This itemized breakdown shall be in accordance with the requirements established in Article 6.4.3.
3. FORCE ACCOUNT - If no Agreed Contract Change or unit price can be reached after good faith negotiations between the OWNER and CONTRACTOR, the OWNER may direct the Work be performed by the CONTRACTOR on a Force Account basis, and payment by the OWNER shall be upon the basis of Actual Cost of the Work as specified in Paragraph 6.4.3.1 plus the participation allowances as specified in Paragraph 6.4.4.

3.1 ACTUAL COST OF THE WORK. - Actual Cost incurred by the CONTRACTOR to perform the additional Work. CONTRACTOR shall provide a complete breakdown of the actual costs to the OWNER on a daily basis as follows:

- a. Labor including Foremen
- b. Materials comprising the Work
- c. The CONTRACTOR's actual incremental Ownership or rental cost of equipment during the time of use on the extra Work. (Rental cost may be based on current Southwest Regional AGC, Association of Equipment Distributors regional computations or equivalent)
- d. Power and consumable supplies for the operation of power equipment
- e. Insurance, any extra bond premiums, Social Security and unemployment contributions, and benefits.

4. PARTICIPATION ALLOWANCE

| <u>Participant</u> | <u>Overhead</u> | <u>Profit</u> | <u>Commission</u> |
|--|-----------------|---------------|-------------------|
| To CONTRACTOR on his Project on Work performed by other than his own forces: | 0% | 0% | 5% |
| To first tier Subcontractor on Work | | | |

| | | | |
|---|-----|-----|----|
| performed by his subtier Subcontractors: | 0% | 0% | 5% |
| To CONTRACTOR and/or the first tier | | | |
| Subcontractors for that portion of the Work | | | |
| performed with their own respective forces: | 10% | 10% | 0% |

Not more than four categories of percentages, not to exceed the maximum percentages shown above, will be allowed regardless of the number of subtier subcontractors: For proposals covering both increases and decreases in the amount of the Contract the application of overhead and profit percentages shall be on the net increase in Actual Costs for the CONTRACTOR or Subcontractor performing the Work. However, where the CONTRACTOR or first tier Subcontractor receives proposals for additive and deductive amounts from separate subtier subcontractors, the commission shall be allowed on the added amounts prior to subtraction of the credit amounts. The cost of such extra Work shall be added to the Contract Sum by a Written Change Order as specified in Paragraph 6.1.

6.5 DELETION OF WORK - The OWNER may, pursuant to State Statute, unilaterally order the CONTRACTOR to omit up to twenty-five percent (25%) of the original Contract Sum and associated Work, as specified in Paragraph 6.2.

6.6 CLAIMS FOR ADDITIONAL COSTS

1. If the CONTRACTOR pursues a claim for an increase in the Contract Sum prior to final Contract Settlement, he shall give the OWNER written notice thereof with a simultaneous information copy to the ENGINEER within thirty (30) days after the CONTRACTOR knows, or should have known, of the events giving rise to such CONTRACTOR claim This notice shall be presented in writing to the OWNER and ENGINEER by the CONTRACTOR before proceeding to execute the disputed Work, except in an emergency endangering life or property in which case the CONTRACTOR shall proceed in accordance with Paragraph 5.29.4. No such CONTRACTOR claim shall be valid unless the CONTRACTOR follows the procedure outlined herein. If the OWNER and the CONTRACTOR cannot agree on the amount of the adjustment in the Contract Sum, if any, it shall be determined by administrative procedures as provided by Article X. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.
2. If the CONTRACTOR claims that additional cost will be incurred because of, (1) any written OWNER or ENGINEER interpretation of the Contract Documents, (2) any order by the OWNER to stop the Work pursuant to Paragraph 4.10.1 where the CONTRACTOR was not at fault, (3) any written order involving a perceived minor change in the Work issued pursuant to Paragraph 6.2.2, the CONTRACTOR shall make such claim as provided in Paragraph 6.6. 1.

ARTICLE VII. CONTRACT PAYMENTS

7.1 ESTIMATED QUANTITIES AND MEASUREMENT - The estimated quantities of the various elements of Work to be done and material to be furnished are approximate only and are provided by ENGINEER and OWNER as a basis for OWNER comparison of proposals and award of Contract. It is expressly understood and agreed by OWNER and CONTRACTOR that the actual amounts of Work to be done and material to be furnished may differ somewhat from these estimates. Unless specified differently elsewhere, the quantities of Work actually performed by Contractor will be computed on the basis of measurements taken by the OWNER's representatives, and these measurements shall be final and binding on CONTRACTOR.

7.2 PROGRESS PAYMENTS - During the latter part of each month as the Work progresses on all OWNER Contracts regardless of Contract Sum, said OWNER, or his designated representatives, and CONTRACTOR shall determine either the cost of the labor and materials or quantities incorporated into the Work during that month and actual invoiced cost of CONTRACTOR acquired materials stored on the Project site, and/or within off-site storage facilities either owned or leased by the CONTRACTOR. Upon receipt of a complete and mathematically accurate Construction Estimate Certification Form from the CONTRACTOR, the OWNER shall make payments to CONTRACTOR within thirty (30) calendar days on Contracts totaling four hundred thousand (\$400,000.00) dollars or

less, based upon such cost determination and at the Contract unit prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by the OWNER until the final Contract Settlement. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to CONTRACTOR at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of OWNER receipt of a complete and mathematically accurate Construction Estimate Certification Form from the CONTRACTOR, and the retainage held until final Contract Settlement shall be five percent (5%). OWNER's payment of installments shall not in any way be deemed to be a final acceptance of any part of the Work by OWNER, and will not prejudice OWNER in the final settlement of Contract account nor relieve the CONTRACTOR from completion of the Work as herein provided.

7.3 WITHHOLDING OF PAYMENT - In the event that the OWNER discovers evidence of CONTRACTOR and/or Work noncompliance with the Contract Documents subsequent to approval of the Construction Estimate Certification Form, the OWNER may revoke or otherwise amend that part of any Construction Estimate Certification Form to such extent as may be necessary to withhold monies to protect the OWNER from loss on account of:

- 1) Defective Work not remedied by CONTRACTOR.
- 2) Persistent and uncured CONTRACTOR non-compliance with the administrative provisions of the Contract Documents.
- 3) Damage to Work of another CONTRACTOR.
- 4) Liquidated Damages assessed by OWNER for CONTRACTOR failure to maintain scheduled progress in accordance with interim progress milestones, if any are specified in the Contract Documents, and/or CONTRACTOR failure to meet final completion date.
- 5) Receipt of written notice by the OWNER of CONTRACTOR's unpaid bills, as stipulated in Article 5472a, V.T.C.S., if the CONTRACTOR has not provided a payment bond and only if the Contract Sum does not exceed \$25,000.00. Any funds so withheld by OWNER shall be released to the CONTRACTOR if he furnishes either a special indemnity bond to OWNER securing release of lien as provided in Article 5472b-1, V.T.C.S., or CONTRACTOR proof of payment of disputed bills.
- 6) "Indemnification" as provided for in Paragraph 2.3.

When the above CONTRACTOR deficiencies are cured, OWNER will make payment for amounts withheld because of the deficiencies within (30) thirty calendar days.

7.4 FINAL PAYMENT - CONTRACTOR shall not be entitled to receive payment of any sum in excess of the cumulative amounts paid upon such monthly invoices as outlined above until forty-five (45) calendar days after OWNER transmittal of the Letter of Conditional Approval and not before all the stipulations, requirements and provisions of this Contract are faithfully performed and complied with by CONTRACTOR, and unless and until said structures, Work and improvements shall be entirely completed, and delivered to, and accepted by the OWNER in accordance with the Contract Documents. Completion, delivery and acceptance of the Work is evidenced by the Final Certificate of Acceptance issued by the OWNER and such Certificate of Acceptance is approved by the OWNER or his designated representative. The OWNER shall prepare the final invoice as the basis for final Contract settlement. OWNER may deduct from the amount of such final invoice and retain any and all sums which are to be deducted by OWNER or paid or allowed by CONTRACTOR to OWNER, or which are to be retained by OWNER for reasons previously stated in Paragraph 7.3.

1. NOTARIZED AFFIDAVIT - Before final payment for the work by the OWNER, the CONTRACTOR shall submit to the OWNER a notarized affidavit in duplicate stating under oath that all subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the work have been fully paid or satisfactorily secured. Such affidavit shall bear or be accompanied by a statement, signed by the surety company who provided the Payment Bond for the work, to the effect that said surety company consents to final payment to the CONTRACTOR being made by the OWNER.

7.5 OWNER TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE - It is expressly understood and agreed by CONTRACTOR that subject only to the prices, terms and provisions specifically set forth in the Contract Documents including Change Orders, the written estimates and Certificates of the OWNER shall be final in fixing and determining amounts payable or chargeable hereunder to CONTRACTOR by OWNER as required by the other terms and conditions hereof. Also, in case of controversy, the monthly construction estimates and Certificates of Final Acceptance shall be final in fixing and determining all sums to be deducted and retained by OWNER for reasons as stated in Paragraph 7.3, out of any funds otherwise estimated as payable to CONTRACTOR by OWNER.

7.6 CLAIMS BY THIRD PARTIES FOR LABOR OR MATERIALS

1. Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the Work provided for in this Contract and any and all duly authorized modifications or Change Orders of said Contract that may hereafter be made, and shall fully indemnify and hold harmless the OWNER and its agents against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such CONTRACTOR during the prosecution of the Work herein undertaken. CONTRACTOR shall execute a payment bond in accordance with other sections governing same herein for this purpose. Before the OWNER shall be obligated to pay any amount to CONTRACTOR on final Contract settlement, CONTRACTOR shall execute a sworn, written and notarized statement on an affidavit form to be supplied by the OWNER Director of Finance and filed with the OWNER, along with a "consent of surety" letter endorsing final payment to CONTRACTOR, evidencing that all labor employed and all equipment and materials incorporated into the Construction of the Work have been either fully paid for by CONTRACTOR and Subcontractors, or that any pending disputes over payment are being properly addressed by the surety.
2. Suppliers, any subcontractors, and persons claiming to have performed any labor, or to have supplied any equipment and materials toward the performance of this Contract, and who claim not to have received proper compensation from the CONTRACTOR or Subcontractors for same, shall be instructed by OWNER and CONTRACTOR that written and documented claims must be sent directly to the CONTRACTOR and his Surety in accordance with Article 5160, V.T.C.S. The OWNER will furnish to claimants, in accordance with such Article, a copy of the CONTRACTOR's Payment Bond and surety's address as provided therein upon claimants written request. The OWNER shall further furnish a statement to claimants that Claimants are cautioned that no legal or equitable lien exists on the OWNER funds yet unpaid to the CONTRACTOR, and that reliance on notices sent only to the OWNER may result in loss of claimant's rights to timely perfect recovery against the CONTRACTOR and/or his Surety. The OWNER is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any unauthorized representation by any agent or employee of OWNER to the contrary.

ARTICLE VIII. CONTRACT COMPLETION TIME

8.1 COMMENCEMENT OF WORK - The Work called for in this Contract shall be commenced by CONTRACTOR within seven (7) calendar days after issuance by the OWNER of the written Authorization To Proceed. Under no circumstances shall the Work commence prior to CONTRACTOR's receipt of OWNER issued, written Authorization To Proceed. Computation of Contract Time will begin upon actual commencement of Work by the CONTRACTOR during the seven (7) calendar day period referenced above, or upon the eighth (8th) calendar day (assuming the eighth calendar day is a day upon which Work may lawfully and Contractually be performed), whichever occurs first.

8.2 COMPLETION OF WORK - After commencement of Work as outlined in Paragraph 8.1, the CONTRACTOR shall prosecute the Work continuously, diligently and uninterrupted throughout the Contract Time period, during which period of time CONTRACTOR, all subcontractors and suppliers are bound and obligated at all times to employ sufficient Work force and supervisory diligence to

complete said structures, Work and improvements, and to deliver same over to the OWNER in a timely acceptable, completed, undamaged and clean condition. The time of beginning, rate of progress and time of completion of said Work are hereby declared by OWNER and understood by CONTRACTOR to be "OF THE ESSENCE" to this Contract. The OWNER may suspend said Work either partially or totally as provided for in Paragraph 4.8 and 4.9.

8.3 WORKING DAY/CALENDAR DAY CONTRACT

1. WORKING DAY is defined as a day, not including Sundays or OWNER Designated Holidays, on which the weather or other jobsite conditions not under the control of the CONTRACTOR will permit the performance of this Contract Work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. If the CONTRACTOR elects to perform Work on Saturday, the CONTRACTOR will be charged a Working Day, if weather or other jobsite conditions permit continuous Work operation for seven (7) or more hours. Nothing in this Paragraph shall be construed as prohibiting the CONTRACTOR from working on Saturdays if so desired and gives OWNER' or his duly authorized representative at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday so that OWNER's representatives may be scheduled to observe/inspect said Work. Work on Sundays or OWNER Designated Holidays will not be permitted except in cases of extreme emergency, and then only with the written permission of the OWNER or his duly authorized representative. If Sunday or OWNER Designated Holiday Work is permitted, Contract Time will be charged on the same basis as computing regular Working Days and the OWNER Representative average salary costs at time and one half will be charged to the CONTRACTOR. Should the Work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident or by the condition of the weather, or by action of the elements, or by any general strike of employees, or by shortage of materials, or by any injunction, restraining order or other court of competent jurisdiction action, CONTRACTOR shall have no claim for any adjustment of the Contract Sum on account of such delay, but Working Days will not be charged by OWNER during the period of any such delays.
2. CALENDAR DAY - Unless herein otherwise expressly defined, shall mean a calendar day or days of 24 hours each from midnight to the next consecutive midnight. Work on Sundays or OWNER Designated Holidays will not be permitted except in cases of extreme emergency, and then only with the written permission of the OWNER or his duly authorized representative. If Sunday or OWNER Designated Holiday Work is permitted, the OWNER representative average salary costs @ time and one half will be charged to the CONTRACTOR. Nothing in this Paragraph shall be construed as prohibiting the CONTRACTOR from working on Saturdays if so desired and gives OWNER' or his duly authorized representative at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday so that OWNER's representatives may be scheduled to observe/inspect said Work.

- 8.4 FAILURE TO COMPLETE WORK ON TIME - If the CONTRACTOR fails to complete the Contract in the time specified by OWNER in the Contract Documents and agreed to by CONTRACTOR through execution of this Contract, Contract Time charges will continue to be made for each Working or Calendar Day (depending upon which type Contract is entered into) thereafter. The time set forth in the Contract for the completion of the Work is an ESSENTIAL ELEMENT of the Contract. For each Working or Calendar Day that any Work shall not be complete, after the expiration of the Working or Calendar Days specified in the Contract, (to include Working or Calendar Days charged for correction of CONTRACTOR deficiencies found during the final inspection), plus, any extended days allowed by OWNER, the amount of liquidated damages assessed per day as stipulated in the Contract will be deducted from the money owed or to become due the CONTRACTOR, not as a penalty but as liquidated damages owed the OWNER for extended expenses, loss and public inconvenience resulting from CONTRACTOR's failure to complete said Work within the Time CONTRACTOR agreed to by execution of this Contract. CONTRACTOR and OWNER agree that such liquidated damages as are set prior to the Contract execution are for projected reasonable costs that are otherwise difficult for either Party to forecast and will be incurred by the OWNER due to CONTRACTOR completion beyond the number of Working or Calendar Days calculated herein by the OWNER.

- 8.5 CONTRACT TIME STATEMENT - The OWNER, or authorized representative shall furnish a "Contract Time Statement" to the CONTRACTOR after the end of each calendar month, showing the number of

Working or Calendar Days charged by OWNER and of such non-chargeable Days credited to the CONTRACTOR during each month. Such statement shall become final and binding upon the CONTRACTOR without exception, unless CONTRACTOR notifies the OWNER, in writing of any Contract Time Statement discrepancies claimed by the twentieth (20th) calendar day following OWNER issuance date on the Contract Time Statement

- 8.6 Liquidated Damages for Failure to Complete on Time - The CONTRACTOR agrees that time is of essence of this contract and that for each day of delay beyond the number of days herein agreed upon for the completion of work herein specified and contracted for, after due allowance for such extension of time as is provided for under the provisions of the proceeding paragraph, the OWNER may withhold permanently for the CONTRACTOR's total compensation, not as a penalty but as liquidated damages, the sum per day given in the following schedule:

AMOUNT OF LIQUIDATED DAMAGE

| Amount of Contract | Damages Per Day |
|----------------------------|-----------------|
| Less than \$ 50,000 | \$ 50.00 |
| \$ 50,001 to \$ 100,000 | \$100.00 |
| \$ 100,001 to \$ 250,000 | \$150.00 |
| \$ 250,001 to \$ 500,000 | \$200.00 |
| \$ 500,001 to \$ 750,000 | \$250.00 |
| \$ 750,001 to \$1,000,000 | \$300.00 |
| \$1,000,001 to \$1,500,000 | \$350.00 |
| \$1,500,001 to \$2,000,000 | \$400.00 |
| \$2,000,001 to \$2,500,000 | \$450.00 |
| \$2,500,001 to \$3,000,000 | \$500.00 |
| \$3,000,001 to \$3,500,000 | \$550.00 |
| \$3,500,001 and over | \$600.00 |

ARTICLE IX. PROJECT COMPLETION AND ACCEPTANCE

- 9.1 FINAL ACCEPTANCE of the Project will be considered only after all stipulations, requirements and provisions of this Contract are faithfully completed and the Project is delivered to the OWNER by CONTRACTOR in an acceptable condition for the intended use by OWNER. In the event that all major Contract pay items are complete and only minor clean-up operations remain for Contract completion, the OWNER has the discretionary authority to issue a Letter of Conditional Approval. Should the OWNER or his duly authorized representative's Letter of Conditional Approval contain conditions for the final Acceptance of the Work, Contract Time will continue to be charged against the CONTRACTOR until such conditions have been corrected to the satisfaction of the OWNER.

- 1 OWNER may at any time request CONTRACTOR in writing to permit OWNER to beneficially occupy any such part of the Work which OWNER believes to be ready for its intended use, substantially complete and ready for Final Acceptance. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request OWNER to issue a Letter of Conditional Approval or Final Acceptance for that part of the Work. Within a reasonable time after such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the completed and Finally Accepted Work to determine its status of completion. Warranties on that part of the Work beneficially occupied by OWNER will commence upon issuance of the Letter of Conditional Approval. Any Work items remaining to be completed and Finally Accepted as outlined in the Letter of Conditional Approval will have Warranty commencement upon completion and Final Acceptance by OWNER.
2. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such OWNER part of the Work although it is not Substantially Complete. A copy of such request will be sent to the Engineer and within a reasonable time thereafter, OWNER, CONTRACTOR, Engineer and ENGINEER shall make an inspection of that part of the Work

affected by the request to determine its status of completion and will jointly prepare a list of the items remaining to be completed or corrected before Final Acceptance. If CONTRACTOR does not object in writing to OWNER, Engineer and ENGINEER that such part of the Work is not ready for separate operation by OWNER, or that separate operation by OWNER will significantly interfere with CONTRACTOR's remaining operations, OWNER will finalize the list of items to be completed or corrected and will deliver such list to CONTRACTOR together with a written recommendation as to the division of responsibilities pending Final Acceptance with respect to security, operation, safety, maintenance, warranties, utilities, insurance, and retainage for that part of the Work taken over for operation by OWNER. During such operation, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

- 9.2 PARTIAL ACCEPTANCE by OWNER for beneficial occupancy of any completed part of the Work, which has specifically been identified in the Contract Documents as being eligible for early OWNER Acceptance, or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Final Acceptance of the total Work subject to the following:
- 9.3 Warranty/Correction Period - During a period of 12 months from and after the date of the final acceptance by the OWNER of the work embraced by this contract, the CONTRACTOR shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the OWNER shall become necessary during such period. If within 3 days after the receipt of a notice in writing to the CONTRACTOR or his agent the CONTRACTOR shall neglect to make or to undertake with due diligence the aforesaid repairs, the OWNER is hereby authorized to make such repairs at the CONTRACTOR's expense. In case of an emergency where, in the judgment of the OWNER, delay would cause a serious loss or damage, repairs may be made without notice being sent to the CONTRACTOR, and the CONTRACTOR shall pay the cost thereof.

ARTICLE X. DISPUTES:

- 10.1 GENERAL - Prior to any anticipated litigation between the OWNER and the CONTRACTOR, both hereby agree that disputed matters shall first be submitted to OWNER administrative appellate procedures as described below:
1. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by mutual agreement shall be initially decided by the ENGINEER who shall reduce his decision to writing and promptly mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the ENGINEER shall be final and conclusive unless within thirty (30) calendar days from the date of issuance of such decision by ENGINEER the CONTRACTOR mails or otherwise furnishes to the OWNER a written notice of appeal addressed to the OWNER, whose appellate decision shall be the final and conclusive OWNER decision. In connection with any appeal under this Article, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of the appeal to persons to be promptly appointed by the OWNER to review such disputed matters. The OWNER will also be allowed to present information supporting OWNER's position.
 2. Pending final OWNER decision after a dispute hearing, the CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the OWNER'S decision. Neither the OWNER nor the CONTRACTOR is precluded from resorting to litigation or other remedy at law nor in equity to perfect a legal filing prior to the expiration of an applicable statute of limitations or after this OWNER administrative review process is completed.

ARTICLE XI. SUPPLEMENTAL AND SPECIAL CONDITIONS

- 11.1 GENERAL - When the Work contemplated by the OWNER is of such a character that the foregoing Standard General Conditions of the Contract cannot adequately cover necessary and additional

contractual provisions, the Contract Documents may include Supplemental and Special Conditions as described below:

1. SUPPLEMENTAL CONDITIONS shall describe any additional procedures and requirements of Contract administration to be followed by the CONTRACTOR, OWNER, and OWNER representatives. Supplemental Conditions may expand upon matters covered by the Standard General Conditions, where necessary.
 2. SPECIAL CONDITIONS shall relate to terms, conditions and procedures related to a particular project and be unique to that project.
- 11.2 FUNDED PROJECTS - On State or Federally funded projects, the OWNER may waive, suspend or modify any Article in these General Conditions which conflicts with any State or Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the OWNER of such State or Federal funds for the Project. In the case of any project financed in whole or in part by State or Federal funds, any Contract standards or provisions required by the enabling State or Federal statute, or any State or Federal rules, regulations or procedures adopted pursuant thereto that conflict with, or preempt these local Standard General Conditions, shall be controlling.

SPECIAL CONDITIONS TO THE GENERAL SPECIFICATIONS

GENERAL CONDITIONS: ARTICLE V. CONTRACT RESPONSIBILITIES

Replace Items 5.2.1a with the Item below

5.2.1a Staking the Work for construction as indicated in Section 5.16.

Replace Items 5.16.1-7 with the Items below

5.16 CONSTRUCTION STAKES

1. The CONTRACTOR will be supplied with one set of construction stakes delineating the Project and appropriate benchmark information. Detailed transfers of elevation, line and grades to structures and other features of the Work shall be the responsibility of the CONTRACTOR.
2. WATER MAINS - Construction stakes will consist of a single line of stakes with guard stakes showing the stationing, and offset of PI, PC and PT of the pipe alignment.
3. STREETS - Construction stakes will consist of a single line of offset hubs at PC and PT of horizontal and vertical curves and at special features with guard stakes showing the stationing. Hubs will offset as per contractor's preference within the Right of Way..
4. SANITARY AND STORM SEWERS - Construction stakes will consist of a single line of offset hubs at manhole locations and at other special features with guard stakes showing the stationing, the offset.
5. STRUCTURES – Construction stakes will consist of property corners and one benchmark on the site.
6. LASER BEAMS - The use of Laser Beams for vertical control of water mains and sanitary sewers shall be required and the CONTRACTOR shall make available to the OWNER's Representative a level and rod of sufficient sensitivity to accurately determine differences in elevation between points 300 feet apart with one instrument set-up.
7. CONTRACTOR'S RESPONSIBILITY - When the construction stakes have been set, the preservation of such stakes as to position, elevation and marking shall become the responsibility of the CONTRACTOR. Should any of the original stakes be destroyed by the CONTRACTOR's operations, or by any other non-OWNER related third parties or means whatsoever, the replacement of such stakes by ENGINEER and/or Engineer will be at the expense of the CONTRACTOR. Prompt payment by CONTRACTOR to ENGINEER for replacement staking is expected and OWNER may withhold periodic or final payments to CONTRACTOR to secure said payment.

Section 01110

SUMMARY OF WORK

PART 1 G E N E R A L

1.01 SECTION INCLUDES

- A. Summary of the Work including work by the City, City-furnished Products, work sequence, future work, Contractor use of Premises, special conditions for substantial completion and City occupancy.

1.02 WORK COVERED BY CONTRACT DOCUMENTS

- A. The project will consist of, but not limited to, the demolition and reconstruction of approximately 400 linear feet (1,538 square yards) of concrete channel. The project also includes the installation of erosion control measures downstream.

- 1. The Contractor will be responsible for a storm water pollution prevention plan and posting of the TPDES Construction Notice on the job site, per Schertz Technical Section 01410.
- 2. Miscellaneous site and other work necessary or incidental for completion of the project

- B. Provide materials, labor, equipment and superintendence for the construction of the drainage, road, and/or utility improvements in accordance with these Technical Specifications, Project Plans, and Contract Documents. Contractor's responsibility includes, but is not limited to, construction sequencing in accordance with the Contract Documents, quality control of workmanship and materials, handling of all material, handling and disposal of all waste material, and compliance with all regulatory standards governing the work

1.03 ALTERNATES

- A. From the following list of Alternates, amount included in Contract Price for only those Alternates accepted by the City and listed in Notice of Award:

- 1. NONE

1.05 CITY-FURNISHED PRODUCTS

- A. Items Furnished by the City for Installation and final connection by Contractor: Water meter.
- B. Contractor's Responsibilities:
 - 1. Arrange and pay for Product delivery to the site.
 - 2. Receive and unload Products at the site; jointly with the City, inspect for completeness or damage if required by City.
 - 3. Handle, store, Install, and finish Products.
 - 4. Repair or replace damaged items.

1.05 WORK SEQUENCE

- A. Construct work in stages to provide proper coordination with work by others. Coordinate the construction schedule and operations with the OWNER's representative. Reference to General Conditions Item 5.15, Sequence of Work.
- B. Construct the Work in Phases during the construction period, coordinate construction schedule and operations with the City:
 - 1. Take photographs or video of existing site prior to any construction activities, including clearing, grading, etc.
 - 2. Set up traffic detour and traffic control and detour.
 - 3. Establish erosion control measures.
 - 4. Construction of channel per construction plans
 - 5. Testing and clean-up
- C. For projects with no Phases, do not disturb more than 50% of total project linear feet of disturbed right-of-way and easement until site restored in accordance with Section 01740 – Site Restoration.
- D. Coordination of the Work: Refer to Section 01312 - Coordination and Meetings.
- E. Contract time for this project shall be **90** calendar days

1.06 CONTRACTOR USE OF PREMISES

- A. Comply with procedures for access to the site and Contractor's use of rights-

of-way as specified in Section 01145 - Use of Premises.

- B. Construction Operations: Limited to the City's rights-of-way provided by the City and areas shown or described in the Contract documents.
- C. Utility Outages and Shutdown: Provide a minimum of 48 hours notice to the City and private utility companies (when applicable), excluding weekends and holidays, in advance of required utility shutdown. Coordinate all work as required.

1.07 STREET CUT ORDINANCE

- A. Comply with the latest City of Schertz details.
- B. Quantities are included for street cut pavement repair and replacement in applicable Specification sections for Unit Price contracts.
- C. Include payment for street cut pavement repair and replacement in lump sum bid for Stipulated Price contracts.

1.08 WARRANTY

- A. Comply with warranty requirements in accordance with General Conditions.

1.09 ADDITIONAL CONDITIONS FOR SUBSTANTIAL COMPLETION

- A. In addition to requirements outlined in the General Conditions, for Contractor to be substantially complete with the Work and call for inspection by Public Works to confirm, the following conditions must be met or completed:
 - 1. All testing shall be completed and accepted by Public Works.
 - 2. Permanent erosion control measures are in place and cleanup complete
 - 3. *All pay items complete.*

PART 2 P R O D U C T S - Not Used

PART 3 E X E C U T I O N - Not Used

CITY OF SCHERTZ
STANDARD SPECIFICATIONS
END OF SECTION

SUMMARY OF WORK