City of Leander

Project Manual For:

Veteran's Park

July 2015

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VETERANS PARK

TABLE OF CONTENTS

Section	No. of Pages
1. Public Notice	1
2. Instructions to Bidders	3
3. Bid Schedule Descriptions	2
4. Bid Proposal	2
5. Respondent Reference Sheet	1
6. General Conditions	39
7. Payment Bond	1
8. Performance Bond	1
9. Standard Contract Agreement	1

PUBLIC NOTICE

Bids are requested by the City of Leander for the Veterans Park Improvements Project. Sealed bids will be received by the Purchasing Office at City Hall, 200 W. Willis St. - P.O. Box 319, Leander, Texas 78646, until 2 pm on August 26, 2015, at which time they will be publicly opened and read. Bids must be accompanied by a cashier's check, certified check, or bid bond in an amount not less than 5% of the total bid prices. Bids must be plainly marked "Sealed Bids: Veterans Park Improvements".

A non-mandatory pre-bid meeting will be held at 10:00 am on August 12th at the Leander Parks & Recreation Office (406 Municipal Drive).

Bid packets may be viewed and downloaded from the City of Leander website (http://www.leandertx.gov/rfps) and obtained from Document Engine in Round Rock (512.310.8228). Contact the Leander Parks & Recreation Dept. (512.528.9909) for further information.

The estimated cost of the project is $122,000.

The City of Leander reserves the right to reject any or all bids and formalities.

Please publish in the following Hill Country News Publications:

1. Thursday July 30, 2015
2. Thursday, August 6, 2015

INSTRUCTIONS TO BIDDERS

A. **PURPOSE:** The City of Leander ("City) seeks bids for the construction of Veterans Park Improvements at 1200 West Sonny Drive. Sealed bids will be received at the by the Purchasing Agent at City Hall – 200 West Willis St. – P.O. Box 319, Leander, Texas 78646, until 2 pm, on August 26, 2015. A non-mandatory pre-bid meeting will be held on Wednesday, August 12th at 10 am at the Parks & Recreation Office.

B. **BID PROPOSALS:** Bids must be submitted in accordance with the following instructions to receive consideration. Bid submissions must include:

1. Bid Proposal;
2. Respondent Reference Sheet; and
3. Bid Bond

C. **SCOPE OF WORK:** Mobilization; compliance with SWPPP; excavation; construction 2 plazas (Wall of Honor and Military Flag Overlooks), 2 flagpoles, 5 military seal monuments and flagpoles, flagpole lighting and electrical work.

D. **DOCUMENTS:** Bid documents include: Public Notice, Instructions to Bidders, Bid Proposal, Respondent Reference Sheet, General Conditions, Location Maps, Standard Contract Agreement and Construction Plans & Specifications.

E. **EXAMINATION OF DOCUMENTS & SITES:** Bidders shall carefully examine the ITB documents and work site to obtain firsthand knowledge of the scope and the conditions of the work. Each Bidder, by submitting a proposal to perform any portion of the work, represents and warrants that they have examined the Request for Proposal for the Veterans Park Improvements project and the work site, and from their own investigation, are satisfied as to the scope, accessibility, nature and location of the work; the character of the equipment needed for the performance of the work; the character and extent of other work to be performed; local conditions; labor availability, practices and jurisdictions and other circumstances that may affect the performance of the work. No additional compensation will be allowed by the City for the failure of such Contractor to inform him as to conditions affecting the work.

F. **INTERPRETATION OF DOCUMENTS:** If any person contemplating submitting a proposal is in doubt as to the meaning of any part of the ITB, or other proposed contract documents, they may submit to the City, not later than three (3) working days prior to the date for opening bids a written request for an interpretation or clarification. Bidders should act promptly and allow sufficient time for a reply to reach them before preparing their proposals. Any interpretation or clarification will be in the form of an Addendum duly issued. No alleged verbal interpretation or rulings will be held binding upon the Owner.

G. **ADDENDA:** Interpretations, clarifications, additions, deletions, and modifications to the documents during the proposal period will be issued in the form of Addenda and a copy of such Addenda will be mailed or delivered to each person who has been issued an ITB. Addenda will be a part of the Bid Documents and the Contract Documents, and receipt of them shall be acknowledged in the Proposal Form. Addenda will not be issued less than three (3) working days prior to the established bid date.

H. **LICENSE;** Bidders must be in compliance with licensing laws of the State of Texas, as applicable, in order to be awarded a contract.

I. **PREPARATION OF BIDS:** Prices quoted shall include all items of cost, expense, taxes, fees and charges incurred, or arising out of, the performance of the work to be performed under the Contract. Any bid other than the required form will be considered informal and may be rejected. Erasures or other changes in a bid must be explained or noted over the initials of the Bidder. Bids containing any conditions, omissions, unexplained erasures and alterations, or irregularities of any kind may be rejected. Where Bidder is a corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.

J. **SUBMITTAL OF BIDS:** Sealed bids will be received at the time, date and place stated in the Public Notice. Proposals shall be made on unaltered Bid Proposal forms furnished by the City. Fill in all blank spaces and submit one copy. Proposals shall be signed in ink and the name of the signer and title shall be typed below signature. If the Bidder is involved in a partnership the name of all partners shall be provided on the Proposal Form. Where Bidder is a corporation followed by the name of the state of incorporation and the legal signatures of an officer authorized to bind the corporation to a contract. Submit proposal in an opaque, sealed envelope addressed to the City and plainly mark on the outside of the envelope the project name, and name and address of the Bidder. No Bidder shall modify, withdraw or cancel his bid or any part thereof for thirty (30) days after the time agreed upon the receipt of bids. Submit bids by mail or in person prior to the time for receiving bids set forth in this Invitation to Bidders.

K. **MODIFICATION & WITHDRAWAL OF BIDS:** Prior to the time set for opening, bids may be withdrawn or modified. Bids may be modified only on the official proposal forms and they must be signed by the person legally empowered to bind the Bidder.

L. **DISQUALIFICATION:** The City reserves the right to disqualify Bidders before or after the opening, upon evidence of collusion with intent to defraud, or other illegal practices, relating to this proposal upon the part of the Bidder.

M. **QUALIFICATION OF CONTRACTORS SUBMITTING PROPOSALS:** Potential Contractors must meet qualification requirements. Bidders must submit satisfactory evidence that they have a practical knowledge of the work proposed and that they have adequate equipment, appropriate expertise and necessary financial resources to perform under the proposed contract.

N. **PRE-BID MEETING:** Prior to bid submittal potential bidders are invited to the Pre-Bid meeting on the date and time shown in the Public Notice. Attendance is encouraged, but not mandatory. Regardless, Bidders must visually inspect and be familiar with all areas to be landscaped for which they intend to bid.

O. **OMISSION:** It is the intent of this specification to obtain complete landscape construction services as described in the ITB. Any services that have been omitted from the plans and specifications that are clearly necessary to complete the work shall be considered a requirement although not directly specified or called for in this specification.

P. **AWARD:** The City reserves the right to enter into an Agreement or a Purchase Order with a single award, split awards, non-award, or use any combination that best serves the interest and at the sole discretion of the City. Award announcement will be made upon City Council approval of staff recommendation and executed agreement.

Q. FORM OF CONTRACT: A copy of the standard contract agreement is included in the ITB.

R. INSURANCE: The following standard insurance policies are required.

1. Commercial General Liability Policy
2. Business Automobile Liability Policy
3. Excess/Umbrella Liability Policy
4. Workers' Compensation Policy

S. SAFETY: To insure the safety of the public and contractor workers, the Contractor will be required to provide flashing lights and/or slow moving vehicle signs on any vehicles or equipment that operates on or immediately adjacent to public thoroughfares or parking lots. The Contractor's workers will be required to wear orange safety vests when they are working on or adjacent to public thoroughfares or parking lots.

BID SCHEDULE DESCRIPTIONS

Bid Items 1through 15. The Current City of Leander Design and Construction Standards are hereby referred to and included in this contract as fully and to the same extent as if copied at length herein and they shall be applied to this project except as modified/indicated below in these specifications or on the plans.

Bid Item 1. **Mobilization/General Requirements of Contract:** This item covers the movement of personnel, construction equipment, and supplies to the project site or to the vicinity of the project site in order to enable the Contractor to begin work on the project. This items also includes but is not limited to any bonds, insurance, administration and supervision, temporary facilities, construction surveying/staking, existing utility locations, and any other items not accounted for in base bid schedule.

Bid Item 2. **Compliance with SWPPP:** This item covers compliance with the Technical Specifications, Plans, preparation of the SWPPP, submittal of NOI, performance of inspections and maintenance records according to the SWPPP. This item covers the installation of temporary erosion control measures not specifically listed elsewhere as Bid Items but required in accordance with the SWPPP.

Bid Item 3. **Excavation/Embankment:** This item covers unclassified excavation, placement and compaction of unclassified fill/embankment, subgrade preparation and other incidentals required to complete the work (Ref. Grading Plan Sheets L-11, L-13).

Bid Item 4. **Concrete Plaza at Wall of Honor Overlook:** This item covers the unclassified excavation, subgrade preparation, backfill, reinforced concrete pavement, finishing of concrete, and other incidentals required to complete the work (Ref. Detail Sheet. L-14).

Bid Item 5. **Pavers at Military Flag Overlook:** This item covers the unclassified excavation, subgrade preparation, paver sand bed, brick pavement, mortar, pavers and other incidentals required to complete the work (Ref. Detail Sheet. L-17).

Bid Item 6. **Pavers at Wall of Honor Overlook:** This item covers the unclassified excavation, subgrade preparation, paver sand bed, brick pavement, mortar, pavers and other incidentals required to complete the work (Ref. Detail Sheet. L-17).

Bid Item 7. **Flagpole (20' pole):** This item includes the furnishing and installation of reinforced concrete footing, pole, base plate, flag pole other incidentals required to complete the work (Ref. Detail Sheet. L-17).

Bid Item 8. **Flagpole (25' pole):** This item includes the furnishing and installation of reinforced concrete footing, pole, base plate, flag pole other incidentals required to complete the work (Ref. Detail Sheet. L-16).

Bid Item 9. **Military Seal Monument** This item covers the unclassified excavation, subgrade preparation, backfill, reinforced concrete footing, anchor bolts, stone veneer, military seal and other incidentals required to complete the work (Ref. Detail Sheet. L-17)

Bid Item 10. **Lighting for Flagpoles at Military Flag Overlook:** This item covers the furnishing and installation of light fixture and other incidentals required to complete the work (Ref. Site Electrical Plans).

Bid Item 11. **Lighting for Flagpoles at Wall of Honor Overlook:** This item covers the furnishing and installation of light fixture and other incidentals required to complete the work (Ref. Site Electrical Plans).

Bid Item 12. **Flagpoles at Wall of Honor Overlook:** This item covers the unclassified excavation, subgrade preparation, backfill, reinforced concrete footing, anchor bolts, stone veneer, and other incidentals required to complete the work (Ref. Detail Sheet. L-16)

Bid Item 13. **Cast Stone Cap:** This item covers cast stone, grout, and other incidentals required to complete the work (Ref. Detail. Sheets. L-16, L-17).

Bid Item 14. **Railings at Plazas:** This item covers the removal and reinstallation railings at the two plazas, sleeves, embedment, grout, metal cutting/finishing and other incidentals required to complete the work (Ref. Detail. Sheets. L-15, L-17)

Bid Item 15. **Electrical Distribution:** This item covers the furnishing and installation of all electrical work from point of primary connection to all distribution panels including but not limited to demolition, unclassified excavation/trenching, boring, backfill, conduit, wire, house panels, racks, transformers, receptacles, and other incidentals required to complete the work. (Ref. Site Electrical Plans)

BID PROPOSAL

Pursuant to the foregoing Notice to Bidders and Instructions to Bidders, the undersigned bidder hereby proposes: 1) To furnish all necessary superintendence, labor, machinery, equipment, tools, materials, insurance and miscellaneous items to complete all the work on which bids are provided by the attached supplemental specifications, and as shown on the plans for the construction of **Veterans Park Improvements;** and 2) Binds the Firm on acceptance of this proposal to execute a contract and bond for completing said project within the time stated, for the following prices.

Bid Item	Approx. Quantity	Unit	Item Description	Unit Price	Total Price
1	1	LS	Mobilization/ general requirements of contract for bid schedule no. 1 items.	$_____	$_____
2	1	LS	Compliance with SWPPP	$_____	$_____
3	1	LS	Excavation/Embankment (Ref. Grading Plan Sheets L-11, L-13)	$_____	$_____
4	2,300	SF	Concrete Plaza Concrete at Wall of Honor Overlook, complete in place per plan (Ref. Detail Sheet L-14)	$ _____	$_____
5	2,280	SF	Pavers at Military Flag Overlook, complete in place per plan (Ref. Detail Sheet L-17)	$_____	$_____
6	2,580	SF	Pavers at Wall of Honor Overlook, complete in place per plan (Ref. Detail Sheet L-17)	$_____	$_____
7	5	EA	Flagpoles (20') per plan (Ref. Detail Sheet L-17)	$_____	$_____
8	2	EA	Flagpoles (25') per plan (Ref. Detail Sheet L-16)	$_____	$_____
9	5	EA	Military Seal Monument, complete in place per plan (Ref. Detail Sheet L-17)	$_____	$_____
10	5	EA	Lighting for Flag Poles at Military Flag Overlook, complete in place per plan (Ref. Site Electrical Plans)	$_____	$_____

11	2	EA	Lighting for Flagpoles at Wall of Honor Overlook, complete in place per plan (Ref. Site Electrical Plans	$_____	$_____
12	2	EA	Flags at Wall of Honor Overlook, complete in place per plan (Ref Detail Sheet L-16)	$_____	$_____
13	310	LF	Cast Stone Cap, complete in place per plan (Ref. Detail Sheets L-16, L-17)	$_____	$_____
14	300	LF	Railings at Plazas, per plan (Remove and reinstall existing railing, cut, weld and paint in place – Ref. Detail Sheets L-15, L-17)	$_____	$_____
15	1	LS	Electrical Distribution, complete in place per plan (Ref. Site Electrical Plans)	$_____	$_____

TOTAL BID (Items 1 thru 15): $_____

If this proposal is accepted, the undersigned agrees to execute the contract and provide necessary bonds and insurance certification as per the Instructions to Bidders and commence work within ten (10) days after written Notice to Proceed. The undersigned further agrees to complete the work in full within **ninety (90)** calendar days after the date of the written Notice-to-Proceed.

The undersigned certifies that the bid prices contained in the proposal have been carefully checked and are submitted as correct and final. The Owner reserves the right to reject any or all bids and may waive any informality.

_____	_____
Signature	
_____	_____
Print Name	Mailing Address
_____	_____
Title	Telephone
_____	_____
Firm Name	Email Address
_____	_____
Date	Secretary, if Contractor is a corporation

RESPONDENT'S REFERENCE SHEET

PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE

SOLICITATION NUMBER: _____

RESPONDENT'S NAME: _____ **DATE:** _____

Provide the name, address, telephone number and **E-MAIL** of at least three (3) Municipal and/or Government agencies or firms of comparable size that have utilized similar service within the last two (2) years. City of Leander references are not applicable. References may be checked prior to award. Any negative responses received may result in disqualification of submittal.

1. Company's Name _____
   Name of Contact _____
   Title of Contact _____
   E-Mail Address _____
   Present Address _____
   City, State, Zip Code _____
   Telephone Number ( ) Fax Number: ( )

2. Company's Name _____
   Name of Contact _____
   Title of Contact _____
   E-Mail Address _____
   Present Address _____
   City, State, Zip Code _____
   Telephone Number ( ) Fax Number: ( )

3. Company's Name _____
   Name of Contact _____
   Title of Contact _____
   E-Mail Address _____
   Present Address _____
   City, State, Zip Code _____
   Telephone Number ( ) Fax Number: ( )

FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.

GENERAL CONDITIONS

1. **DEFINITIONS.** The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not defined herein and of common usage in the construction trade shall, unless the context indicated a different meaning, have the meaning and usage given in the construction trade. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this Agreement. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association.

1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.

1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Leander, Texas.

1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager, or his designee, or the Director of the Parks & Recreation Department, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.

1.04. Contract Amount. The term "Contract Amount" shall mean the price or prices shown in the Contractor's Bid Proposal submitted for the Project and accepted by the City as shown in the signed Agreement, including proper additions and deductions as provided in the Contract Documents.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01, together with the Plans & Specifications.

1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.

1.07. Engineer. The term "Engineer" shall mean the licensed professional engineer, or the registered professional architect, who signed and sealed the Plans & Specifications.

1.08. Extra Work. The term "Extra Work" shall mean and include work that is not covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing prior to the work being done by the Contractor. If any Extra Work will increase the Contract Amount, or if any other change will increase or decrease the Contract Amount, a change order must be approved and executed as provided in this Agreement.

1.09. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all

payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.10. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.11. Nonconforming work. The term "nonconforming work" shall mean work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.

1.12. Parties. The "parties" are the City and the Contractor.

1.13. Plans & Specifications. The Plans & Specifications are the design, plans, drawings, maps, and technical specifications for the Project as prepared by a licensed professional engineer or registered professional architect. The Plans & Specifications shall be a "Contract Document" as that term is used in this Agreement.

1.14. Project. The term "Project" shall mean and include all that is required to obtain a final product that is acceptable to the City. The term "work" shall have like meaning.

1.15. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.16. Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.17. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project and the Work are defined as: **Benbrook Ranch Park Phase II Development,** consisting of furnishing all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, bonds, and other accessories and services necessary to construct and complete the **Benbrook Ranch Park Phase II Development**, together with any and all extra work, in conformance with the Plans & Specifications and Contract Documents.

1.18. Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS.

2.01. List of Contract Documents. The Contract Documents and their priority shall be as follows:

2.01.01. The signed Agreement
2.01.02. Addenda to the Contract Documents
2.01.03. General Conditions
2.01.04. Plans and Specifications
2.01.05. Instructions to Bidders and Notice to Bidders
2.01.06. Performance bond, Payment bonds, and Bid bonds
2.01.07. Contractor's Bid Proposal
2.01.08. Statement of Bidder's Safety Experience

2.02. Plans and Specifications. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction free of charge. Additional sets will be furnished upon request at the costs specified in Paragraph 2.04. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03. Subcontractors and Suppliers. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

3. AWARD OF CONTRACT.

3.01. Documentation Upon Award. Upon the award of the contract by the City Council, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02. Time is of the Essence. Accordingly, the Contractor shall be prepared to perform the work in the most expedient and efficient possible manner in order to complete the work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the notice to proceed (the "beginning date"). The notice to proceed may be given in writing or by oral notification by City's Representative at the post-contract award conference. The notice to proceed may not be given, nor may any work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments.

4. CITY'S REPRESENTATIVE.

4.01. Communications. The Contractor shall forward all communications, written or oral, to the City through the City's Representative. A copy of all such communications shall be forwarded to the Engineer.

4.02. Inspections. The City's Representative and the Engineer may periodically review and inspect the work of the Contractor, and may cause other qualified persons to inspect the work.

4.03. Subordinate Supervisors and Inspectors. The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the work performed under this Agreement and ensure that said work is performed in accordance with the plans and specifications.

4.04. Directions by City. The Contractor shall regard and obey the directions and instructions of City's Representative or the Engineer, and any authorized subordinate supervisors or inspectors appointed by the City, provided such directions and instructions are consistent with the authority of the City under this Agreement, are not inconsistent with the rights, duties and obligations of the Contractor under this Agreement, and are not otherwise inconsistent or in conflict with the status of the Contractor as an independent contractor.

4.05. Appeal by Contractor. Should the Contractor object to any orders by the Engineer, any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

4.06. Engineer as City's Representative. The Engineer will be a City representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer during construction are as set forth in this Agreement and any written agreement between the City and Land Design Partners related to the Project (the "Consulting Services Agreement"), and shall not be extended without written consent of the City and the Engineer. If the Engineer is designated by separate written instrument as the City Representative, the City shall never-the-less have and retain the authority to make additional reviews and inspections of the Work. The Contractor shall cooperate with the Engineer in the Engineer's capacity as a City representative, including but not limited to the following:

4.06.01. The Contractor shall allow the Engineer access to the work site to review and inspect the progress of the Work.

4.06.02. The Contractor shall submit copies of all shop drawings, samples, change orders and payment applications to the Engineer and the City Representative for review. All change orders and payment applications must be approved in writing by the City Manager or his delegate.

4.06.03. Requests for information about the Plans and Specifications shall be submitted to the Engineer, with a copy of such request to the City's Representative. Pursuant to applicable terms in the Consulting Services Agreement and this Agreement, the Engineer will issue a written response (in the form of Drawings or otherwise) as the Engineer determines necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; provided that no response requiring a change in the design, drawings or plan may be issued without the City's written approval. If Contractor believes that the Engineer's written response justifies an increase in the Contract Amount or an extension of the

time for performance and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided in Section 17 or Section 22.

4.07. Authorized Variations in Work. The City Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the time for completion, do not require a change to the design, drawings or plan, and that are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on City, and also on Contractor who shall perform the Work involved promptly; provided that, if any material change to the design, drawings, or plans and specifications const must be approved in writing by both the Engineer and the City Manager or his delegate. For the purposes of this Agreement, a "material change" in the design, plans and specifications is any change that varies from, or requires a modification to, the design, drawings or plans, or any change that increases or decreases the Contract Amount or time for performance. If Contractor believes that a field order justifies an increase in the Contract Amount or an extension of the time for performance and the parties are unable to agree as to the amount or extent thereof, the Contractor may make a claim therefor as provided in Section 17 or Section 22.

4.08. Rejecting Work. The City Representative will have authority to disapprove or reject Work that the City Representative believes to be defective, and will also have authority to require special inspection or testing of the Work at anytime, regardless of whether or not the Work is fabricated, installed or completed.

4.09. Unit Prices. Pursuant to the Consulting Services Agreement, the Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor, and will review with the Contractor preliminary determinations on such matters before rendering a written decision thereon.

4.10. Dispute Resolution. The City Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Sections 17 and 22 in respect of changes in the Contract Amount or time for performance will be referred initially to the City Representative in writing with a request for a formal decision in accordance with this paragraph, which the City Representative will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to City Representative and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to the City Representative and the other party within sixty days after such occurrence unless the City Representative (with consent of the City and the Contractor) allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Section 4, the City Representative will not be liable in connection with any interpretation or decision rendered in good faith in such

capacity. The rendering of a decision by City Representative pursuant to this Agreement with respect to any claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment by the Contractor-unless specifically agreed otherwise in writing by the parties prior to such application or payment) will be a condition precedent to any exercise by City or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by laws or regulations in respect of any such claim, dispute or other matter.

4.09. Limitation of Responsibilities. Neither Engineer's authority to act under this Section 4 or elsewhere in the Contract Documents nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to Contractor, any subcontractor, any supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer, or the City Representative, as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indication otherwise). The use of any such term or adjective shall not be effective to assign to the Engineer or the City Representative any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Agreement.

The Engineer and the City Representative will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer and City Representative will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

The Engineer and the City Representative will not be responsible for the acts or omissions of Contractor or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

5. INDEPENDENT CONTRACTOR.

5.01. Independent Contractor. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment, and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Agreement. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02. Control of the Work. The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project during the progress of the work a competent Project Manager and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is in breach of this Agreement.

5.03. Contractor Provided Materials and Equipment. Unless otherwise stipulated in writing, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the work by the Contractor. It shall be the responsibility of the Contractor to furnish a completed work product that meets the requirements of the City. Any additional work, material, or equipment needed to meet the intent of this specification shall be supplied by the Contractor without claim for additional payment, even though not specifically mentioned herein.

5.04. Contractor's Risk. Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

6. DISORDERLY EMPLOYEES. The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the work are, in his opinion, incompetent, unfaithful, or disorderly, such person or persons shall be discharged from the work and shall not again be re-employed on the site or the Project without City Representative's written permission.

7. HOURS OF WORK. The Contractor shall work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays, or such other regular hours as agreed by the City Representative. The Contractor may work overtime, weekends, and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

8. NATURE OF THE WORK. It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the work, the confirmation of the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the work under this Agreement. However, the Contractor shall not perform any act or do any work on the Project that

places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

9. POST-AGREEMENT AWARD MEETINGS.

9.01. Award and Scheduling Conference. Prior to the commencement of the work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following written documents:

(a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
(b) The names and addresses of all proposed subcontractors.
(c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.
(d) Name, local office, phone number and addresses, and home phone numbers for the Contractor and its Project Superintendent/Manager.
(e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
(f) Where applicable, materials procurement schedules and material supplier names, addresses, and phone numbers.

9.02. Minutes of Meetings. The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

10. PROGRESS OF WORK.

10.01. Contractor to Schedule Work. Unless otherwise specifically provided, the Contractor shall prosecute its work at such time and sessions, in such order of precedence, and in such manner as shall be most conducive to the economy of the Project; provided, however, that the order and time of prosecution shall be such that the Project shall be Substantially Completed in accordance with this Agreement, the plans and specifications, and within the time of completion designated in the proposals and schedules agreed upon by the parties.

10.02. Scheduling and Coordination. Further, the parties shall be subject to the following:

(a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.
(b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised

schedule to City's Representative.

(c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.

(d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.

(e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

(f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

(g) In the event that it is determined by the City that the progress of the work is not in accordance with the approved progress and payment schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03. Work Stoppage. If in the judgment of either the City or City's Representative any of the work or materials furnished is not in strict accordance with this Agreement or any portion of the work is being performed so as to create a hazardous condition, the City may, in its sole discretion, order the work of the Contractor or any subcontractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT.

11.01. Verification and Measurements. Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense.

11.02. Utilities. The Contractor shall be responsible for all power, light, and water required to perform the work.

11.03. Debris Free Site. Throughout the progress of the work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04. Layout of Work. Except as specifically provided herein, the Contractor shall lay out all work in a manner acceptable to City's Representative in accordance with applicable City of Leander codes and ordinances. City's Representative or the Engineer will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all work in accordance with the plans and specifications.

11.05. Lines and Grades. All lines, grades, and construction staking shall be furnished by the Contractor. Sufficient staking materials and equipment shall be provided by the Contractor, including but not limited to: paint, flagging, laths, hubs, blue tops, nails, hammers, measuring chains or tapes, transits and levels.

11.06. Contractor's Structures. The building or locating of structures for housing men or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

12. MATERIALS.

12.01. General Materials Quality. Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with these General Conditions, the other Contract Documents, and recognized industry standards.

12.02. Materials Purchase. All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein.

12.03. City Provided Materials. Where the City deems it necessary to supply materials, it may furnish to the Contractor a list of materials set forth in an attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of any materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store, and safeguard the materials.

(b) Further, the Contractor shall repair, repaint, or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered

to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

If no "List of City Materials" is attached, or if no "List of Materials Ordered by the City" is attached, then in that event the parts or portions of this Section 12.03 regarding such omitted list shall not be applicable.

12.04. Materials and Supplies. Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. Except as agreed in writing by the City Representative and the Engineer, all materials, equipment and supplies installed or incorporated in the Project shall be new and comply with the approved specifications.

13. ENTRY, OBSERVATION, TESTING & POSSESSION.

13.01. City Access to the Site. The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02. Observation and Testing. The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and

shall give ample notice as to the time each part of the work will be ready for observation.

13.03. Uncovering Work. The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is covered by the Contractor prior to inspection and is work that is required by the plans & specifications, accepted construction practices, the contract documents or the codes and ordinances of the City to be inspected prior to completion, the work will be uncovered and restored at the Contractor's sole expense. If any work is required to be uncovered and the work is not in accordance with the plans, specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. If the work is in accordance with the plans, specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04. Use of Completed Portions. City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions of the Project. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement.

14. REJECTED WORK.

14.01. Non-Compliant Work. All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02. Remedial Action. If the work or any part thereof is not in conformity with this Agreement, it shall be rejected by the City's Representative. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

(a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING.

15.01. Direct Contractor Control. The Contractor agrees that it will retain personal control

and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02. Approval of Subcontractors. Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

16. PAYMENT TERMS.

16.01. Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. On or before the first day of each month, the Contractor shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the preceding month. The statement shall also include the value of all materials not previously submitted for payment that have been delivered to the site but have not yet been incorporated into the work. The City will not will not pay for materials or equipment not incorporated into the work at the time of the progress payment application. Payment will be made by the City for materials once they have been incorporated into the work, in accordance with the Plans and Specifications and Contract Documents. With each application for payment, Contractor shall submit an affidavit verifying that all subcontractors have been paid for services rendered as of the date of the application for payment.

16.02. Progress Payments. On or before the 30th calendar day following the City's receipt of a progress payment application made in conformity with Paragraph 16.01, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed by the Contractor and accepted by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion and acceptance of the work in accordance with this Agreement, the City shall pay the remainder of the Contract Amount, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of forty-five (45) calendar days from the date of Final Completion.

16.03. Retainage. From each approved statement, the City shall retain until final payment, ten

percent (10%), where the full Contract Amount is less than $400,000.00, and five percent (5%), where the full Contract Amount is $400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

16.04. Unit Price Method. If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.05. Return of Materials. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.06. Contractor Not to Obligate City The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The Contractor shall not—and shall have no authority whatsoever—to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.7. Suspension of Payments. The City, at any time, may suspend monthly progress payments on the work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the work in accordance with this Agreement or within the time period submitted in its bid.

16.8. Withhold Funds. Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Paragraph 16.03, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following:

(a) Defective work.
(b) Claims filed or reasonable evidence indicating probable filing of claims.
(c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
(d) Claims filed or reasonable evidence indicating damage to another by the Contractor.
(e) Claims filed or reasonable evidence indicating damage to third parties, including adjacent property owners.
(f) Claims filed or reasonable evidence indicating unremedied damage to property owned by the City.
(g) City's determination of an amount of liquidated damages.
(h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.

(i) Other amounts authorized under this Agreement.

17. EXTRA WORK CHARGES.

17.01. Change Order Approval. No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02. Limits on Change Orders. "Extra Work", as defined in Paragraph 1.08 and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original contract price may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original Contract Amount may be made or approved by the City Manager or his delegate if the total of the change order(s), in the aggregate, is less than Twenty-five Thousand Dollars ($25,000.00). Changes in excess of Twenty-five Thousand Dollars ($25,000.00) must be approved by the City Council prior to commencement of the services or work. Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.

17.03. Completion of Work and Extra Work. The Contractor shall complete all work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the work shall not excuse the Contractor from performing all the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the work and the Contractor shall assume and pay the costs of the performance of the work as contracted.

(a) The Contractor shall perform all Extra Work pursuant to the executed Change order and subject to the monitoring and inspection by the City's Representative, when presented with a written work order signed by City.

(b) No claim for Extra Work of any kind will be allowed unless ordered in writing by the City. In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work. Each request by the Contractor for a Change Order shall specify the amount of the requested or proposed increase or the decrease in the Contract Amount.

(c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.

(d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A-By agreed unit prices, or
Method B-By agreed lump sum, or
Method C-If neither Method A nor Method B is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the actual field cost of the work.

(e) Method A - Unit Prices. The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

(1) The cost of materials shall be determined by the invoices;

(2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) Method B - Lump Sum. The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) Method C - Actual Field Costs. The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with all expenses incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, workers' compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. The actual field costs to be paid to the Contractor shall cover and compensate him for its profit, overhead, general superintendence, field office expenses, and all other elements of cost and expense not embraced within the actual field costs as herein defined. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative.

17.04. Timely Notice of Change Orders Required. If the Contractor or City, as applicable, believes a change order is required or justified to increase or to decrease the Contract Amount or the time for completion of the Work, the Contractor or City shall promptly give written notice to the other party and the Engineer that a change order will be requested. This requirement shall extend to and include requests for extensions or reductions of time for completion due to weather and all other causes. The Contractor or the City shall, in any event, within thirty (30) days after occurrence of the action or event giving rise to the request for a change order, submit a requested change order to the Engineer and the other party. Each such requested change order submitted shall be complete and signature ready, and specific as to the requested change, including the amount, if any, by which the Contract Amount is proposed to be increased or decreased. Unless extended by written agreement, or by the Engineer after an appeal that is filed within sixty (60) days after the event or action giving rise to a request for a change order, a change order for which notice and request is not given within thirty (30) days of the event or action giving rise to the request for the change order shall be waived.

18. TIME OF COMPLETION.

18.01. Beginning and Substantial Completion Dates. The date of beginning, the time for Substantial Completion and Final Completion of work as specified in this Agreement are essential conditions of this Agreement.

18.02. Notice to Proceed. The work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed may be given orally or set by the City's Representative at the post-award conference.

18.03. Substantial Completion Date. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Work shall be substantially completed within the time period set forth in the Agreement.

18.04. Final Completion Date. The work shall reach Final Completion and be ready for final payment within thirty (30) working days from the date of Substantial Completion.

19. SUBSTANTIAL COMPLETION.

19.01. Notice of Substantial Completion. The Contractor shall notify City's Representative when, in the Contractor's opinion, the contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the work has been Substantially Completed, City's Representative shall inspect the work for the preparation of a final punch list.

(a) If City's Representative and the City find that the work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the work. City's Representative shall not be required to provide a list of unfinished work.

(b) If the City Representative and City find that the work is Substantially Completed,

the City shall issue to the Contractor its certificate of Substantial Completion.

19.02. No Delay After Substantial Completion. The Substantial Completion of the work shall not excuse the Contractor from performing all of the work undertaken in a timely manner, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION.

20.01. Notice of Final Completion. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.09. If the City's Representative and the City accept and deem such work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within ten (10) calendar days, less any retainage, which shall be held for a period of forty-five (45) calendar days after Final Completion. At the expiration of the forty-five (45) calendar day period, City shall release any unclaimed retainage.

20.02. Required Certifications. The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03. Workmanship. Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any defects and pay for any damage to other work that may appear after final acceptance of the work.

21. DELAYS.

21.01. Calendar Day Job. This is a calendar day job and the Contractor shall have the obligation to complete the work and obtain final acceptance of the work within the contract term. The Contractor, in undertaking to complete the work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02. Discretionary Delay By the City. The City may, in its sole discretion, by written notice delay the work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. Only in such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Paragraph 22 to offset for such stoppage of the work.

21.03. Change Order for City Delay. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the

Contractor may apply to the City for an increase in the time permitted for completion of the work and/or recovery of incidental damages resulting from increased storage costs or other costs necessary to protect the value of the work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. **EXTENSIONS OF TIME.** The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the work has been delayed by one or more of the following:

(1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
(2) by changes ordered in the work, or reductions thereto approved in writing;
(3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Austin area weather service; or
(4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does not include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. **LIQUIDATED DAMAGES.**

23.01. Agreed Damages. The time for the Substantial and Final Completion of the work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02. Per Diem Liquidated Damages. If the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of Two Hundred Fifty and no/100 DOLLARS ($250.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be imposed for any failure to meet either or both of the deadlines for Substantial Completion and Final Completion.

24. CHARGES FOR INJURY OR REPAIR.

24.01. Damages to the Work. The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by the Contractor, its employees, agents, officers, representatives, subcontractors and materials suppliers. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02. Protect the Work. The Contractor shall take the necessary precautions to protect any areas adjacent to its work.

24.03. Work Includes All Repairs. The work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

25. WARRANTY.

25.01. One Year Warranty. Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

> The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative and that all work will be of good quality, free from faults and defects, and in conformance with this Agreement, the other Contract Documents, and recognized industry standards.

25.02. Defective Work. All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03. Rights not Waived. This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04. Greater Warranty Term. Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05. Warranty Covered by Bonds. This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement. The final completion and acceptance of the Project shall be subject to this Section 25 and the one year warranty. Excluding abandonment or default by the Contractor prior to final completion, the statute of limitations provided in *Sec. 2253.078, Tex. Gov't. Code*, shall not begin to run until the expiration of the one year warranty period.

25.06. Defective Work Discovered During Warranty Period. If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly correct the defective work at no cost to the City.

25.07. Warranty Work. After receipt of written notice from the City to begin corrective work, the Contractor shall promptly begin the corrective work. The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08. Notice to Surety. If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the work, the Contractor has not started to make the necessary corrections or adjustments, the City may file a claim under the Performance and Payment Bonds and is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by the Contractor.

25.09. Cost of Warranty Work. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10. Warranty of Repair Work. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the work.

26. PAYMENT OF EMPLOYEES, SUBCONCTRACTORS & SUPPLIERS.

26.01. Wage Rates. Pursuant to *Section 2258.023(a), Texas Government Code*, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages set forth in Section 04-Wage Rates, of the Special Conditions.

26.02. Statutory Penalty. Pursuant to *Section 2258.023(b), Texas Government Code*, if the

Contractor or any subcontractor violates the requirements of Paragraph 26.01, the Contractor or subcontractor as the case may be shall pay the City Sixty Dollars ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates. The Contractor shall be responsible for compliance by its subcontractors and the payment of any such penalty that is payable by a subcontractor. The Contractor shall be entitled to collect from the subcontractor any such penalty paid for the subcontractor.

26.03. Weekly Payroll. The Contractor and each subcontractor shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04. Payroll Documentation. No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05. Payment of Subcontractors. The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed, or attempted to be filed, against any property owned by the City. In the event a statutory notice of claim or attempted lien is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said claim or lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06. Affidavit of Bills Paid. Each application for payment made by the Contractor after the first application for payment shall include an affidavit by the Contractor stating that all bills for labor, materials, and incidentals submitted by subcontractors, materialmen or third parties and included in any prior application for payment have been paid in full. Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

27. INSURANCE.

27.01. Required Insurance Coverage. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees, or subcontractors. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by

the City, its officials, employees, or volunteers shall be considered in excess of the Contractor's insurance and shall not contribute to the coverage required to be provided by Contractor or to any claim made against the Contractor or any subcontractor or materialmen of the Contractor. Further, the Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, which shall be incorporated herein by reference as part of this Agreement, and approved by the City before work commences.

27.02. Standard Insurance Policies Required.

(a) Commercial General Liability Policy
(b) Business Automobile Liability Policy
(c) Excess/Umbrella Liability Policy
(d) Workers' Compensation Policy

27.03. General Requirements Applicable to All Policies.

(a) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
(b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
(c) "Claims Made" policies will not be accepted.
(d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Leander, Texas.
(e) Upon request, certified copies of all insurance policies shall be furnished to the City of Leander, Texas.
(f) The City of Leander, Texas, its officials, employees, and volunteers, are to be added as "Additional Insured" to the General and Business Automobile Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.

27.04. Commercial General Liability.

(a) General Liability insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
(b) Minimum of $1,000,000.00 per occurrence for bodily injury and property damage; $2,000,000.00 aggregate.
(c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
(d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
(e) The coverage shall include but not be limited to the following: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, "Explosion, Collapse,

and Underground" coverage.

27.05. Business Automobile Liability.

(a) Business Automobile Liability insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
(b) Minimum Combined Single Limit of $1,000,000.00 per occurrence for bodily injury and property damage.
(c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
(d) The coverage shall include owned or leased autos, non-owned autos, and hired cars.

27.06 Umbrella/Excess Liability. In addition to all other liability insurance coverage required to be provided by the Contractor pursuant to this Section 27, the Contractor shall provide an umbrella/excess liability policy. The coverage limit minimum shall not be less than $1,000,000.00

27.07. Workers' Compensation Insurance.

(a) Pursuant to the requirements set forth in *Title 28, Section 110.110, Texas Administrative Code*, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

(b) The workers' compensation insurance shall include the following terms:
   (i) Employer s liability limits of $1,000,000.00 for each accident is required.
   (ii) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04", shall be included in this policy.
   (iii) Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

(c) The following shall be a requirement of this this Agreement and, pursuant to the explicit terms of *Title 28, Section 110.110(c)(7),-Texas Administrative Code*, the bid specifications, and this Agreement, all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

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

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

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

"B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

"C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

"E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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

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

"G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

"H. The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

"I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the project;

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

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and
(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period

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

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

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

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

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

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

27.08. Certificates of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

(a) The company is licensed and admitted to do business in the State of Texas.
(b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
(c) All endorsements and insurance coverages are provided according to requirements and instructions contained herein.
(d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Leander, Texas.
(e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

28. BOND PROVISIONS.

28.01. Performance and Payment Bonds. Pursuant to *Section 2253.021*, *Texas Government Code*, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds $25,000, and a performance bond is required if the Contract Amount exceeds $100,000. If the Contract Amount is below those amounts, the City may require payment and/or performance bonds for this Agreement and the Work. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed and provided in accordance with all requirements of *Article 7.19-1*, *Texas Insurance Code*, and *Chapt. 2253, Tex. Gov't. Code*, and all other applicable law, and the following:

(a) The Contractor shall execute performance and payment bonds for the full Contract Amount.
(b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.
(c) The Contractor shall provide original, sealed, and complete copies of the executed bonds at the time of execution of this Agreement and prior to the commencement of work. Copies of the bonds shall be incorporated herein by reference as a part of this Agreement.
(d) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the work and shall be extended for any warranty work to cover the warranty period. The statute of limitations provided in Sec. 2253.021, Tex. Gov't. Code, shall not begin to run until the earlier of abandonment by or termination of the Contractor, or the expiration of the one year warranty period.
(e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02. Changes in the Work. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall recompense the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned.

29. SURETY.

29.01. Abandonment or Termination. If the Contractor has abandoned the Project or the City has terminated the contract for cause and the Surety, after notice demanding completion is sent, fails to commence the completion of the work in a timely manner and compliance with this Agreement, then the City at its option may provide for completion of the work in either of the following manners:

(a) The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

(b) The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

(c) In addition to, or in lieu of, either of the foregoing options the City may take any other action permitted by law, or pursue any and all remedies available at law or in equity against the Contractor and/or the Surety.

29.02. Security for Completion Costs. If the Surety fails to undertake and complete the work, and the cost to complete the work exceeds the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, the City may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City may elect. The City shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03. Release. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be

due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

29.04. Reservation of Rights Under Bonds. If a performance and a payment bond has been provided for this Agreement, such bonds shall be and remain in full force and effect as provided by law and the City may act to enforce or require performance by the Surety. If the Contractor abandons the work, is terminated for cause, or fails to comply with the warranty during the warranty period, and the Surety does not agree to promptly proceed to complete the work, no term, provision or condition of this Agreement, no action by the City to protect the work, or the City's investment in the work, or to complete the work, or to obtain any remedy against the Contractor, shall be or constitute a waiver of any right or cause of action under the bonds.

30. COMPLIANCE WITH LAW.

30.01. Materials. The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02. Codes, Rules and Regulations. The Contractor shall perform and require all subcontractors to perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03. Erosion Control. The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

31. SAFETY PRECAUTIONS.

31.01. Contractor Responsibility. Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Leander Fire Department. The Contractor shall, at minimum, comply with all laws, rules and regulations, and recognized and accepted indusrtry practices, applicable to safety precautions, notices and warnings.

31.02. Notices and Warnings. The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

31.03. Damages. The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall

immediately be replaced or compensated for by the Contractor at its own cost and expense. It is specifically provided however that nothing in this Section 31 shall be construed or interpreted as waiving any legal defense available to the Contractor, or creating any additional causes of action or additional rights on behalf of any third party.

32. **TRENCH SAFETY.** This Section 32 shall be applicable if any part of the work includes trenching. The Contractor must comply with Texas law regarding trench excavation if any trench exceeding five feet in depth is part of the work, and in accordance with the following items:

32.01. State and Federal Regulations. The Contractor must comply with the requirements of *Tex. Health & Safety Code, §756.022-023 (Vernon 1992)*, as amended, and the requirements of *29 C.F.R., Sections 1926.650 through 1926.653 inclusive, "Excavation, Trenching and Shoring," of the Occupational Safety and Health Administration Standards*, as amended.

32.02. Separate Pay Items. The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03. Safety Program. Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04. Trench Safety Inspections. The Contractor must provide the City the name of the "competent person" required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05. Precautionary Work Stoppage on Trench. If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

33. **INDEMNITY.**

33.01. Indemnification. Contractor shall indemnify the City for its liability, including that arising from the City's concurrent negligence. To the fullest extent permitted by law, the Contractor agrees to and shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, except liability excluded by paragraph 33.02 of this Contract, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done by the Contractor under this Agreement, provided that any such claim, loss,

damage, cause of action, suit, or liability is caused in whole or in part by an act or omission of the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project. This indemnity shall apply regardless of whether such injuries, death, damages, or breach are caused in part by the negligence or omission of the City, any other party indemnified hereunder, the Contractor, or a third party.

33.02. Specific Instances. The indemnifications contained in Section 33.01 shall include but not be limited to the following specific instances:

(a) In the event the City is damaged due to the act, omission, mistake, fault, or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.

(b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.

(c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.

(d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.

(e) The Contractor shall also be responsible for the removal of all related debris.

(f) The Contractor shall also be responsible for subcontractors hired by it.

(g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

33.03. Limitation of Indemnity to Engineer. The obligations of the Contractor under this Section 33 shall NOT require the Contractor to indemnify or hold harmless a registered architect, licensed engineer or an agent, servant, or employee of a registered architect or licensed engineer from liability for damage that: (i) is caused by or results from: (A) defects in plans, designs, or specifications prepared, approved, or used by the architect or engineer; or (B) negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of this Contract and the plans, designs, or specifications that are a part of this Contract; or (ii) that arises or results from, or is caused by, actions or a failure to act by any person other than the Contractor or the employees, agents, officers, subcontractors, or materials suppliers of the Contractor.

34. **RELEASE.** The Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, attorneys, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

35. **PERMITS AND LICENSES.** The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work, including but not limited to site development permits, building permits, and Texas Department of Transportation permits for work in rights-of-way under the control of the State. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

36. **ROYALTIES AND LICENSING FEES.** The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses, or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials, and methods used in the Project. It shall defend all suits or claims for infringement of any patent rights. Further, if the Contractor has reason to believe that the design, service, process, or product specified is an infringement of a patent, it shall promptly give such information to City's Representative.

37. **ABANDONMENT.**

37.01. Notice to Surety. In case the Contractor should abandon or fail or refuse to resume work after written notification or if the Contractor fails to comply with the orders of City's Representative when such orders are consistent with this Agreement, and the City Representative declares the work to be abandoned, then the surety on the bond shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

37.02. Notice of Abandonment. After receiving notice of abandonment, the Contractor shall not remove from the work any machinery, equipment, tools, materials, or supplies then on the job; but the same may be held for use on the work by the City or the surety of the Contractor, or any other Contractor, in completion of the work. The Contractor shall not receive any rental or credit therefor (except when used in connection with extra work where credit shall be allowed as provided in this Agreement). If the use of such equipment and materials will ultimately reduce the cost to complete the work, that reduction shall be reflected in the final settlement.

37.03. Deemed Abandonment. The Work may, in the sole discretion of the City, be deemed abandoned, if, after commencement of the Work, the Contractor fails to have workmen on the site for ten (10) consecutive days. Any days that the City Representative determines should not be a workday solely because of weather conditions shall not be counted as days. The work shall not be deemed to be abandoned until the first to occur of the following: written notice of abandonment is given by the Contractor to the City; the City gives the Contractor written notice that the Contractor has, pursuant to the terms of this Agreement, abandoned the work; or, if applicable, the City receives written notice that the Contractor has filed for bankruptcy.

38. BREACH OF CONTRACT & DAMAGES

38.01. Breach. The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

38.02. Cure and Remedy. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

(a) If the Contractor shall fail to remedy any default, or if such default cannot be promptly cured to commence curing such default and pursue such cure in a prompt and timely manner, after written notice thereof from City's Representative, as City's Representative shall direct; or
(b) If the Contractor shall fail to comply with the terms and provisions of this Agreement for any reason, other than the failure by City's Representative to make payments called upon when due; or
(c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CAUSE. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety at any time for any of the following:

39.01. Insolvency. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or

39.02. Receivership. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or

39.03. Failure to Prosecute Work. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the

time schedules; or

39.04. Failure to Cure. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, or if such default cannot be remedied within that time the Contractor fails to commence cure and to pursue and obtain cure in a prompt and timely fashion, as City's Representative shall direct; or

39.05. Continuing Failure to Comply. If the Contractor shall after notice fail to comply with the requirements of this Agreement on a continuing or repeated basis for any reason, other than the failure by City's Representative to make payments called upon when due; or

39.06. Substantial Default. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

40. TERMINATION FOR CONVENIENCE.

40.01. Notice of Termination. The performance of the work may be terminated at any time or, from time to time, in whole or in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

40.02. Payment of Incurred Costs. In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further payments not previously earned by the Contractor hereunder except as provided in Section 40.03 below, and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fee paid.

40.03. Overhead and Profit. It is recognized that a portion of the Contractor's overhead, set-up, mobilization and profits will be recovered in each progress payment. In the event of termination for convenience and a resolution of the amount, if any, due the Contractor under 40.02 above to cover the actual expenses and remaining actual liability (excluding costs referred to in section 40.04 below) incurred by the Contractor under this Agreement, the Contractor shall be paid an amount to cover overhead, lost profits, set-up and move in costs, equal to seven percent (7%) of the total agreed value of the work remaining to be completed upon issuance of the notice of termination. The Contractor shall execute and deliver to the City a full and complete release upon payment of such amount.

40.04. Subcontractors and Materials Suppliers. The Contractor shall contract with its subcontractors and materials suppliers in a manner to give effect to this Section 40 and the right of the City to terminate for convenience without any liability to such subcontractors or materials suppliers.

41. RIGHT TO COMPLETE. If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled

to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City's Representative for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

42. CLOSE OUT.

42.01. General Actions. After receipt of a notice of termination, whether for cause or convenience, unless, otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

(a) Stop the work on the date and to the extent specified in the notice of termination;
(b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
(c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
(d) Assign to City, in the manner and to the extent directed by it (if any), all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
(e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
(f) Deliver to City's Representative, when directed by City's Representative all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred; and/or

42.02. Close Out After For Cause Termination. In the event of termination for cause, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice, less costs and damages to the City, and shall not be entitled to receive any further payments hereunder, and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fees paid. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the unterminated portion or taking closeout measures.

43. HIRING. During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal

to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. **ASSIGNMENT.** This Agreement and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

45. **OTHER TERMS.**

45.01. Invalidity. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

45.02. Written Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

45.03. Appropriations. Notwithstanding any provision contained herein, the financial obligations of the City contained herein are subject to and contingent upon appropriations by the City Council of such funds or other revenues being available, received and appropriated by the City in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the City.

45.04. No Joint Venture, Agency, Joint Enterprise. This Agreement shall not be construed to establish a partnership, joint venture, agency, or joint enterprise, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties hereto. Nor shall this Agreement be construed to create or grant rights, contractual or otherwise, to any other person or entity not a party to this contract. Each party shall remain solely responsible for the proper direction of its employees and an employee of one shall not be deemed an employee or borrowed servant of the other for any reason.

45.05. No Third Party Beneficiaries. Nothing herein shall ever be construed to confer upon any third person any rights, benefits or remedies, contractual or otherwise, as a third party beneficiary by reason of this Agreement.

45.06. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the City or its officers and employees. Neither the City, nor its officers and employees waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

45.07. Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or

understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

45.08. Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

45.09. Litigation Costs. In the event of litigation concerning the subject matter of this Agreement, the prevailing party shall be entitled to reimbursement for all of its attorney's fees, court costs, and other litigation costs, if, and only if, such prevailing party is awarded remedies or damages with a value that exceeds by ten percent (10%), or more, the best offer of resolution made by the non-prevailing party prior to litigation or within sixty (60) days after the date suit is filed.

45.10. Arbitration. In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

45.11. Choice of Law and Place of Performance. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Williamson County, Texas, United States of America.

45.12. Authority to do Business. The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this contract.

45.13. Authority to Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

45.14. Waiver. Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

45.15. Headings, Gender, Number. The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

45.16. Agreement Read. The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

45.17. Multiple Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

PAYMENT BOND **Bond No._____**

THE STATE OF TEXAS §
§ **KNOW ALL BY THESE PRESENTS:**
COUNTY OF WILLIAMSON §

That _____, of the City of _____, County of _____, and State of _____ as Principal, and _____ authorized under the laws of the State of Texas to act as Surety on Bonds for Principals, are held and firmly bound unto **THE CITY OF LEANDER, (Owner)**, and all subcontractors, workers, laborers, mechanics and suppliers as their interest may appear, all of whom shall have the right to sue upon this bond, in the penal sum of _____Dollars ($ _____) for the payment whereof, well and truly be made the said Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, dated the _____ day of _____, 2007, for the construction of the _____, to which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall well and truly pay all subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of the improvements of said Contract, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

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

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this__ day of _____, 201__.

_____
Principal

_____
Printed Name
By: _____
Name Title:_____
Address:_____
_____

_____
Surety

_____
Printed Name
By:_____
Name &Title _____
Address: _____
_____

Resident Agent of Surety:
Signature _____
Printed Name_____
Address _____
_____

PERFORMANCE BOND **BOND NO. _____**

THE STATE OF TEXAS §

COUNTY OF _____ §

KNOW ALL BY THESE PRESENTS, THAT:

_____ of the City of_____, County of _____ ,and State of _____, as PRINCIPAL, and _____ , a corporation organized and existing under the laws of _____ and authorized under the laws of the State of Texas to act as SURETY on bonds for PRINCIPALS, are held and firmly bound unto the City of Leander, Texas (OWNER), in the penal sum of Dollars ($_____) for the payment whereof, the said PRINCIPAL and SURETY bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written Contract with the OWNER, dated the_ day of __, 2007, for the construction of the _____, to which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said PRINCIPAL shall faithfully perform the work in accordance with the plans, specifications and under said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said Contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications thereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Texas Gov't Code Chapter 2253 as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

OWNER may draw on any part or all of the total amount of this bond by submitting a written request for a draw from the OWNER'S Public Works Director or designee to SURETY'S Attorney-in fact.

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

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this ____ day of _____, 201__.

_____	_____
Principal	Surety
By:_____	By: _____
Title:_____	Title:_____
Address:_____	Address:_ _____
_____	_ _____

The name and address of the Resident Agent of Surety is:
(Seal

STANDARD CONTRACT AGREEMENT
BENBROOK RANCH PARK PHASE II CONSTRUCTION

THE STATE OF TEXAS §

§ KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON §

THIS AGREEMENT is made and entered into on this ___ day of _____ 201__, by and between the City of Leander, Texas, a home-rule city and municipal corporation with principal offices located at 200 W. Willis Street, Leander, Williamson and Travis Counties, Texas, 78641 (hereinafter referred to as "City"),and _____, with principal offices located at _____ (hereinafter referred to as "Contractor").

That, for and in consideration of the mutual terms, conditions and covenants of this Agreement and the accompanying documents between City and Contractor and for and in consideration of payments as set forth therein, Contractor hereby agrees to commence and complete the following Project: _____, consisting of furnishing all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to construct and complete the Project, together with any and all extra work as described in the drawings, maps, plans, and specifications (the "Project" or "Work"), in accordance with Instructions to Bidders, the Notices to Bidders, the General Conditions, the Bid Proposal, technical specifications, maps and plans, Performance Bond, Payment Bond, and other drawings and printed or written explanatory matter thereof, and the addenda thereof, all as prepared by _____ and approved by the City, all of which are made a part hereof and collectively evidence and constitute the entire contract ("Contract Documents").

Contractor hereby agrees to commence Work within ten (10) calendar days following the date contained in the Notice to Proceed, and Contractor hereby agrees to substantially complete same within _____ (__) calendar days after the date contained in the Notice to Proceed.

Waiver of any breach of this Agreement shall not constitute waiver of any subsequent breach.

City agrees to pay Contractor from available funds for satisfactory performance of this Agreement the price or prices as shown in the approved Bid Proposal submitted by the Contractor for the Project, which forms a part of this contract and has been approved by the City in the total amount of _____*(amount in numerals)* _____, *(amount in words)*, subject to proper additions and deductions ("Contract Amount"), all as provided in the General Conditions of this Agreement, and Owner agrees to make payments on account thereof as provided therein. The financial obligations of the City under this Agreement shall be paid from current funds and shall be subject to funds being appropriated and budgeted in sufficient amounts to satisfy such obligations.

Although drawn by the City, both parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

IN WITNESS WHEREOF, both parties have caused this Agreement to be signed in their respective corporate names by duly authorized representatives, and the parties hereby bind themselves, their successors and assigns for the faithful and full performance of the terms and provisions hereof.

EXECUTED on the latest date of the signatories indicated below.

CITY OF LEANDER (City)

By: _____
Kent Cagle, City Manager

Date: _____

CONTRACTOR

By: _____

Name & Title: _____

Date: _____

ATTESTED: _____, City Secretary