



February 18, 2025

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at: <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to address the City Council about items listed on the agenda, as well as on matters that are not specifically listed on the agenda. Alternatively, a citizen may address the City Council about an agenda item when the item comes up for consideration during the meeting. In order to address the City Council, please complete the Public Comment Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, the City Council will not discuss, deliberate, or make any decisions on items not listed on the agenda. Comments are limited to 3 minutes per person.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of a purchase order by and between the City of Nacogdoches and Heil of Texas for Service Repair of Garbage Trucks in a not-to-exceed amount of \$50,000 for FY24-25. (Public Works Operations Manager)
 - B. Consider approval of an agreement for pricing and a purchase order by and between the City of Nacogdoches and Holt Cat for Preventative Maintenance of Equipment utilizing BuyBoard Contract 685-22 in a not-to-exceed amount of \$40,000 for FY 24-25. (Public Works Operations Manager)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
 - A. Consider approval of a contract by and between the City of Nacogdoches and DSP

Development, LLC for the 2025 Curb and Valley Gutter Project in a not-to-exceed amount of \$396,294.04 (Director of Public Works).

B. Consider a Resolution authorizing the submission of a preliminary application to the Texas Department of Transportation for the 2025 Transportation Alternatives Set-Aside Program. (Director of Public Works)

C. Consider approval of a budget amendment for the AMR Transmitter & Meter Replacement Capital Improvement Project Acceleration. (Finance Director)

7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.

8. ADJOURN.



Rhonda Lewis
City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at (936) 559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

This meeting will be conducted pursuant to Chapter 551 of the Texas Government Code. The Council reserves the right to adjourn into Executive Session at any time during the meeting to discuss any of the above-posted agenda, as authorized by Texas Local Government Code Sections 551.071 [litigation and certain consultation with attorney], 551.072 [acquisition of an interest in real property], 551.073 [prospective gift to city], 551.074 [certain personnel deliberations], 551.076 [deployment/implementation of security personnel or devices], or 551.087 [deliberations regarding economic development negotiations]. The City of Nacogdoches is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications may be provided upon request. Please contact the City Secretary at (936) 559-2506 for information. I certify the notice of the meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas 75961, on February 14, 2025, by 5:00 p.m., pursuant to Chapter 551 of the Texas Government Code.

Rhonda Lewis, City Secretary



City Council Meeting

Date: February 18, 2025

Agenda Item: 5.A.

PRESENTER: Cary Walker, Public Works Manager

ITEM/SUBJECT: Consider approval of a purchase order by and between the City of Nacogdoches and Heil of Texas for Service Repair of Garbage Trucks in a not-to-exceed amount of \$50,000 for FY24-25. (Public Works Operations Manager)

SUMMARY/BACKGROUND: The City's entire fleet of Sanitation trucks utilizes Heil bodies and equipment. These trucks contain numerous moving parts which continuously operate six (6) days per week as garbage routes are picked up. This causes excessive wear from all types of abrasive material in contact with these moving parts. Previously, repairs to these trucks have been completed under individual purchase orders as issues arose. Staff is working towards establishing annual blanket purchase orders for these services and, to that end, is asking for consideration of a purchase order for services for the remainder of this fiscal year with the intent to establish these purchase orders at the beginning of subsequent fiscal years.

Heil of Texas is the sole source vendor for this region on these Heil products. As a sole source vendor, they are exempt from the competitive bidding process under Texas Local Government Code Section 252.022(a)(7)(D). Anticipated repair needs for the remainder of this fiscal year are in the amount of \$50,000, based on historical averages. These repairs are budgeted each year in the Sanitation Collection operating budget.

FINANCIAL:

Item is budgeted:

Account No.: 31.40 620.20

Account Name: *Sanitation Collection – Vehicle Maintenance*

Amount: \$50,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Cary Walker, Public Works Operations Manager
walkercl@nactx.us
(936) 559-2582

ATTACHMENTS: 1. Sole Source Letter



February 27, 2024

Subject: Authorized Heil Dealer

To whom it may concern:

This letter is to certify that **Heil of Texas** is an authorized dealer in the state of Texas and New Mexico.

Heil of Texas
5900 Wheeler St
Houston, TX 77023

Heil of Texas is responsible for promoting, serving, supporting, and offering technical assistance for Heil Refuse Bodies.

Don't hesitate to contact the regional sales manager representing Texas with any questions or concerns.

Sincerely,

John Osterkamp

John Osterkamp
Regional Sales Manager
Heil Environmental
423-785-6414
josterkamp@doveresg.com

PRESENTER: Cary Walker, Public Works Manager

ITEM/SUBJECT: Consider approval of an agreement for pricing and a purchase order by and between the City of Nacogdoches and Holt Cat for Preventative Maintenance of Equipment utilizing BuyBoard Contract 685-22 in a not-to-exceed amount of \$40,000 for FY 24-25. (Public Works Operations Manager)

SUMMARY/BACKGROUND: The City utilizes many pieces of Caterpillar (Cat) equipment in the Sanitation Division, including motor graders, skid steer loaders, and excavators, to name a few. Holt Cat, the regional representative for Caterpillar, performs preventative maintenance on these units including oil changes, filter changes, and other normal required services to maintain Cat warranties. Holt Cat uses exclusive proprietary software necessary to program all Cat equipment during routine services and/or repairs without voiding equipment warranties. This agreement includes Holt Cat 24-hour monitor service on all City of Nacogdoches Cat equipment and they alert staff in the event a machine has an issue or throws a default code allowing operators time to shut down the equipment without causing further harm. Previously, maintenance to this equipment has been completed under individual purchase orders. Staff is working towards establishing annual blanket purchase orders for these services and, to that end, is asking for consideration of a purchase order for services for the remainder of this fiscal year with the intent to establish these purchase orders at the beginning of subsequent fiscal years.

Holt Cat is under a BuyBoard cooperative purchasing contract (BuyBoard Contract #685-22) which is exempt from the competitive bidding process under Texas Local Government Code Section 252.022(a)(12)(D). BuyBoard pricing for services is \$193/hour, however, under this 3-year pricing agreement, the City would pay a discounted \$175/hour rate for preventative maintenance. The agreement also includes a fixed mileage charge based on 25 miles instead of the actual round-trip mileage (approx. 150 miles) from the Holt Cat location in Longview. The agreement can be canceled with 30 days' written notice and total resolution of all unpaid debts.

Anticipated repair needs for the remainder of this fiscal year are in the amount of \$40,000, based on historical averages. These repairs are budgeted each year in the Sanitation Disposal operating budget.

FINANCIAL:

Item is budgeted:

Account No.: 31.41 620.25

Account Name: *Sanitation Disposal – Equipment Maintenance*

Amount: \$40,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Cary Walker, Public Works Operations Manager
walkercl@nactx.us
(936) 559-2582

ATTACHMENTS: 1. Maintenance Agreement

MAINTENANCE AGREEMENT

Agree. No. Q-19352

BuyBoard Contract # 685-22

DATE: 2/7/2025, 9:01 AM

DEALER: HOLT CAT
5665 Southeast Loop 410

San Antonio, TX 78222

ACC# 0842341
CUSTOMER CITY OF NACOGDOCHES PUBLIC WORKS
FINANCE DEPT
ADDRESS PO BOX 635070
CITY, ST, ZIP NACOGDOCHES, TX, 75963-5070

PRICING TYPE Term
MONTHS 36

HOURS 6000
ZONE Zone 1

CONTACT NAME

PHONE NUMBER

SERVICING
LOCATION
DISTANCE FROM
SHOP

TERM of AGREEMENT 6000 or 36

**Terms and Pricing for this agreement will be invalid if not signed by:* Date: 3/9/2025

**Customers can contact HOLT CAT for P.M. Services when required or request HOLT to monitor P.M. services if equipped with CAT Product Link*

TERMINATION: Either party can terminate this agreement with a 30 days written notice and total resolutions of all unpaid debts.

SPECIAL TERMS: Special Terms: Customer will be invoiced per incident.

PRICE GUARANTEE: Prices listed are guaranteed for the term of the agreement.

Group1

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
140K	OJPA04154		\$1,601.00	\$2,339.00	\$3,301.00	\$5,102.00	\$3,373.00	\$5,730.00

Group2

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
246C	OJAY07595		\$1,111.00	\$1,440.00	\$2,128.00	\$2,585.00	\$2,411.00	\$2,994.00

Group3

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
320D	0PHX02246		\$1,581.00	\$2,200.00	\$2,779.00	\$4,164.00	\$2,887.00	\$4,593.00

Group4

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
420F	0JWJ00861		\$1,288.00	\$2,160.00	\$3,177.00	\$3,671.00	\$3,460.00	\$4,251.00

Group5

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
420F	0SKR03708		\$1,286.00	\$2,183.00	\$3,200.00	\$3,695.00	\$3,568.00	\$4,274.00

Group6

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
420F	0SKR01504		\$1,286.00	\$2,183.00	\$3,200.00	\$3,695.00	\$3,568.00	\$4,274.00

Group7

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
623	0WYF00132		\$1,631.00	\$3,545.00	\$4,865.00	\$8,048.00	\$4,972.00	\$8,571.00

Group8

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
816	0J6N00105		\$1,366.00	\$2,441.00	\$3,169.00	\$4,764.00	\$3,276.00	\$5,390.00

Group9

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6	
963	0LTT00352		\$1,398.00	\$2,075.00	\$2,703.00	\$3,915.00	\$2,863.00	\$4,338.00	

Group10

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6	
CB24	024001881		\$1,062.00	\$1,341.00	\$2,169.00	\$2,204.00	\$2,469.00	\$2,808.00	

Group11

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6	
D2	0XKM01414		\$1,181.00	\$1,830.00	\$1,998.00	\$2,863.00	\$2,595.00	\$2,858.00	

Group12

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6	
D4K2	0KM200190		\$1,474.00	\$2,132.00	\$2,347.00	\$3,316.00	\$2,454.00	\$3,721.00	

Group13

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6	
D6T	0KMT01117		\$1,527.00	\$2,279.00	\$3,696.00	\$4,671.00	\$3,768.00	\$5,563.00	

Group14

Model	Serial Number	Unit Number	PM1	PM2	PM3	PM4	PM5	PM6
D6T	0SLJ01109		\$1,626.00	\$2,573.00	\$3,845.00	\$5,108.00	\$3,953.00	\$6,051.00

**Parts pricing will be estimate and subject to change, which may change the total price listed on this agreement. Discounts will be applied to the current parts pricing at the time of service.*

**Major maintenance services and pricing will be provided at customers request.*

**IronPro Maintenance Agreements are auto-renewed prior to the end of your agreement at current year pricing.*

THESE PRICES DO NOT INCLUDE VALVE ADJUSTMENT. (VALVE ADJUSTMENT AVAILABLE AT ADDITIONAL COST)

To Opt of auto-renew initial here: _____

Signed Date: _____

Authorized Signature: _____

Start Date: _____

Print Name: _____

End Date: _____

Customer Contact: _____

Phone: _____

Holt Representative: Hilda Rios

Services performed by HOLT CAT Express Lube Service to equipment listed on this agreement will follow the guidelines recommended in the Caterpillar Operation and Maintenance Guides. While these performed services meet the manufacturer's specifications, only the items listed on the HOLT Express Lube Service (Defined Maintenance Check list) will be serviced at the intervals indicated. There may be other maintenance requirements listed in the Operation and Maintenance Guide, which are not performed under this agreement. These required services remain the responsibility of the equipment owner. A customer may choose to customize the Defined Check list, to add or remove maintenance checks and create a Customized Customer Maintenance Check list. Owners and Operators should always refer to the proper and current Operation and Maintenance Guide for Safe Operation and Maintenance procedures before operating this equipment. A maintenance checklist has been attached to this agreement for each equipment type to indicate the specific maintenance checks to be performed during the term of this agreement.

DEALER RESPONSIBILITIES:

- Labor to perform scheduled maintenance on equipment at the location listed. Scheduled Maintenance", shall mean maintenance that is scheduled to be performed with the customer at a set hour interval according to the current appropriate operation, lubrication and/or maintenance guide.
- Parts & lubricants to perform maintenance on equipment as specified under agreement.
- S.O.S. Kits, Test facility and labor to perform oil sampling.
- Travel to and from job location for maintenance only.
- Regular freight charges for maintenance parts.
- Pick up and disposal of used oil, filters and coolants.
- Note: Scheduled Maintenance does not include daily maintenance.

USERS RESPONSIBILITIES - USER WILL:

- Operate and perform daily maintenance on equipment according to the guidelines and recommendations as specified in the appropriate current operations, lubrication and maintenance guide. Parts and labor for scheduled maintenance will be performed by HOLT CAT. S.O.S. will be considered part of scheduled maintenance.
- Utilize fluids, lubricants, and filters which meet current Caterpillar specifications and at all times maintain levels as recommended by Caterpillar. Engines will require CH4 Rated oil and transmission gear train will require T04 rated oil.
- Utilize scheduled oil sampling from Holt oil sampling will be taken at the time of scheduled maintenance at prescribed intervals. Holt will furnish S.O.S. kits.
- Be responsible for damages which occur due to fire, theft, vandalism, abuse or accidental damage.

- Be responsible for all premium freight charges.
- Be responsible for all hauling to and from job location.
- Be responsible for all cleaning of equipment as required for maintenance.
- Be responsible for tire and tube replacement, fuel, ground engaging tools (buckets, ripper shanks, etc.), glass breakage, make up fluids, cleaning and painting.
- Be responsible for notifying HOLT CAT of any unusual noises or problems on equipment which could damage or cause abnormal performance of equipment.
- Be responsible for making machine available for maintenance.

EXCLUSIONS & LIMITATIONS THIS AGREEMENT:

- Does not include repairs due to damage caused from fire, windstorm, flood, rising water, lightning, theft, pilferage, vandalism, accidents, operator's negligence, environmental conditions and misuse (Using equipment for purposes other than its intended use).
- Is non-transferable.
- Does not cover any modification made to the equipment that is not a Caterpillar recommended modification.
- Does not cover equipment operated at any location other than the location listed.
- Does not cover repairs or parts that are not performed, purchased or approved by HOLT CAT.
- Does not cover any repairs other than maintenance.
- Does not cover travel for repairs other than maintenance.
- Does not cover hauling.
- Does not cover wear items such as ground engaging tools (buckets, ripper shanks, etc.), brakes, chains, belts, etc.

LIMITED WARRANTY:

Dealer warrants that the repair and maintenance services provided under this agreement to be free from defects in material and workmanship under normal use and service for a period of twelve months or 2000 service meter units following the date such services were performed, whichever comes first, for all caterpillar equipment. This warranty shall apply to Non-Caterpillar equipment for repair labor only, and Non-Caterpillar parts with following the Original Equipment Manufacturers (OEM) warranties as stated. In the event of a breach of the foregoing warranty, the Customer's sole and exclusive remedy shall be the repair or replacement (at Dealer's option) at Dealer's expense of any defective part or parts, and the correction of any defective workmanship. Replacement parts may be new or remanufactured, at Dealer's option.

CONDITIONS AND LIMITATIONS

THIS WARRANTY IS NOT APPLICABLE TO FAILURES OR DEFECTS RESULTING FROM:

- The use of attachments or parts not sold and approved by Dealer or Caterpillar, Inc; or
- Installation of components or other repair work not performed by Dealer; or
- Alteration or modifications of the Equipment by Customer in any manner which might affect the mechanical operation; or
- Repairs of failures caused by Customer abuse, neglect, or use of the Equipment beyond its rated capacity or other misuse; or
- Failure by Customer to perform its obligations under this agreement.

All repairs made by Dealer pursuant to the Warranty shall not extend any other warranty. Customer shall be responsible for giving timely notice of claims under Ins Warranty and shall promptly make the Equipment available for repair. This warranty is not transferable by Customer.

WITHOUT LIMITING THE FOREGOING, DEALER SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER FOR DAMAGES OF ANY TYPE, WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL. OR INDIRECT, AS A RESULT

OF A BREACH OF THE WARRANTY HEREIN PROVIDED OR AS A RESULT OF REPAIR OR MAINTENANCE SERVICES PERFORMED BY DEALER

LIMITATION OF WARRANTY: THE PROVISIONS OF THIS EXPRESS LIMITED WARRANTY ARE DEALER'S SOLE WARRANTY. DEALER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. ALL

IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY DEALER AND EXCLUDED FROM THIS

WARRANTY.

The provisions of this express limited warranty shall survive the expiration or earlier termination of this agreement.

MISCELLANEOUS

A. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreements, if any, of the parties with respect to such subject matter, and may not be amended except in a written instrument signed by both parties.

B. The failure of any party to this agreement at any time or times to require the performance of any provisions of this agreement shall in no manner affect the right to enforce same; and no waiver by any party to this agreement of any provision (or of a breach of any provision) of this agreement, whether by conduct or otherwise, in anyone or more instances, shall be deemed or construed either as a further or continuing waiver if any such provision or breach or a waiver of any other provision (or of a breach of any other provision) of this agreement

C. In addition, both parties agree that if legal action is instituted by either party against the other in relation to this agreement, such action will be brought in a Texas District Court for the County of Nacogdoches or the United States District Court for the Eastern District of Texas, Lufkin Division, and both parties expressly consent to the subject matter and personal jurisdiction and venue of such courts for purposes of such action.

D. Time is of the essence of this Agreement

E. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such original counterparts.

F. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. No party to this agreement shall be liable for failure to perform on its part any provision or part of this agreement when such failure is due to fire, flood, strike or other industrial disturbance, unavoidable accident, war embargo, inability to obtain materials, transportation controls, governmental actions, or other causes beyond the control of such party, for the period of delay imposed by such costs.

H. Should any part of provision of this agreement be held unenforceable or in conflict with the law of any jurisdiction, of the remaining parts or provisions shall not be affected by such holding.

I. Any notice provided in or permitted under this agreement shall be made in writing and may be given or served by: (a) delivering the same in person to the party to be notified; (b) depositing the same in the mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified; (c) delivering the same on a prepaid basis via an overnight courier service; or (d) sending the same by facsimile transmission, followed by delivery of a hard copy of same via an overnight courier service. If notice is deposited in the mail pursuant to this paragraph, it will be deemed received on the delivery date that the U.S. Post Office stamped on the return receipt. Notice given in any other manner shall be deemed received only if and when actually received by the party to be notified. For the purpose of notice, until changed as hereinafter provided, as set forth on the signature page hereof. Each party shall have the right at any time to change its respective address and to specify as its address any other by giving at least ten days prior written notice to the other party.

J. Services performed to equipment listed on this form will follow the guidelines recommended in the Operation and Maintenance Guide. While these performed services meet the manufacturer's Specifications, only the items listed will be serviced at the intervals indicated. There may be other services required in the Operation and Maintenance Guide, which are not performed under this Maintenance Agreement. These required services remain the responsibility of the equipment owner. Owners and Operators should always refer to the proper and current Operation and Maintenance Guide for Safe Operation and recommended Maintenance procedures before operating this equipment.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and DSP Development, LLC for the 2025 Curb and Valley Gutter Project in a not-to-exceed amount of \$396,294.04 (Director of Public Works).

SUMMARY/BACKGROUND: Staff is currently in the design phase for the first street improvement project utilizing bond funds planned to be released for bids in early spring. In advance of the street paving on an anticipated twenty-five (25) City streets in that project, staff released a project for curb and gutter replacements and valley gutter installations on these streets. The goal is to accomplish these installations during the current winter months when paving generally can't be completed without temperature or weather delays, but which don't inhibit concrete work, and allow for paving to commence quickly in the spring or early summer without being held up by these installations which must occur first in a paving project.

On February 10, 2025, the City received bids for the 2025 Curb and Valley Gutter Project. Three (3) contractors submitted bids as follows:

<i>DSP Development, LLC</i>	<i>\$ 396,294.04</i>
CoxJones	\$ 431,285.40
JAAY Concrete Paving, Inc.	\$ 470,995.00

DSP Development, LLC was found to be the lowest bidder. They are an Apple Springs-based contractor and a new company. As such, they are still under construction with their first few municipal projects as a company. Staff has had discussions with the owners of DSP, and they report that they have worked in the industry for over 10 years and have completed over 50 projects in prior employment. In conformance with our Procurement Policy, staff has also reviewed information the owner provided us on current projects they have ongoing, prior project types they have been involved in, equipment, and manpower available. Staff has also communicated with the subcontractor they will use on this project (C&R Concrete) to ensure that they understand the project scope and schedule, as well as KSA Engineering who is familiar with projects that the owners worked on in their previous employment. We've also spoken with their banker for verification of their financials. Engineering, Legal, and Purchasing staff have reviewed and discussed the submitted information and believe that DSP Development meets the definition of a qualified and responsible low bidder. It is recommended that the contract for this project be awarded to DSP Development, LLC in the amount of \$396,294.04. There is an adequate budget available for this contract from Tranche 1 bond funds.

FINANCIAL:

Item is budgeted:

Account No.: 45 680.37

Account Name: *Proposition F (Streets) – Project Construction*

Amount: \$ 396,294.04

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Case Opperman, PE - Director of Public Works/City Engineer
oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS:

1. Bid Tab
2. Project Map
3. Contract Documents
4. PowerPoint

				DSP Development, LLC Apple Springs, Texas		CoxJones Nacogdoches, Texas		JAAY Concrete Paving, Inc. Corsicana, Texas	
Item	Quan	Unit	Description	Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL
1.	1	LS	Mobilization/Demobilization	\$10,178.38	\$10,178.38	\$12,039.00	\$12,039.00	\$15,000.00	\$15,000.00
2.	41	EA	Concrete Valley Gutter including high-early-strength admixture	\$5,933.48	\$243,272.68	\$7,079.00	\$290,239.00	\$8,500.00	\$348,500.00
3.	451	SY	Asphalt patching for Concrete Valley Gutter installations (48"-wide patch, 6" asphalt)	\$204.02	\$92,013.02	\$217.00	\$97,867.00	\$150.00	\$67,650.00
4.	613	LF	Sawcut, remove and replace existing concrete curb and gutter	\$82.92	\$50,829.96	\$50.80	\$31,140.40	\$65.00	\$39,845.00
TOTALS				\$396,294.04		\$431,285.40		\$470,995.00	



2025 Curb and Valley Gutter Project

Oakview Drive - 1 Valley Gutter; 10 LF Curb & Gutter
Northway Drive - 1 Valley Gutter
Meadowview Drive - 1 Valley Gutter

Redwood Drive - 1 Valley Gutter; 20 LF Curb & Gutter
Timberwood Drive - 46 LF Curb & Gutter

Post Oak Road - 2 Valley Gutters

Glen Hollow Drive - 1 Valley Gutter
123 LF Curb & Gutter

W. Starr Avenue - 3 Valley Gutters
45 LF Curb & Gutter

Sunset Avenue - 1 Valley Gutter
W. Craven Street - 1 Valley Gutter
W. Gaylon Brooks - 2 Valley Gutters
Harris Street - 1 Valley Gutter
Burk Street - 1 Valley Gutter
Lock Street - 2 Valley Gutters
Virginia Avenue - 233 LF Curb & Gutter

E. Oak Lane - 20 LF Curb & Gutter
Edgewood Lane - 30 LF Curb & Gutter

Monk Street - 1 Valley Gutter

Zula Street - 3 Valley Gutters

Colston Street - 1 Valley Gutter

Arthur Weaver Street - 3 Valley Gutters
Eliza Street - 2 Valley Gutters
Glass Street - 1 Valley Gutter
Ward Street - 1 Valley Gutter
Fox Street - 2 Valley Gutters
Brown Street - 2 Valley Gutters; 20 LF Curb & Gutter

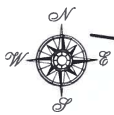
Patton Street - 1 Valley Gutter
Leak Street - 1 Valley Gutter

Ila Street - 1 Valley Gutter
Sharon Drive - 10 LF Curb & Gutter
Yolunda Drive - 36 LF Curb & Gutter

Laurel Lane - 2 Valley Gutters; 10 LF Curb & Gutter
Shirley Street - 1 Valley Gutter; 10 LF Curb & Gutter

Legend

 City Limit
 Streets



0.0 0.125 0.25 0.5 0.75 Miles

**Refer to Summary Sheet
for Valley Gutter Locations**





**BIDDING
and
CONTRACT DOCUMENTS**

FOR

**CONSTRUCTION SERVICES
FOR
2025 CURB AND VALLEY GUTTER PROJECT**

Bid #: 25-10-114

**DUE DATE
FEBRUARY 10, 2025 @ 2:00 PM**

City of Nacogdoches, Texas
City Hall
202 E. Pilar
Nacogdoches, TX 75961
936-559-2516

www.nactx.us



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STANDARD FORM OF AGREEMENT FOR CONSTRUCTION

DRAWINGS

INSTRUCTION TO BIDDERS

INSTRUCTIONS TO BIDDERS

1.0 NOTICE

Sealed bids addressed to the City of Nacogdoches Engineering Office, 202 Pilar St., Suite 239, Nacogdoches, TX 75961, will be received for **Construction Services for 2025 Curb and Valley Gutter Project** until **2:00 PM, February 10, 2025** after which time all qualified bids will be publicly opened and read aloud at **City Hall Conference Room 203**. Bids received after that time will be returned unopened. No fax or email bids will be accepted.

LOCATION AND DESCRIPTION OF PROJECT

Installation of forty-one (41) concrete valley gutters and approximately 613 linear feet of curb and gutter replacement on various City streets.

COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents may be viewed and downloaded free of charge at www.civcastusa.com or on the City website at <https://www.nactx.us/bids.aspx>.

The successful bidder will be required to furnish a Payment Bond and Performance Bond in the amount of the contract. Bidders may not withdraw their Bid Proposal within 60 calendar days of the bid opening date.

Sealed bids shall be clearly marked with the words “Sealed Bid, 2025 Curb and Valley Gutter Project” and addressed to the City of Nacogdoches. Bids shall be delivered using one of the following methods:

Hand-deliver to:

Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

Mail to:

Attn: Engineering
P.O. Box 635030
Nacogdoches, Texas 75963

Ship to (FedEx, UPS, DHL, etc.):

Attn: Engineering
202 East Pilar, Suite 239
Nacogdoches, Texas 75961

A Certified Cashier's Check or an acceptable Bid Bond in an amount of not less than five (5) percent of the total amount bid shall accompany each bid proposal.

2.0 DEFINITION OF TERMS

In order to simplify the language throughout this bid, the following definitions and those defined in the Contract Documents shall apply:

BIDDER - A contractor who submits a Bid directly to the City.

BIDDING DOCUMENTS - the Advertisement, Instructions to Bidders, the Proposal, Special Provisions, Technical Specifications and the proposed Contract Documents (including all Addenda issued prior to the receipt of Bids).

CITY – Same as City of Nacogdoches.

CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the State Constitution and Laws.

CONTRACT – An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time during which repeated purchases are made of the commodity specified.

CONTRACTOR – The successful Bidder(s) of this bid request.

CITY – The government of the City of Nacogdoches, Texas.

OWNER – City of Nacogdoches.

SUB-CONTRACTOR – Any contractor hired by the Contractor or Supplier to furnish materials and services specified in this bid request.

SUCCESSFUL BIDDER - the lowest, qualified, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

SUPPLIER – Same as Contractor.

3.0 COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents may be viewed and downloaded free of charge at www.civcastusa.com or on the City website at <https://www.nactx.us/bids.aspx>.

Complete sets of Bidding Documents must be used in preparing Bids; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

4.0 COMMUNICATION

The Owner's Representative for all communication regarding the Bidding and Contract Documents, including specifications and drawings is:

Case Opperman, PE – Director of Public Works/City Engineer
oppermanc@nactx.us
(936) 559-2515

No oral questions and other interpretations or clarification will be considered official or binding.

5.0 PRE-BID CONFERENCE

A Pre-bid Meeting will be held at **City Hall Conference Room 203** at **10:00 AM on February 3, 2025**. This meeting is not mandatory, but attendance is highly recommended.

Representatives of the Owner will be present to discuss the project. Bidders are highly encouraged to attend and participate in the conference. Owner's Representative will transmit to all prospective

bidders of record such Addenda as he considers necessary in response to questions arising at the conference.

6.0 GENERAL BID PROVISIONS

- a. The Invitation to Bid as advertised will be considered an inclusion of the specifications and conditions.
- b. Bid proposals will be submitted on the forms provided by Owner. All figures must be written in ink or typewritten. However, mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person signing the proposal. Do not use a whiteout or other cover products on mistakes.
- c. Formal advertised bids indicate date and time by which the bids must be received at the designated location. Bids received after that time will be returned unopened to the bidder.
- d. The bidder will note any exceptions to the conditions of this bid. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.
- e. Bidders may request withdrawal of a posted sealed proposal prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City of Nacogdoches in writing. Owner reserves the right to reject any and all bids by reason of this request.
- f. If it becomes necessary to revise any part of this bid, a written addendum will be provided to all bidders. Owner is not bound by any oral representations, clarifications, or changes made in the written specifications by Owner's employees, unless such clarification of change is provided to bidders in written addendum form from the City of Nacogdoches.
- g. Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid. Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.
- h. Owner may give an environmental preference to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- i. Bidders may be disqualified and rejection of proposals may be recommended to the Owner for any (but not limited to) of the following causes: 1) Failure to use the proposal form furnished by the Owner; 2) Lack of signature by an authorized representative on the proposal form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among proposers; 5) Omission of a certified Cashier's Check or Bid Bond (if required) proposal guarantee; 6) Unauthorized alteration of bid form; 7) Lack of appropriate qualifications and experience relative to the size and scope of the work proposed; 8) Unsatisfactory performance; 9) Failure to complete projects or 10) Loaded or unbalanced bids. Owner reserved the right to waive any minor informality or irregularity.

- j. Whenever in this invitation, any particular materials, process and/or equipment are indicated or specified by patent, proprietary or brand name, or by name of manufacture, such wording will be deemed to be used for the purpose of facilitating description of the material, process and/or equipment desired and will be deemed to be followed by the words "or equal." Contractor shall provide exactly such items in his bid as described, unless approved pursuant to Paragraph 12.0 herein.
- k. Samples of items shall be furnished, if requested by the Owner, without charge, and if not destroyed, shall be returned upon request at the bidder's expense.
- l. It is agreed that the successful bidder will not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same, or any part thereof, without previous written consent of Owner and any sureties.
- m. Contractor must provide audited financial statements, if requested, to the City.
- n. Prices in the Bid Proposal shall be presented in the format requested (Unit Price, Lump Sum, etc.)
- o. No freight or delivery charges will be accepted unless shown on bid.
- p. Owner is exempt from State Retail Tax and Federal Excise Tax. The price bid must be net, exclusive of taxes.
- q. All bidders will comply with all Federal, State, and local laws relative to conducting business in the City of Nacogdoches. The laws of the State of Texas will govern as to the interpretation, validity, and effect of this bid, its award and any contract entered into.
- r. Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will operate to void all proposals of that particular bid solicitation or request.
- s. Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

7.0 QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request, written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below. Each Bid must contain evidence of the Bidder's qualifications to do business in the State of Texas or covenant to obtain such qualification prior to award of the contract.

In determining a bidder's qualifications, the following factors will be considered:

- A. Work previously completed by the bidder and whether the bidder:
 - a. maintains a permanent place of business;
 - b. has adequate plant and equipment to do the work properly and expeditiously;
 - c. has paid or settled all claims for payment promptly;
 - d. has appropriate technical experience;
 - e. has job references for work of similar size and scope to the project; and
 - f. satisfactory performance and completion of public, or comparable, projects.
- B. The safety record of the Bidder, of the corporation, partnership, or institution represented by the Bidder, or of any one acting for such firm, corporation, or partnership.

Each Bidder may be required to show that he has properly completed similar type work and that no claims are now pending against such work. No bid will be accepted from any bidder who is engaged in any work that would impair his ability to fully execute, perform or finance this work. The General/Subcontractors Experience Data Sheet following the proposal must be filled out and submitted with the bid for consideration. Failure to include a completed Data Sheet may result in the rejection of the bid.

8.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. It is the responsibility of each Bidder before submitting a Bid to:
- a. examine the Contract Documents thoroughly;
 - b. visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work;
 - c. consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
 - d. study and carefully correlate Bidder's observations with the Contract Documents;
 - e. notify the Owner's Representative of all conflicts, errors or discrepancies in the Contract Documents; and
 - f. visit with local utilities, including cable companies, and other entities that may have underground or above-ground infrastructure in the work area for infrastructure location.
- B. Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data from the Owner's files for its underground facilities and information and data furnished by owners of other underground facilities. Owner does not assume responsibility for the accuracy or completeness thereof.
- C. Before submitting a Bid each Bidder will be responsible to make or obtain such explorations, at bidders expense and not to be added into cost of bid if accepted (tests and data concerning physical conditions - surface, subsurface and underground facilities - at or contiguous to the site, or otherwise) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- D. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment or disposal of spoil are to be provided by the Contractor. Contractor is responsible for obtaining all permits required for any of the before mentioned purposes prior to beginning work in accordance with the Standard Form Of Agreement, Paragraph 35 Permits and Licenses.
- E. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in

scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

9.0 INTERPRETATIONS and ADDENDA

All questions about the meaning or intent of the Contract Documents are to be directed to the Owner. Interpretations or clarification considered necessary by the Owner's Representative in response to such questions will be issued by Addenda and mailed or otherwise delivered to all parties recorded by the Owner's Representative as having received the Bidding Documents. Questions received less than 48 hours prior to opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. No oral and other interpretations or clarification will be considered official or binding.

Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

To properly qualify his bid, each Bidder shall, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the Proposal Form or on a separate attachment to the bid. Bids without such acknowledgment of all issued Addenda and letters of clarification may cause your bid to be considered non-responsive. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.

10.0 BID SECURITY

Bidders must submit with their Bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of Bid payable without recourse to the City of Nacogdoches, Texas, or a bid bond in the same amount from a surety company holding permit from the State of Texas to act as a surety, as a guarantee that Bidder will enter into a contract and execute bond and guarantee forms within fifteen (15) days after notice of award of contract. Bids without checks, as stated above, or acceptable bid bond may not be considered.

Bid Security shall be in effect from the opening of the Bid and will be retained until a Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. A Bidder may withdraw its Bid at any time until the Agreement is signed. However, it will forfeit its Bid Security in doing so if no material mistake was made in the Bid.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, the Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until 5 days after the Agreement is executed whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid opening.

11.0 CONTRACT TIME

The times for Substantial Completion and Final Completion are set forth in the Special Provisions and will be included in the Agreement. It will be necessary for the Successful Bidder to satisfy the City of the Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Special Provisions.

12.0 SUBSTITUTE OR "OR EQUAL" ITEMS

The materials and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. No substitution will be considered unless a written request for approval has been submitted by the Bidder and has been received by the Owner's Representative at least five (5) working days prior to the date for receipt of Bids or until after the contract for the work has been signed. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the Bidder. The Owner's Representative's decision of approval or disapproval of a proposed substitution shall be final. If the Owner's Representative approves any proposed substitution before the date for receipt of bids, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

13.0 BID FORM

All blanks on the Bid Form must be completed in ink or by typewriter. Unfilled blanks may result in the bid being disqualified.

Any financial amounts written in words will supersede amounts written by numbers in the Bid Form.

Bids by corporations must be executed in the corporate name by the corporate officer authorized to sign for the corporation, accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and accompanied by evidence of authority to sign. The fiscal address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda. The numbers and dates of which must be filled in on the Bid Form or on a separate attachment to the Bid.

The address and telephone number(s) for communication regarding the Bid must be shown.

All of the data on the GENERAL/SUBCONTRACTORS EXPERIENCE AND DATA INFORMATION sheet must be completely filled in.

14.0 SUBMISSION OF BIDS

A Bid shall be submitted at the time and place indicated in the Advertisement. It shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the Bidder. The Bid shall be accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

Each Bidder should, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the outside of the envelope containing his Bid proposal.

15.0 MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed, in the described manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

If prior to the award of the contract by the City Council, any Bidder files a duly signed, written notice with Owner's Representative and promptly thereafter demonstrates to the reasonable satisfaction of Owner's Representative that there was a material mistake in the preparation of his Bid, that Bidder may withdraw his Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

16.0 OPENING OF BIDS

Properly prepared Bids will be opened publicly and read aloud. A summary of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids. A tabulation of the Bids which are read will be available upon request as soon as it has been assembled and verified.

Bids received after the specified time of the opening will be returned unopened.

17.0 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance, for 60 days after the date of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

18.0 AWARD OF CONTRACT

Owner reserves the right to reject any and all Bids, to waive any and all informalities and irregularities not involving price, time, or changes in the Work and to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, the Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, time of construction, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided. Owner may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed

subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.

If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid opening.

Bid prices may be compared after adjusting for differences in the time designated in the Bid for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Standard Form of Agreement for liquidated damages indicated for Substantial Completion for each day after the desired date appearing in the City's Standard Form of Agreement, Paragraph 23.

19.0 CONTRACT SECURITY

Paragraph 28 BOND PROVISIONS of the Standard Form of Agreement set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to the Owner, it must be accompanied by the required performance and payment Bonds.

20.0 SIGNING OF AGREEMENT

The Successful Bidder shall execute the Contract and provide proof of insurance as detailed in the Standard Form of Agreement based on Staff recommendation prior to Council action. Within 15 days of Award, all required Bonds shall be delivered to the Owner. A fully executed contract will be presented to the Successful Bidder.

21.0 PERSONAL INTEREST

Bidders shall comply with all applicable ordinances and with state law pertaining to conflict of interest and required disclosures, including, but not limited to, TEXAS LOCAL GOVERNMENT CODE, Chapter 171.

22.0 DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

For purposes of this section, the following definitions apply:

“Interested party” means a person who has a controlling interest in a business entity with whom the City contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker intermediary, advisor, or attorney for the business entity.

"Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

"Intermediary," means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

1. Receives compensation from the business entity for the person's participation;
2. Communicates directly with the City on behalf of the business entity regarding the contract; and
3. Is not an employee of the business entity.

The process as implemented by the Texas Ethics Commission (“TEC”) is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission’s electronic filing application](#) listing each interested party of which the business entity is aware of Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

CONTRACTOR'S PROPOSAL

City of Nacogdoches 2025 Curb and V&D eFOROut

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
<u>Base Bid</u>					
1.	1	LS	Mobilization/Demobilization Ten thousand one hundred seventy eight dollars and thirty eight cents <i>per LS (written in words)</i>	<u>\$ 10,178.38</u>	<u>\$ 10,178.38</u>
2.	41	EA	Concrete Valley Gutter including high-early-strength admixture, in accordance with plans and details, including all sawcuts, preparation, concrete, all materials and labor; complete, in place Five thousand nine hundred thirty three dollars and forty eight cents <i>per EA (written in words)</i>	<u>\$ 5,933.48</u>	<u>\$ 243,272.68</u>
3.	451	SY	Asphalt patching for Concrete Valley Gutter installations (48"-wide patch, 6" asphalt installed in 2" max. lifts) in accordance with Concrete Tie-In detail, including all sawcuts, subgrade preparation, Type D hot mix asphaltic concrete, haul and disposal, all materials and labor; complete, in place Two hundred four dollars and two cents <i>per SY (written in words)</i>	<u>\$ 204.02</u>	<u>\$ 92,013.02</u>
4.	613	LF	Sawcut, remove and replace existing concrete curb and gutter, all widths, including haul and disposal, pavement patch back, sodding of all disturbed areas, all materials and labor; complete, in place Eighty two dollars and ninety two cents <i>per LF (written in words)</i>	<u>\$ 82.92</u>	<u>\$ 50,829.96</u>

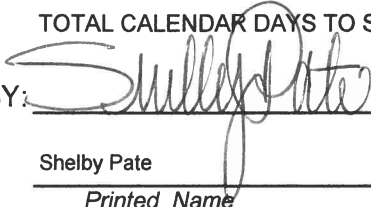
BID SUMMARY

BASE BID TOTAL (Items 1 - 4) \$396,294.04

Three hundred ninety six thousand two hundred ninety four dollars and four cents

BASE BID TOTAL *(written in words)*

TOTAL CALENDAR DAYS TO SUBSTANTIAL COMPLETION 120

BY: 

Shelby Pate

Owner

Printed Name

Title

COMPANY: DSP Development, LLC

Phone No. 936-240-9209

P.O. Box 212

Apple Springs,

TX

75926

Address

City

State

Zip



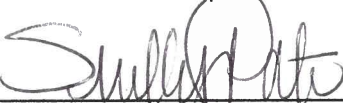
ADDENDUM 1

Date: February 6, 2025
To: All Interested Parties
From: Case Opperman, PE – Director of Public Works/City Engineer
Subject: City of Nacogdoches 2025 Curb and Valley Gutter Project

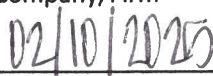
The bidding and contract documents for the above referenced project are hereby amended as follows:

- Haul off and disposal of debris to be provided by Contractor
- No debris will be accepted at City yards or facilities
- Traffic control to be provided by Contractor as part of Mobilization/Demobilization bid item
- Curb and gutter replacements should not require full street closure, but may necessitate lane closures with appropriate traffic control. For Valley Gutter installations, intersections may be closed completely except on streets with no other outlet, in which case installation shall be in halves to allow street access to traffic at all times. Multiple streets may be worked on at once, however in all situations intersection and lane closures shall be coordinated with the City beforehand.

Acknowledge and return this signed addendum with your bid. Failure to do so may cause your bid to be considered non-responsive.



Authorized Representative


Company/Firm


Date

City of Nacogdoches – Engineering Department

P.O. Drawer 635030 • Nacogdoches, TX 75963 • (936) 559-2521 • Fax (936) 559-2908 •
www.ci.nacogdoches.tx.us • Home of Stephen F. Austin State University • www.sfasu.edu

CONTRACTOR DATA SHEET

**GENERAL/SUB-CONTRACTOR'S EXPERIENCE
AND
DATA INFORMATION**

Name of Company: DSP Development, LLC

Company Years in Business: 4 years

List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)

Project	Municipality	\$ Amount	Type	Date

*DSP Development, LLC has not completed any municipal projects to date however, there are currently two projects under contract that are incomplete. Both Shelby and Dyllon have completed numerous municipal projects under previous employers.

Superintendent & Project Manager Information

Include Superintendent proposed for the project, years of experience as superintendent,
project manager proposed for the project, and years experience as project manager

Superintendent	Years Experience	Projects
Dyllon Pate	10+	

Project Manager	Years Experience	Projects
Shelby Pate	8+	

References: Name 5 projects of similar work, giving owner's name, representative's name, project engineer's name, and telephone numbers for each

1.		

2.		

3.		

4.		

5.		

CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this Contract, that this bid has not been prepared in collusion with any other Bidder, and that the contents of this bid have not been communicated to any other Bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By:  Title: Owner

Typed Name: Shelby Pate Company Name: DSP Development, LLC

Phone No: 936-240-9209 Fax No: _____

Email: dspdevelopment@yahoo.com

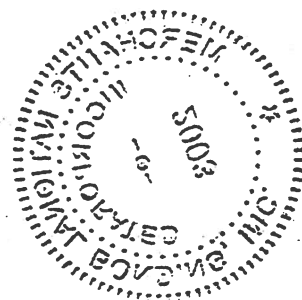
Bid Address:	<u>P.O. Box 212</u>	<u>Apple Springs,</u>	<u>TX</u>	<u>75926</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Remit Address:	<u>P.O. Box 212</u>	<u>Apple Springs,</u>	<u>TX</u>	<u>75926</u>
	<u>P.O. Box or Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>

Federal Tax ID No: 85-3907527

DUNS No: 11-554-0474

Date: 02/10/2025



MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Brian P Herrera; Jacob Strader; Jordan Henderson; Justin McQuain; Megan Liescheski; Mireli Stanford

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and April 27, 2024 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015 and amended on April 27, 2024.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 29th day of July, 2024.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

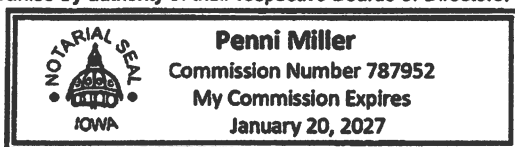
By

Larry Taylor

President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 29th day of July, 2024, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



(Expiration of notary's commission does not invalidate this instrument)

[Signature]

Notary Public

I, Elisabeth Sandersfeld, Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 10th day of February, 2025.



Elisabeth Sandersfeld

Secretary





MERCHANTS NATIONAL BONDING, INC. • P.O. BOX 14498 • DES MOINES, IOWA 50306-3498
PHONE: (800) 678-8171 • FAX: (515) 243-3854

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

To get information or file a complaint with your insurance company or HMO:

Merchants National Bonding, Inc.
Call: Compliance Officer at (800) 671-8171
Toll-free: (800) 671-8171
Email: regulatory@merchantsbonding.com
Mail: P.O. Box 14498, Des Moines, Iowa 50306-3498

To get insurance information you may also contact your agent:

M Surety Services
Call: (832) 567-8906
Mail: 5728 Root Rd, Spring, TX 77389

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439
File a complaint: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: Consumer Protection, MC: CO-CP, Texas Department of Insurance,
PO Box 12030, Austin, TX 78711-2030

¿Tiene una queja o necesita ayuda?

Si tiene un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

Para obtener información o para presentar una queja ante su compañía de seguros o HMO: Merchants National Bonding, Inc.

Llame a: Compliance Officer al (800) 671-8171

Teléfono gratuito: (800) 678-8171

Correo electrónico: regulatory@merchantsbonding.com

Dirección postal: P.O. Box 14498 , Des Moines, Iowa, 50306-3498

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: Consumer Protection, MC: CO-CP, Texas Department of Insurance, PO Box 12030, Austin, TX 78711-2030

CONDITIONS OF AGREEMENT

CONDITIONS OF AGREEMENT

CONTRACT DOCUMENTS

STANDARD SPECIFICATIONS FOR CONSTRUCTION--CITY OF NACOGDOCHES

FACILITIES: All building construction and related installations shall conform to the City's latest adopted editions of the International Building Code, National Electric Code, and the Uniform Plumbing Code and the Nacogdoches Standards for the Design and Construction of Public Improvements. All other City of Nacogdoches codes and ordinances shall also apply.

CIVIL CONSTRUCTION: These specifications shall be used in conjunction with the City of Nacogdoches' Standard Specifications of Water and Sewer Construction and Street Construction and is hereby incorporated by reference. All City of Nacogdoches codes and ordinances shall apply.

Any discrepancies between the City standards and these specifications shall be clarified per the instructions in Paragraph 9.0, "INTERPRETATIONS AND ADDENDA" in the instructions to Bidders.

GENERAL CONDITIONS OF AGREEMENT

The Standard Form of Agreement between Owner and Contractor shall be governing conditions of this contract.

SPECIAL PROVISIONS OF AGREEMENT

- A. **MEASUREMENTS:** All work not specifically set forth as a pay item in the Proposal shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the various unit prices listed in the Proposal.
- B. **QUANTITIES:** Where unit quantities are shown on each bid item of the Proposal, they shall be construed to represent approximate quantities of Work to be completed. Final quantities will be determined by measurement on the site of the completed Work. Work performed outside of specified limits will not be included in final measurement. Bidders are hereby notified that no incidental items of the Work will be paid for unless it is listed in the Proposal form as a pay item.
- C. **EXPLOSION, COLLAPSE AND UNDERGROUND HAZARDS (XCU):** Contracts where trenching depths exceed twelve (12) feet shall require additional coverage for the following General Liability hazards:

Explosion
Collapse

Applies to blasting operations
Applies to excavation and grading work adjacent to structure

Underground

Applies to excavation, burrowing, trenching, tunneling, etc. For example, severing an electrical line during excavation operations.

An additional premium may be assessed by contractor's insurance provider. Successful contractor is responsible for assessing depth based on plans and specifications contained herein.

- D. **TRAFFIC CONTROL:** When work is performed in or immediately adjacent to a public street right-of-way, the Contractor shall submit to the City Engineer a traffic control plan for each public right-of-way he enters prior to the pre-construction meeting. This plan shall be in conformance to the Texas Manual on Uniform Traffic Control Devices. Once reviewed, the plans will be returned to the Contractor with comments.

Approved Traffic Control Plans shall be in the possession of the contractor on site during all work within the designated right of way.

- E. **MATERIAL STAGING:** Contractor is responsible for identifying and securing a suitable site for the storage of materials and other construction related items unless such a site is specifically identified in the plans.
- F. **PERMITS:** Contractor will be required to get permits pursuant to contract documents; however, the city will waive the fees.
- G. **STORM WATER PERMIT:** For construction areas disturbing more than one (1) acre of land, Contractor shall provide a Storm Water Pollution Prevention Plan and all related inspections, rain gages, signage, subsidiary to the contract.
- H. **SURVEY:** The Owner will provide a one-time survey staking of key construction points, bench marks, horizontal controls, building corners, or utility appurtenances as deemed necessary by the City Engineer. Additional construction staking, or replacement staking, will be at the contractor's expense.
- I. **CONTRACTOR PARKING and BATHROOMS:** Unless noted otherwise in the bid documents and plans, the installation of temporary bathroom facilities on the site will not be allowed. Parking for construction related vehicles, worker vehicles, and other equipment may be limited at the construction site. The Contractor should anticipate the need to provide an off-site parking subsidiary to the bid price in the contract.
- J. **FIELD OFFICES:** The Contractor will not be required to maintain a field office at the construction site. In the event that the Contractor wishes to have a temporary project office, approval will be required by the Owner. The cost for the installation of all utilities will be paid by the Contractor.
- K. **DRAINAGE AND EROSION CONTROLS:** The contractor will be responsible for designing, installing and maintaining interim drainage and erosion controls for the construction site.

Surface drainage channels, culverts, or other features will be maintained by the contractor in such a way to minimize the impacts from storm water to offsite properties.

- L. CONTRACT FORMS, BONDS AND CERTIFICATES: The Standard Form of Agreement bond forms listed below will be made a part of the executed contract documents and are made a part of these specifications:

CITY OF NACOGDOCHES STANDARD FORM OF AGREEMENT BETWEEN THE
OWNER AND THE CONTRACTOR

PERFORMANCE BOND

PAYMENT BOND

These forms are not to be filled in by the bidder at the time of submitting his proposal.

STANDARD FORM OF AGREEMENT FOR CONSTRUCTION

CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the **City of Nacogdoches**, a Texas home-rule municipal corporation (the "City") and **DSP Development, LLC**, a limited liability corporation (the "Contractor"), for **Construction Services for 2025 Curb and Valley Gutter Project** located in Nacogdoches, Texas (the "Project").

1. DEFINITIONS

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 Nacogdoches, 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 delegate, 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 amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.

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. 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.

1.08. 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.

1.09. 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.

1.10. 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.

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

1.12. 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.

1.13. 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.

1.14. 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.

1.15. 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 includes the following: **Construction Services for 2025 Curb and Valley Gutter Project** located in Nacogdoches, Texas.

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

2. CONTRACT DOCUMENTS

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

- 2.01.01. This signed Agreement
- 2.01.02. Addendum to this Agreement
- 2.01.03. General Conditions
- 2.01.04. Special Conditions
- 2.01.05. Technical specifications
- 2.01.06. Drawings
- 2.01.07. Instructions to Bidders and any other notices to Bidders or Contractor
- 2.01.08. Performance bond, Payment bonds, Bid bonds and Special bonds
- 2.01.09. Contractor's Proposal

2.02. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03. 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.

2.04. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the plans and specifications and “as built” drawings, are to be returned to the City on request at the completion of the work. All Contract Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City’s interpretation. The terms and conditions of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

3. AWARD OF CONTRACT

3.01. 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 in this Agreement.** 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 notice to proceed may be given by oral notification or set 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, particularly those required under Paragraphs 27 and 28 (Insurance & Bonds).**

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Three Hundred Ninety-Six Thousand Two Hundred Ninety-Four and 04/100 Dollars (\$396,294.04).**

4. CITY'S REPRESENTATIVE

4.01. The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02. The City's Representative may periodically review and inspect the work of the Contractor.

4.03. 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. The Contractor shall regard and obey the directions and instructions of City's Representative, any subordinate supervisors or inspectors appointed by the City provided such directions and instructions are consistent with the obligations of this Agreement.

4.05. Should the Contractor object to any orders by 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.

5. INDEPENDENT CONTRACTOR

5.01. 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. 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 a breach of this Agreement.

5.03. Unless otherwise stipulated, 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. 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 person shall be discharged from the work and shall not again be re-employed on the site or the Project without City's Representative's written permission.

7. HOURS OF WORK

The Contractor may work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays. 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

8.01. It is understood and agreed that the Contractor has, by careful examination, studied and compared the various Drawings and other Contract Documents, satisfied itself as to the nature and location of the work, the conditions 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, including but not limited to weather, and all other matters that in any way affect the work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. 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.

8.02. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03. If the Contractor fails to perform the obligations of Paragraphs 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

9. POST-AGREEMENT AWARD MEETINGS

9.01. 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 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 in writing.
- (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. 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. 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 schedules agreed upon by the parties.

10.02. 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 ensure completion of the Project within the time specified.

10.03. The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a contractor's schedules does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04. **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, they may, in their sole discretion, order the work of the Contractor or any sub-contractor 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. 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. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

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

11.03. 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 Nacogdoches codes and ordinances. City's Representative 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 and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

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.

11.07. The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.08. City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. Although Contractor should anticipate some delays and interference to its sequence of Work because of work by other contractors and utilities, and will not be entitled to either an extension of time or additional compensation because of them, in the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any

separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

12.01. 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 this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02. 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. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03. Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the 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 the 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.

12.04. Materials and supplies shall be new and of good quality. 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 ensure 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. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

13. ENTRY, OBSERVATION, TESTING & POSSESSION

13.01. 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. 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. The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If 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. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, 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. 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 which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

14.01. 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. If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. 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 & SUBCONTRACTORS

15.01. 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. 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

16.01. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02. Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by the City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15th 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 which have been delivered to the site but have not yet been incorporated into the work.

16.03. Progress Payments. On or before the **30th** calendar day following the City's receipt of a progress payment application made in conformity with Paragraph 16.02, 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 approved 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, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

16.04. 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.

16.05. 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.

16.06. 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.

16.07. 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.

16.08. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09. Unless otherwise provided in the Contract Documents:

- (a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 16.9(a) and (2) changes in the Contractor's costs under Paragraph 16.9(b).

16.10. **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. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.11. **Withhold Funds.** Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Paragraph 16.04, 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, or as otherwise provided in this Agreement:

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (f) Claims made or reasonable evidence indicating claims will be made for 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 or under any other agreement made between City and Contractor.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.12. The Parties agree that the City or the state auditor, if state funds are used to fund this contract, may conduct an audit or investigation of any entity receiving funds from the City directly or indirectly through a subcontract under the contract. The acceptance of funds under the contract or subcontract acts as acceptance of the authority of the City or the state auditor to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the City or the state auditor with access to any information the City or the auditor considers relevant to the investigation.

17. EXTRA WORK CHARGES

17.01. 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. For "Extra Work", as defined in Paragraph 1.07 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 change order is less than ***Fifty Thousand Dollars (\$50,000.00)***. Changes in excess of ***Fifty Thousand Dollars (\$50,000.00)*** 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.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non included cost.

17.03. 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) It is agreed that the Contractor shall perform all Extra Work under the direction of 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.

(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 other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's 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. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

(1) No indirect or consequential damages will be allowed.

(2) All costs must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned

manloading to actual manloading, or any other analysis that is used to show damages indirectly.

- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

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

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

18.03. 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 Contractor has bid **120 calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

19. SUBSTANTIAL COMPLETION

19.01. 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. The Substantial Completion of the work shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION

20.01. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.08. If the City's Representative and the City accept and deems 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 thirty (30) calendar days.

20.02. 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. 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 which may appear after final acceptance of the work.

21. DELAYS

21.01. 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. The City may, in its sole discretion, delay the work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. 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. 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 recovery of incidental expenses 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 Texas A&M University 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, within thirty (30) days of the occurrence of the event causing the delay, 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. 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. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, 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 **Five Hundred and no/100 DOLLARS (\$500.00)** 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 made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

24.01. The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

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

24.03. 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. 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 labor and 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. All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

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

25.05. This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

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 of the Work, 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. 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. 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 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 or its surety.

25.09. 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. 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, SUBCONTRACTORS & SUPPLIERS

26.01. **Wage Rates.** Pursuant to Section 2258.023(a) of the 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 attached hereto as Exhibit A.

26.02. **Statutory Penalty.** Pursuant to Section 2258.023(b) of the 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.

26.03. 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. 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 against any property owned by the City. In the event a statutory lien notice 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 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.** Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit, attached as Exhibit E, 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. 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 policies, coverages, limits and endorsements required are as set forth in Exhibit B.

28. BOND PROVISIONS

28.01. Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. 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 in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, 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 counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit C, together with valid original powers of attorney, **at the time of execution of this Agreement and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit C**.
- (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.
- (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. 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 compensate 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, in accordance with the provisions of Article 17.

29. SURETY

29.01. If the Contractor has abandoned the Project or the City has terminated the contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the work

in compliance with this Agreement, then the City at its option may provide for completion of the work in either of the following manners:

29.01.01. 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.

29.01.02. 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 together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Paragraph 38, entitled "TERMINATION FOR CAUSE" 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.

29.02. Should the cost to complete the work exceed 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's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative 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's Representative may elect. City's Representative 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. 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.

30. COMPLIANCE WITH LAW

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

30.02. 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. 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.

30.04. The Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA;

30.05. In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of this contract it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state;

31. SAFETY PRECAUTIONS

31.01. All safety measures, policies and 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 Nacogdoches Fire Department marked "Attn.: Assistant Chief".

31.02. 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. 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.

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

31.05. In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon

encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

31.06. City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07. For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 31.07 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01. The Contractor must comply with the requirements of Tex. Health & Safety Code Ann. §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. 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. 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. 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. 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. CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND OR/OR DESIGNEES FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY, SUITS OR CAUSES OF ACTION, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS CONTRACT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

33.02. The defense of any claim shall be coordinated by Contractor with the City Attorney of the City of Nacogdoches, Texas when the City is named Defendant in any lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the City Attorney. The Parties agree to furnish timely written notice to each other of any such claim.

33.03. The indemnifications contained in paragraphs 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.

33.04. The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.05. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

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, 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. 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. BREACH OF CONTRACT & DAMAGES

37.01. 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.

37.02. 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 after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail 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.

38. 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:

38.01. 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 and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

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

38.03. 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

38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

38.06. If the Contractor abandons the Work.

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

39. TERMINATION FOR CONVENIENCE

39.01. The performance of the work may be terminated at any time in whole or, from time to time, 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.

39.02. In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice 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. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

If this Agreement is terminated for cause, 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, without rental obligation therefor, 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 and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

41.01. 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's Representative, in the manner and to the extent directed by it, 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.

42. TERMINATION CONVERSION

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

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. EFFECTIVE DATE

The effective date of this contract shall be the date of award of the contract.

46. OTHER TERMS

46.01. **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.

46.02. **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.

46.03. **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.

46.04. **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.

46.05. **Mediation.** After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in Nagadoches, Texas.

46.06. **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.

46.07. **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 Nagadoches County, Texas, United States of America.

46.08. **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.

46.09. **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 this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.10. Contractor Affirmations: If this contract is funded in whole or in part by money from the State of Texas, State law requires the following certifications, representations and/or warranties. Regardless of funding by the State, by signature hereon affixed, the Contractor hereby certifies that:

- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract
- (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.
- (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- (d) **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by

citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.

- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.
- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

46.11. **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.

46.12. **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.

46.13. **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.14. **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.

46.15. **Notice of Indemnification.** City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

DSP DEVELOPMENT, LLC

By: _____
Printed Name: _____
Title: _____
Date: _____

CITY OF NACOGDOCHES

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

APPROVED AS TO CONTENT:

Director of Public Works
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

General Decision Number: TX20250028 01/03/2025

Superseded General Decision Number: TX20240028

State: Texas

Construction Type: Highway

Counties: Anderson, Angelina, Bosque, Camp, Cass, Cherokee, Erath, Falls, Fannin, Franklin, Freestone, Grimes, Hamilton, Henderson, Hill, Hood, Hopkins, Houston, Jack, Jasper, Lamar, Leon, Limestone, Madison, Marion, Milam, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Red River, Sabine, San Augustine, Shelby, Somervell, Titus, Trinity, Tyler, Van Zandt, Walker, Washington and Wood Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: 	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. 	
If the contract was awarded on or between January 1, 2015 and	. Executive Order 13658 generally applies to the	

January 29, 2022, and the	contract.	
contract is not renewed or	. The contractor must pay all	
extended on or after January	covered workers at least	
30, 2022:	\$13.30 per hour (or the	
	applicable wage rate listed	
	on this wage determination,	
	if it is higher) for all	
	hours spent performing on	
	that contract in 2025.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025

SUTX2011-009 08/08/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 13.38	**
ELECTRICIAN.....	\$ 20.92	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 11.33	**
Structures.....	\$ 13.07	**
LABORER		
Asphalt Raker.....	\$ 11.34	**
Flagger.....	\$ 9.03	**
Laborer, Common.....	\$ 10.30	**
Laborer, Utility.....	\$ 11.53	**
Pipelayer.....	\$ 13.24	**
Work Zone Barricade		
Servicer.....	\$ 11.22	**
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor.....	\$ 12.35	**
Asphalt Distributor.....	\$ 14.36	**
Asphalt Paving Machine.....	\$ 12.92	**

Broom or Sweeper.....\$ 10.30 **
 Concrete Pavement
 Finishing Machine.....\$ 19.31
 Concrete Paving, Curing,
 Float, Texturing Machine....\$ 16.34 **
 Crane, Hydraulic 80 Tons
 or Less.....\$ 20.21
 Crane, Lattice boom 80
 Tons or less.....\$ 14.67 **
 Crane, Lattice boom over
 80 Tons.....\$ 17.49 **
 Crawler Tractor.....\$ 13.38 **
 Excavator 50,000 pounds or
 less.....\$ 13.88 **
 Excavator, Over 50,000
 pounds.....\$ 16.22 **
 Foundation Drill, Truck
 Mounted.....\$ 20.76
 Front End Loader 3 cu yd
 or Less.....\$ 12.89 **
 Front End Loader, over 3
 cu yd.....\$ 12.32 **
 Loader/Backhoe.....\$ 12.87 **
 Mechanic.....\$ 18.58
 Milling Machine.....\$ 12.86 **
 Motor Grader, Fine Grade....\$ 17.07 **
 Motor Grader, Rough.....\$ 15.12 **
 Pavement Marking Machine....\$ 13.17 **
 Reclaimer/Pulverizer.....\$ 10.46 **
 Roller, Asphalt.....\$ 11.68 **
 Roller, other.....\$ 10.30 **
 Scraper.....\$ 12.43 **
 Spreader Box.....\$ 13.68 **

Servicer.....\$ 13.83 **

Steel Worker (Reinforcing).....\$ 15.83 **

TRUCK DRIVER

Lowboy-Float.....\$ 14.30 **
 Off Road Hauler.....\$ 12.23 **
 Single Axle.....\$ 10.30 **
 Single or Tandem Axle Dump..\$ 12.28 **
 Tandem Axle Tractor with
 Semi Trailer.....\$ 12.50 **

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA?", or "SC?" denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for

this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE:

UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested

party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

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

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

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

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

Exhibit B
INSURANCE REQUIREMENTS

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
- D. Workers' Compensation
- E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.

II. 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 are not 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 Nacogdoches.
- E. Upon request, certified copies of all insurance policies shall be furnished to the City of Nacogdoches.
- F. The City of Nacogdoches, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- G. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$500,000.00 per occurrence for bodily injury and property damage with an annual

aggregate limit of \$1,000,000.00 which limits shall be endorsed to be per Project.

- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded 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 with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a “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. Coverage shall be at least as broad as Insurance Service’s Office Number CA 00 01.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00.

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the contract, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

- VI. Those policies set forth in Paragraphs III, IV, and V shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor’s policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to 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, attached hereto as Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the 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 Texas Department of Insurance Division of Workers Compensation (DWC) 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. Workers compensation insurance shall include the following terms:
1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. 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. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and 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") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-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 [of the 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 Division of Workers Compensation, 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.”

- VIII. 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 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 Nacogdoches.
 - E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Three Hundred Ninety-Six Thousand Two Hundred Ninety-Four and 04/100 Dollars (\$396,294.04)** for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Nacogdoches for **Construction Services for 2025 Curb and Valley Gutter Project** all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Nacogdoches or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Nacogdoches shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Nacogdoches shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Nacogdoches or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of Nacogdoches from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of Nacogdoches shall bring any

suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in NACOGDOCHES County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST and SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF NACOGDOCHES, TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called “Principal” and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called “Surety”, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Three Hundred Ninety-Six Thousand Two Hundred Ninety-Four and 04/100 Dollars (\$396,294.04)** for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the ____ day of _____, 20____, for **Construction Services for 2025 Curb and Valley Gutter Project** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be 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 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST and SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF NACOGDOCHES, TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Exhibit E
FINAL AFFIDAVIT OF ALL BILLS PAID

FINAL BILLS PAID AFFIDAVIT
BY CONTRACTOR

BEFORE ME, the undersigned authority, personally appeared as _____,
(Name), known to me to be a credible person, and after
being by me duly sworn, upon oath stated and affirmed that: "My name is
_____ and I am the _____
(Name) (Title)
of _____", hereafter referred to in this affidavit as
(Firm)
"Contractor". Contractor's business address is _____,
(Address)
Texas, _____. The undersigned Contractor has personal knowledge of the facts
(Zip)
stated herein and has full authority to make the agreements in this affidavit on behalf of
Contractor.
Pursuant to and in accordance with a written contract between Contractor and
_____, collectively referred to as Owner, Contractor furnished
(Owner)
materials and labor for the construction, renovation, installation or repair of certain
improvements (the "Improvements"), being City of Nacogdoches contract for
_____.
(Project Name)

All work provided for under said written construction contract, together with all changes and supplements thereto, has been fully completed in accordance with the terms and provisions of said contract.

Contractor has paid each of its subcontractors, laborers, suppliers and materialmen in full for all labor and materials provided to Contractor for or in connection with the construction, renovation or repair of the Improvements.

Contractor is not aware of any unpaid bills, claims, demands or causes of action by any of its subcontractors, laborers, manufacturers, suppliers or materialmen for or in connection with the furnishing of labor materials, or both, for the construction, renovation or repair of the Improvements.

Contractor further understands that this Final Bills Paid Affidavit is being given pursuant to and in accordance with Section 53.085 of the Texas Property Code and that the

intentional, knowing or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

Contractor hereby indemnifies and holds harmless the City of Nacogdoches from any and all claims, demands or causes of action, and any costs, expenses and attorney’s fees incurred in connection therewith, arising from or connected with, the statements and representations contained herein.

EXECUTED this ____ day of _____ , 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Notary’s Acknowledgement

Before me, the undersigned authority, on this day personally appeared _____, who first being duly sworn by me to be the person whose name is subscribed to the foregoing Final Bills Paid Affidavit, acknowledged that he/she has the authority to make this Final Bills Paid Affidavit, and further acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20____.

Exhibit F
PLANS, SPECIFICATIONS AND DRAWINGS

2025 Curb and Valley Gutter Project

Oakview Drive - 1 Valley Gutter; 10 LF Curb & Gutter
Northway Drive - 1 Valley Gutter
Meadowview Drive - 1 Valley Gutter

Redwood Drive - 1 Valley Gutter; 20 LF Curb & Gutter
Timberwood Drive - 46 LF Curb & Gutter

Post Oak Road - 2 Valley Gutters

Glen Hollow Drive - 1 Valley Gutter
123 LF Curb & Gutter

W. Starr Avenue - 3 Valley Gutters
45 LF Curb & Gutter

Sunset Avenue - 1 Valley Gutter
W. Craven Street - 1 Valley Gutter
W. Gaylon Brooks - 2 Valley Gutters
Harris Street - 1 Valley Gutter
Burk Street - 1 Valley Gutter
Lock Street - 2 Valley Gutters
Virginia Avenue - 233 LF Curb & Gutter

E. Oak Lane - 20 LF Curb & Gutter
Edgewood Lane - 30 LF Curb & Gutter

Monk Street - 1 Valley Gutter

Zula Street - 3 Valley Gutters

Colston Street - 1 Valley Gutter

Arthur Weaver Street - 3 Valley Gutters
Eliza Street - 2 Valley Gutters
Glass Street - 1 Valley Gutter
Ward Street - 1 Valley Gutter
Fox Street - 2 Valley Gutters
Brown Street - 2 Valley Gutters; 20 LF Curb & Gutter

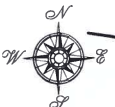
Patton Street - 1 Valley Gutter
Leak Street - 1 Valley Gutter

Ila Street - 1 Valley Gutter
Sharon Drive - 10 LF Curb & Gutter
Yolunda Drive - 36 LF Curb & Gutter

Laurel Lane - 2 Valley Gutters; 10 LF Curb & Gutter
Shirley Street - 1 Valley Gutter; 10 LF Curb & Gutter

Legend

 City Limit
 Streets



0 0.125 0.25 0.5 0.75 Miles

**Refer to Summary Sheet
for Valley Gutter Locations**



City of Nacogdoches

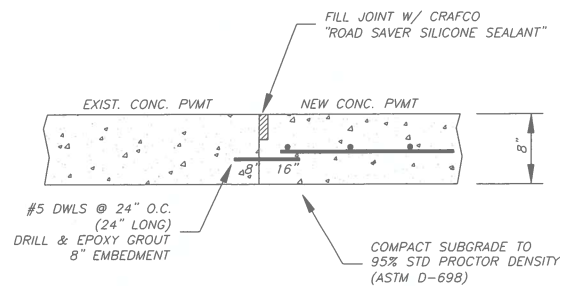
2025 Curb and Valley Gutter Project

Summary

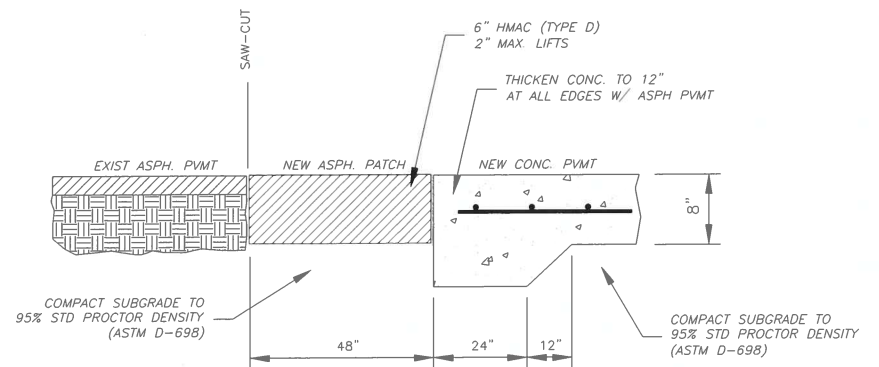
Concrete Valley Gutter Locations	
Street	Intersection
Oakview Drive	North Street
Northway Drive	Oakview Drive
Meadowview Drive	NE Stallings Drive
Redwood Drive	Scenic Drive
Post Oak Road	Sir Galahad Drive - Both Sides
Glen Hollow Drive	Chaparral Drive
W. Starr Avenue	North Street
W. Starr Avenue	Pearl Street - Both Sides
Sunset Avenue	Virginia Avenue
W. Craven Street	Virginia Avenue
W. Gaylon Brooks Street	Virginia Avenue
W. Gaylon Brooks Street	South Street
Harris Street	Virginia Avenue
Burk Street	Virginia Avenue
Lock Street	Virginia Avenue - Both Sides
Monk Street	S. Fredonia Street
Monk Street	S. Church Street
Zula Street	E. Main Street
Zula Street	Timberlake Street - Both Sides
Arthur Weaver Street	Greer Street
Arthur Weaver Street	MLK, Jr. Boulevard - Both Sides
Eliza Street	Arthur Weaver Street - Both Sides
Glass Street	Arthur Weaver Street
Ward Street	Arthur Weaver Street
Fox Street	Arthur Weaver Street
Fox Street	Orton Street
Brown Street	Arthur Weaver Street
Brown Street	Orton Street
Colston Street	Cherry Street
Patton Street	W. Lane Drive
Leak Street	Old Lufkin Road
Laurel Lane	Old Lufkin Road
Laurel Lane	Greenwood Street
Shirley Street	Greenwood Street
Ila Street	Sharon Drive

Curb & Gutter Replacement	
Street	Length (ft)
Oakview Drive	10
Redwood Drive	20
Timberwood Drive	46
Glen Hollow Drive	123
W. Starr Avenue	45
Virginia Avenue	233
E. Oak Lane	20
Edgewood Lane	30
Brown Street	20
Laurel Lane	10
Shirley Street	10
Sharon Drive	10
Yolunda Drive	36

Where Valley Gutter is installed at intersections or other points on a street with no other outlet, installation shall be in halves to allow street access to traffic at all times.



CONCRETE TO CONCRETE TRANSITION



ASPHALT TO CONCRETE TRANSITION



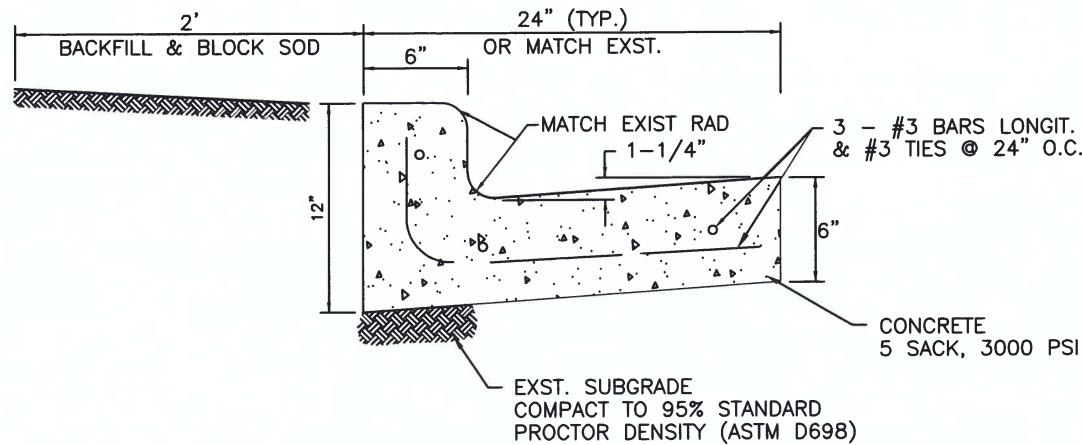
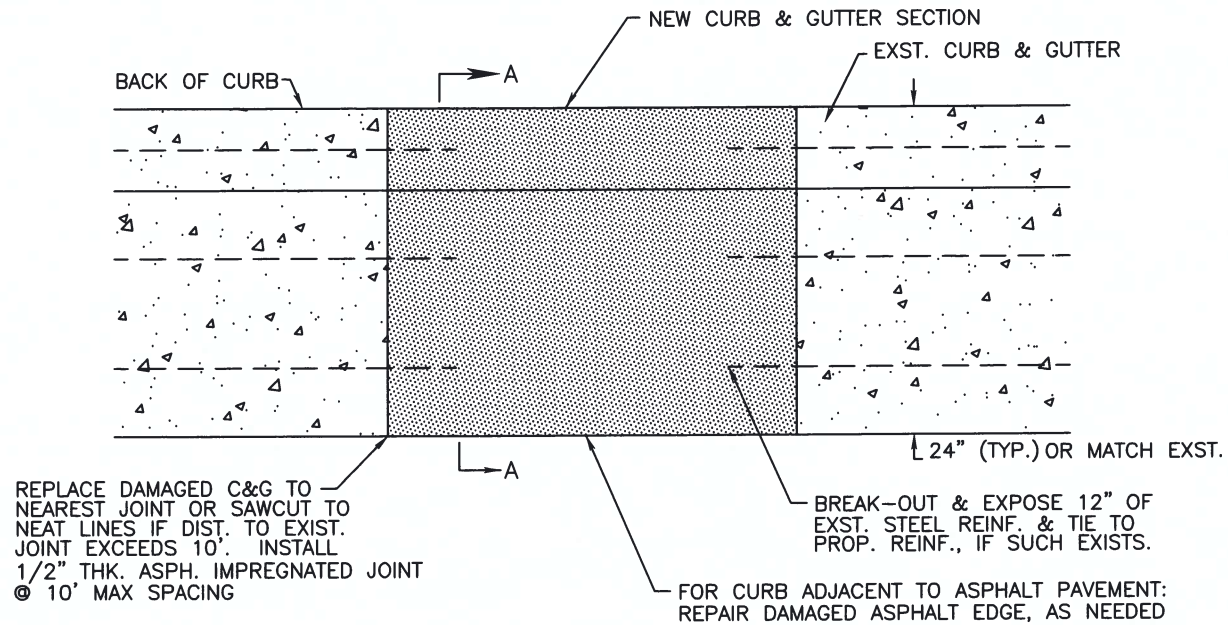
City of Nacogdoches
Engineering Department

SURVEYED	DESIGN	DRAWN	APPROVED	JOB	DATE

DRAWING NAME:

CONCRETE TIE-IN DETAIL

SHEET NAME:



SECTION A-A
CURB & GUTTER DETAIL
NOT TO SCALE



1/2/2025

City of Nacogdoches
Engineering Department

SURVEYED	DESIGN	DRAWN	APPROVED	JOB	DATE

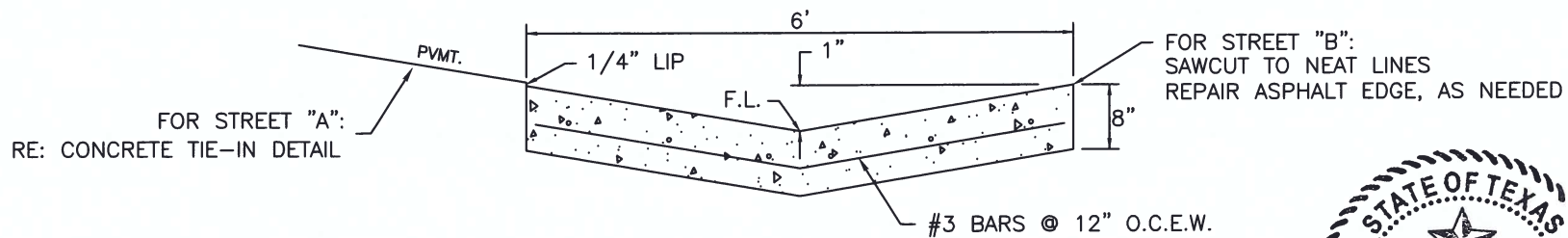
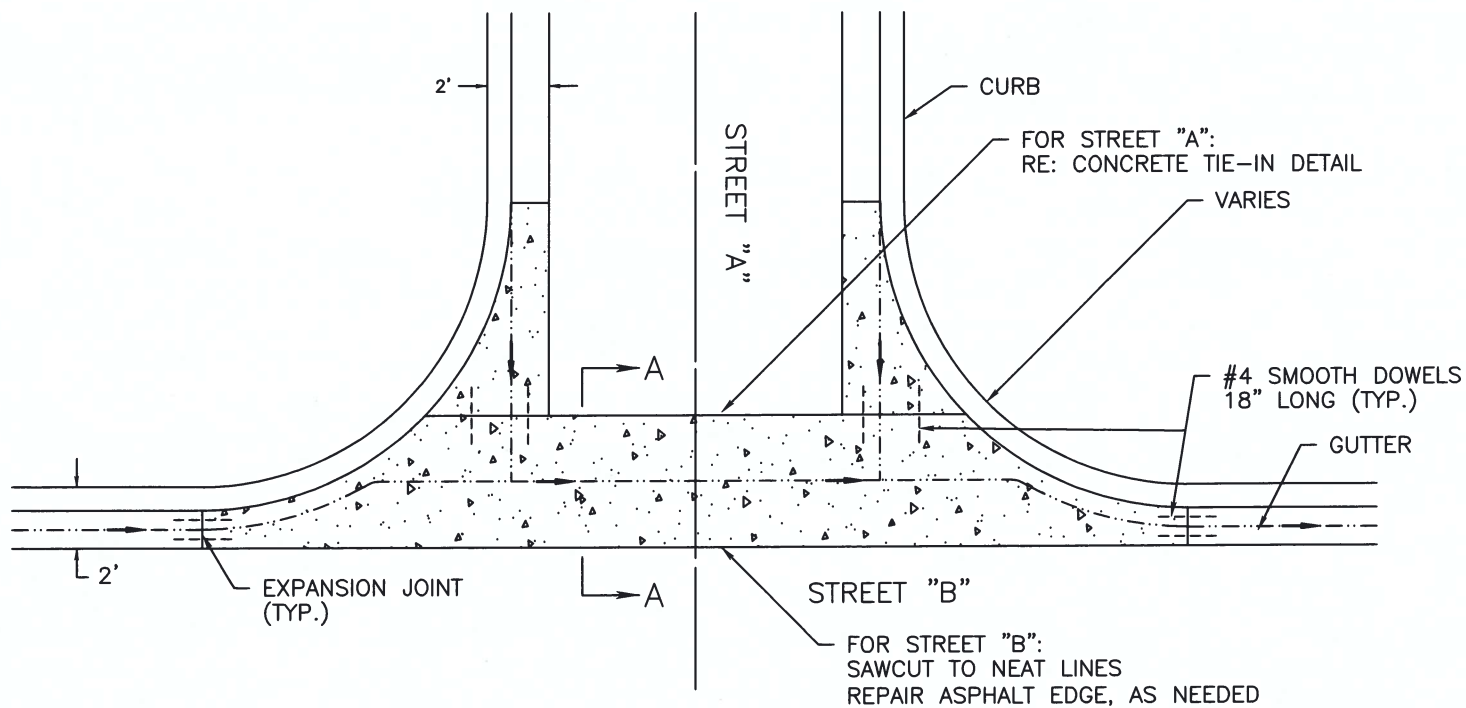
SEAL:

CURB & GUTTER
REPLACEMENT DETAIL

DRAWING NAME:

CURB & GUTTER DETAIL

SHEET NAME:



SECTION A-A

VALLEY GUTTER DETAIL

NOT TO SCALE



City of Nacogdoches
Engineering Department

SURVEYED	DESIGN	DRAWN	APPROVED	JOB	DATE

DRAWING NAME:

VALLEY GUTTER DETAIL

SHEET NAME:

CITY OF NACOGDOCHES
TABLE OF CONTENTS
TECHNICAL SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

Restoration and Clean Up

DIVISION 2 - SITEWORK

Curb and Gutter

Concrete Pavement

Pavement Patching and Repair

Hot Mix Asphaltic Concrete Pavement

PART ONE - GENERAL

- 1.1 The Contractor shall furnish all labor, equipment, materials and incidentals to restore any disturbed or damaged surfaces and/or items to a condition equal to or better than that which existed before work began. The Contractor shall leave the construction site clean.

PART TWO - PRODUCTS

- 2.1 The Contractor may use equipment and materials as necessary to properly complete the restoration and cleanup phase of the project.

PART THREE - EXECUTION

3.1 General

A. As soon as the pipe is laid and backfilled or structures built, clean the construction site and any adjoining areas used by the Contractor in construction and make any restorations necessary to leave the site in a condition equal to or better than prior to construction.

B. As a matter of record, the Contractor shall photograph improved or planted areas before and after working across them.

3.2 Restoration

A. The Contractor shall restore and/or replace any paving, curbing, sidewalks, culverts, gutters, shrubbery, plants, fences, sod or other disturbed surfaces or structures. The size, thickness, strength, texture or condition of restored items shall equal to that which existed before the work began.

B. All terraces, levees and water courses shall be restored to their former condition so that they shall function as originally intended.

C. Private roads used by the Contractor shall be restored to former condition.

3.3 Cleanup

A. The cleaning up shall be done by a special labor crew organized by the Contractor at the time he starts backfill operations and such work shall be diligently prosecuted until the entire construction site has been covered.

B. Any rock, including loose rock having a dimension three (3) inches or more, encountered by the grading, trenching or boring operations, not backfilled according to the specifications, shall be removed from the construction site and disposed of at locations and in a manner that is satisfactory to the Owner.

C. Unless directed otherwise by the Owner, all materials used for providing temporary roadways for construction equipment shall be removed and disposed of.

CITY OF NACOGDOCHES
RESTORATION AND CLEANUP

- D. All debris, pavement and excess earth from excavations shall be removed and disposed of by the Contractor.
- E. Seeding or sodding will be necessary in areas of excavation as required by the Owner. The seeding or sodding is to be performed according to specifications dealing with this work.
- F. To prevent erosion of soil disturbed by construction, the Contractor shall construct terraces or shall place over the construction site and trench backfill suitable control devices composed of sacks filled with earth or sand, silt fences, silt dams or hay bales.
- G. The Contractor should not attempt to perform cleanup operations during adverse weather or wet ground conditions.
- H. At no time during the progress of the work shall the completed cleanup operation be a greater distance behind the completed pipe trench than is deemed advisable by the Engineer.
- I. Before the final acceptance of the project, the entire project site shall be cleared of all surplus and waste materials from the work and otherwise restored as required above.

PART ONE - GENERAL

- 1.1 Description of Work - This item shall govern for curb and gutter, with or without reinforcing steel, composed of Portland Cement Concrete constructed on approved subgrade, foundation material or finished surface in accordance with approved lines and grades in conformance with details shown on the plans. Determination of lines and grades shall be the responsibility of the CONTRACTOR, subject to approval of the OWNER.

PART TWO - PRODUCTS

- 2.1 Concrete - Concrete used shall be Class "A" Concrete. Reinforcing steel, if required, shall conform to the requirements set forth on the plans. Expansion joint filler shall be premolded material meeting the requirements of Specification Item, CONCRETE PAVEMENT (CLASS "A" CONCRETE).
- 2.2 Curing and Admixtures - Membrane curing materials shall meet the requirements of TxDOT ITEM 526, MEMBRANE CURING, latest edition. Admixtures shall meet the requirements of TxDOT ITEM 437, CONCRETE ADMIXTURES, latest edition.

PART THREE - EXECUTION

- 3.1 Subgrade Preparation - The subgrade or foundation shall be shaped to line, grade and cross-section, and if considered necessary by the Engineer, hand tamped and sprinkled. If dry, the subgrade or foundation material shall be sprinkled lightly immediately before concrete is deposited thereon.
- 3.2 Forming - Outside forms shall be of wood or metal, of a section satisfactory to the Engineer, straight, free of warp and of a depth equal to the depth required. They shall be securely staked to line and grade and forms for curbs shall be of approved material, shall be of such design so as to provide the curb required, and shall be rigidly attached to outside forms.
- 3.3 Reinforcing - The reinforcing steel, if required, shall be placed in position as required by the plans. Care shall be exercised to keep all steel in its proper place.
- 3.4 Placement - For extruded concrete construction, the concrete shall be placed by an extrusion machine approved by the Engineer. When placement is directly on subgrade or foundation materials, the foundation shall be hand tamped and sprinkled if considered necessary by the Engineer.

The line shall be maintained from a guideline set by the Contractor from survey marks established by the Engineer. The outline shall strictly conform to the details shown on the plans. The forming tube of the extrusion machine shall be readily adjustable vertically during the forward motion of the machine to provide required variable heights necessary to conform to the established grade line. To provide a continual check on the grade, a pointer or gauge shall be attached to the machine in such a manner that a comparison can be made between the extruded work and the guideline. Other methods may be used if approved in writing by the Engineer.

CITY OF NACOGDOCHES

CURB AND GUTTER

The approved mix shall be fed into the machine in such a manner and at such consistency that the finished work will present a well compacted mass with a surface free from voids and honeycomb and true to established shape, line and grade.

Any additional surface finishing specified and/or required shall be performed immediately after extrusion. Joints shall be constructed at such locations as directed by the Engineer and to the details shown on the plans.

- 3.5 Finishing - After the concrete has been struck off and after it has become sufficiently set, the exposed surfaces shall be thoroughly worked with a wooden float. The exposed surfaces shall be rounded by the use of an edging tool to the radius indicated on plans. All exposed surfaces shall be brushed to a smooth and uniform surface.
- 3.6 Joints - Curb and gutters shall be placed in sections of 50 feet maximum length unless otherwise shown on the plans. Joints shall be constructed at such locations and of the type as directed and specified on the plans. Expansion joints shall be placed at all tie-ins to existing curb and gutters

PART FOUR - MEASUREMENT AND PAYMENT

- 4.1 Measurement - Accepted work and materials as prescribed by this item for concrete curb and gutter will be measured by the linear foot, complete in place.
- 4.2 Payment - The work performed and materials furnished as prescribed by this item shall be paid for at the unit price bid for "CONCRETE CURB AND GUTTER" of the type indicated on the plans. The price for each item shall be full compensation for removals, excavation, cleaning and compacting the base or subgrade, furnishing and applying of water, mortar, adhesives or other material, including reinforcing steel and dowel bars, if required, for furnishing, loading and unloading, storing, hauling and handling all ingredients, including all freight and royalty involved, for mixing, placing, finishing, cleaning and sealing joints and curing all concrete, for furnishing all materials for sealing joints and placing joints and joint filler material in proper position, and for all manipulations, labor, equipment, appliances, tools, traffic provisions and incidentals necessary to complete the work.

CITY OF NACOGDOCHES

CONCRETE PAVEMENT

PART ONE - GENERAL

- 1.1 General - This item shall consist of Portland Cement Concrete Pavement, with or without reinforcement, with or without monolithic curbs, constructed as herein specified and as shown on the plans on the prepared subgrade or other base course in conformity with the thickness and typical cross sections shown on the plans and to the lines and grades established by the Engineer.

PART TWO - PRODUCTS

- 2.1 Concrete - Concrete shall conform to the requirements for CLASS "A" CONCRETE as follows:

Min. Sacks Cement per Cubic Yard	Min. Comp. Strength 28 Day PSI	Max. Water Cement Ratio	Slump Range Inches	Coarse Aggregate Number	Fine Aggregate Number
5.0	3,000	7.0	1-3	1,2,3 or 4	1

The use of ready mixed concrete will be permitted for all concrete provided that the plant, truck mixers, agitators and mixing equipment conform to the requirements of the Texas Department of Transportation.

- 2.2 Joints - Boards for expansion joint filler and for contraction and longitudinal joints shall be of Redwood or Cypress timber. They shall be sound heartwood and shall be free from sapwood, knots, clustered birdseye, checks and splits. Boards that crack or shatter during installing and finishing operations will not be acceptable.

Asphalt impregnated joint board or preformed fiber material shall be of required size and uniform thickness. When used in transverse joints, it shall conform approximately to the shape of the finished pavement as shown on plans.

Ready mixed cold applied joint and crack sealer shall consist of a homogeneous blend of asphalt, rubber, inert filler and a suitable solvent or solvents. The material shall be a resilient, adhesive compound capable of effectively sealing properly cleaned joints in concrete pavement against the infiltration of moisture throughout repeated cycles of contraction and expansion and which will not be picked up by vehicle tires, particularly at summer temperatures. Joint sealants and fillers shall meet all requirements of TxDOT Standard Specification Item 433 "Joint Sealants and Fillers".

CITY OF NACOGDOCHES CONCRETE PAVEMENT

The Material when tested in accordance with Text Method Tex 525-C shall meet the following requirements:

Penetration:

At 77° F: (As received) 150 grams, 5 seconds, not less than 2.75 cm. (After evaporation of solvent) 200 grams, 60 seconds, not more than 2.20 cm.

At 32° F: (After evaporation of solvent) 200 grams, 60 seconds, not less than 2.20 cm.

Flow:

Not more than 0.5 cm.

Bond:

There shall be no cracking of the material or failure in bond between the material and the mortar test blocks during or at the end of five cycles.

- 2.3 Dowels - Approved load transmission devices for expansion and contraction joints shall consist of smooth, steel dowel bars of the size and type indicated on plans and shall be open hearth, basic oxygen or electric furnace steel conforming to the properties specified for grade 60 in ASTM Designation: A 615. The free end of dowel bars shall be smooth and free of shearing burrs.

When required by plans, one end of each dowel bar shall be encased in a approved cap having an inside diameter of 1/6 inch greater than the diameter of the dowel bar. The cap shall be of such strength, durability and design as to provide free movement of the dowel bar and shall be approved by the ENGINEER prior to use. One end of the cap shall be filled with a soft felt plug or shall be void in order to permit free movement of the dowel bar for a distance equivalent to 150 percent of the width of the joint used. The dowel caps and dowel bars shall be held securely in place by bar ties as shown on plans, or an approved equivalent thereof. Mechanical methods of implanting dowel bars in the plastic concrete may be used if approved by the ENGINEER.

Smooth dowel bars shall be coated with heavy grease on one end. Unless otherwise shown on the plans, steel reinforcing bars as required including the tie bars shall be open hearth, basic oxygen or electric furnace new billet steel of Grade 60 or Grade 40 for concrete reinforcement. Bars that require bending shall be Grade 40 conforming to requirements of ASTM Designation: A 615.

- 2.4 Curing - The membrane curing compound shall comply with the requirements of TxDOT Standard Specification Item 526 "Membrane Curing".

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2.5 Equipment

2.5.1 General - All equipment necessary for the construction of this item shall be on the project and shall be approved by the ENGINEER as to condition before the CONTRACTOR will be permitted to begin construction operations on which the equipment is to be used. When approved by the ENGINEER in writing, a commercial or independently operated batching plant for measuring materials outside the limits of the project may be used.

2.5.2 Mixer - The mixer furnished may be either a paving mixer (operated at the site of the construction or centrally located), a stationary mixer (central mixer) or paving mixer (truck mounted) that will produce adequately mixed concrete meeting the specified requirements.

The size of the paving mixer shall not be less than that of a 27-E paver, as established by the Mixer Manufacturer's Bureau of the Associated General Contractors. Each truck mounted paving mixer shall be approved by the ENGINEER prior to use on the project.

Each mixer shall be equipped with a water measuring device so constructed that it will measure the water within one (1) percent of the total amount required for each batch. Unless the water is to be weighed, the water measuring equipment shall include an auxiliary tank with a capacity greater than that of the measuring tank, and from which the measuring tank will be filled by gravity flow. The measuring tank shall be open to the atmosphere and shall be so placed and constructed that the water for a batch can be discharged into a calibrated tank or weighing device for checking the accuracy of water measurement without seriously delaying the paving operations. The CONTRACTOR shall have a calibrated tank or weighing device available at all times at a location satisfactory to the ENGINEER.

2.5.3 Hauling Equipment - Batch hauling equipment for the transportation of measured materials from the batching plant to the mixer shall be equipped with tight covers and shall be used when directed by the ENGINEER to prevent excessive evaporation of moisture or any loss of material.

If a central mixer is used, concrete may be transported to the point of delivery in truck agitators or non-agitating trucks. If, in the opinion of the ENGINEER, any appreciable segregation or accumulation of excess water and/or mortar occurs on the surface of the concrete, this may be cause for rejection and this method of transporting the concrete to the point of delivery shall be suspended as directed by the Engineer.

2.5.4 Subgrade or Subbase Planer and Templates - Unless a stabilized subbase is provided, an approved subbase planer shall be provided, mounted on visible rollers riding on the forms and having adjustable cutting blades which shall trim the subgrade to the exact section shown on the plans. The planer frame shall be

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heavy enough to remain on the forms at all times and shall be of such strength and rigidity that, under a test made by changing the support from the wheels to the center, it shall not develop a deflection of more than 1/8-inch. Tractive power equipment used to pull the planer shall not be such as to produce ruts or indentations in the subgrade.

When the slipform method of paving is to be used, the subgrade planer will be operated on a prepared track grade or controlled by an electronic sensor system operated from a "string line" that establishes the horizontal alignment and the elevation of the subbase.

A template for checking the contour of the subbase shall be provided and operated by the CONTRACTOR. The template shall rest upon the side forms and shall be of such strength and rigidity that, under a test made by changing the support to the center, it shall not show a deflection of more than 1/8-inch. It shall be provided with accurately adjustable rods projecting downward to the subgrade at one (1) foot intervals, and these rods shall be adjusted to the required cross section of the bottom of the slab when the template is resting upon the side forms. Where stabilized subbase is provided, use of a scratch template will be required.

- 2.5.5 Forms - Side forms shall be metal of approved cross-section. The preferred depth of the form shall be equal to the required edge thickness of the pavement. Forms with depth greater or less than the required edge thickness of the pavement will be permitted provided the difference between the form depth and the edge thickness is not greater than one (1) inch and further provided that forms of a depth less than the pavement edge are brought to the required edge thickness by securely attaching metal strips of approved section to the bottom of the form. Longitudinal hardwood strips not greater than one (1) inch in thickness may be used in lieu of metal strips.

The length of form sections shall not be less than ten (10) feet and each section shall provide for staking in position with not less than three pins. Flexible or curved forms of wood or metal of proper radius shall be used for curves of 200-foot radius or less. Forms shall be of ample strength and shall be provided with adequate devices for secure setting so that when in place they will withstand, without visible springing or settlement, the impact and vibrating of the spreading and finishing machinery. In no case shall the base be less than eight (8) inches or more in height. The forms shall be free from warps, bends, or kinks, and shall be sufficiently true to provide a reasonably straight edge on the concrete and the top of each form section, and when tested with a straight edge shall conform to the requirements specified for the surface of the completed pavement. Sufficient forms shall be provided for satisfactory prosecution of the work.

Outside curb forms shall be of wood or metal of section satisfactory to the ENGINEER, straight, free of warp, and shall be a depth at least equal to the depth of the curb. They shall be mounted on the paving forms and securely

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attached thereto and maintained in true position during the placing of the concrete.

- 2.5.6 Concrete Spreader - Use of a concrete spreader shall be required and it shall be a self-propelled machine having sufficient power and traction to spread and strike off concrete without slippage on the forms. It shall be equipped with a power driven device for spreading the concrete uniformly between the forms. The spreading device may be a reciprocating blade, a screw conveyor or a belt conveyor. The spreader shall be capable of striking off the surface of the concrete between the forms in the longitudinal direction of the slab at any required elevation.
- 2.5.7 Slipform Paver - This paver shall be equipped with a longitudinal transangular finishing adjustable to crown and grade. The float shall extend across the pavement practically to the side forms and/or edge of slab. A "String line" shall be used to provide grade control for the paver, unless otherwise shown on the plans.
- 2.5.8 Mechanical Vibratory Equipment - All concrete place for pavement shall be consolidated by approved mechanical vibrators operated ahead of the transverse finishing machine and designed to vibrate the concrete internally and/or from the surface. Vibratory members shall extend across the pavement, practically to, but shall not come in contact with, the side forms. Mechanically operated vibrators shall be mounted in such manner as to not interfere with the transverse or longitudinal joints.

The pavement vibrators shall not be used to level or spread the concrete but shall be used only for purposes of consolidation. The vibrators shall not be operated for more than fifteen (15) seconds while the machine upon which they are installed is standing still.

Approved hand manipulated mechanical vibrators shall be furnished in the number required for provision of proper consolidation of the concrete along forms, at joints and in areas not covered by mechanically controlled vibrators. These vibrators shall be sufficiently rigid to insure control of the operating position of the vibrating head.

- 2.5.9 Finishing Equipment - The transverse finishing machine shall be provided with two (2) screeds accurately adjusted to the crown of the pavement, shall be power driven and mounted in a substantial frame equipped to ride on the forms, and shall be so designed and operated as to strike off and consolidate the concrete.

Where hand finishing is permitted under this specification, the CONTRACTOR shall provide a strike template and tamping template both of four (4) by ten (10) inch lumber or equivalent metal section and at least two (2) feet longer than the width of the pavement. Both templates shall conform to the crown section of the pavement, and the tamp, if of wood, shall have a steel face not less than 3/8-inch

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in thickness. The CONTRACTOR shall also provide a longitudinal float of approved design and not less than fourteen (14) feet in length.

The CONTRACTOR shall furnish, operate and maintain at least two (2) standard ten (10) foot steel straightedges.

The CONTRACTOR shall furnish a sufficient number of bridges equipped to ride on the forms and span the pavement for finishing operations and for the installation and finishing of joints. All necessary finishing and edging tools shall be furnished as may be required to complete the pavement in accordance with the plans.

PART THREE - EXECUTION

- 3.1. Preparation of Subgrade - Where stabilized subbase is not provided the subgrade shall be excavated as required, all unstable or otherwise objectionable material removed, and all holes, ruts and depressions filled with approved material. Rolling and sprinkling shall be performed when and to the extent directed, and the road bed shall be completed to or above the plane of the typical sections shown on the plans and the lines and grades approved by the ENGINEER. Material excavated in the preparation of the subgrade shall be utilized in the construction of adjacent shoulders and slopes, and any additional material required for the completion of the sections shall be secured from sources indicated on the plans or designated by the ENGINEER. Drainage of the roadbed shall be maintained at all times.

The subgrade shall be maintained in a smooth, compacted condition in conformity with the required section and established grade until the pavement is placed and shall be kept thoroughly wetted down sufficiently in advance of placing any pavement to insure its being in a firm and moist condition for at least two (2) inches below the prepared surface. Sufficient subgrade shall always be prepared in advance to insure satisfactory prosecution of the work. No equipment or hauling shall be permitted on the prepared subgrade, except by special permission of the ENGINEER, which will be granted only in exceptional cases and only where suitable protection in the form of two (2) ply timber mats or other approved materials is provided.

- 3.2 Placing and Removing Forms - The subgrade under the forms shall be firm and cut true to grade so that each form section when placed with be firmly in contact for its whole length and base width, and exactly at the established grade. Any subgrade under the forms below established grade shall be corrected, using suitable material, placed, sprinkled and rolled as directed. Forms shall be staked with at least three (3) pins of each ten (10) foot section. A pin shall be placed at each side of every joint. Form sections shall be tightly joined and keyed to prevent relative displacement. Forms shall be cleaned and oiled each time they are used. Conformity of the grade and alignment of forms shall be checked immediately prior to placing concrete and all necessary corrections made by the

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CONTRACTOR. Where any form has been disturbed or any subgrade becomes unstable, the form shall be reset and rechecked. In exceptional cases, the ENGINEER may require suitable stakes driven to the grade of the bottom of the forms to afford additional support. Sufficient stability of forms to support the equipment operated thereon and to withstand its vibration without springing or settlement shall be required. If forms settle and/or deflect over 1/8 inch under finishing operations, paving operations shall be stopped and the forms shall be reset to line and grade.

Forms shall remain in place for not less than eight (8) hours after the concrete has been placed. They shall be carefully removed in such a manner that little or no damage will be done to the edge of the pavement. Any damage resulting from this operation shall be immediately repaired. After the forms have been removed, the ends of all joints shall be cleaned, and any honeycombed areas pointed up with approved mortar. Immediately after pointing is complete, the form trench, if used, shall be filled with earth from the shoulders in such a manner as to shed water from rainfall or curing away from the edge of the pavement. Upon completion of the required curing, the subgrade or shoulders adjacent to the pavement shall be placed in condition to maintain drainage.

3.3 Concrete Mixing and Placing

- 3.3.1 Mixing - The concrete shall be mixed in a mixer conforming to requirements. Ready Mix concrete may be used for mixing concrete for pavement. The aggregates, mineral filler if required, cement and water shall be measured separately, introduced into the mixer and mixed for a period of not less than fifty (50) seconds nor more than ninety (90) seconds, measured from the time the last aggregate enters the drum to the time discharge of the concrete begins. The required water shall be introduced into the mixing drum during the first fifteen (15) seconds of mixing. The entire contents of the drum shall be discharged before any materials of the succeeding batch are introduced.

If a central mixer is used, the concrete shall be discharged into the specified hauling equipment and delivered to the road site. If truck agitators are used, the concrete shall be continuously agitated at not less than one (1) nor more than six (6) rpm as directed by the ENGINEER.

- 3.3.2 Placing - Unless otherwise shown on the plans the concrete may be placed by using forms or by use of a slipform paver. Any concrete not placed as herein prescribed within thirty (30) minutes after mixing shall be rejected and disposed of as directed except as provided otherwise herein. Except by specific written authorization of the ENGINEER, concrete shall not be placed when the temperature is below 50°F and falling but may be placed when the temperature is above 45°F and rising, the temperature being taken in the shade and away from artificial heat.

Concrete shall be placed only on approved subgrade or subbase and unless otherwise indicated on the plans, the full width of the pavement shall be

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constructed monolithically. The concrete shall be deposited on subgrade or subbase in such manner as to require as little rehandling as possible. Where hand spreading is necessary, concrete shall be distributed to the required depth by use of shovels. The use of rakes will not be permitted. Workers will not be permitted to walk in the concrete with any earth or foreign material on their boots or shoes. The placing of concrete shall be rapid and continuous.

Concrete shall be distributed to such depth that, when consolidated and finished, the slab thickness required by the plans will be obtained at all points and the surface shall not, at any point, be below the established grade. Special care shall be exercised in placing and spreading concrete against forms and at all joints to prevent the forming of honeycombs and voids.

Concrete for the monolithic curbs shall be the same as for the pavement and, if carried back from the paving mixer, shall be placed within twenty (20) minutes after being mixed. It may be placed while the pavement concrete is still plastic. When sawed joints are used, curbs shall be doweled as shown on the plans and poured after sawing. Curbs doweled on and placed separately may be placed with an extrusion machine.

3.3.3 Reinforcing Steel and Joint Assemblies - All reinforcing steel, including steel wire fabric reinforcement, tie bars, dowel bars and load transmission devices used in accordance with plan provisions shall be accurately placed and secured in position in accordance with details shown on plans. Reinforcing bars shall be securely wired together at alternate intersections, following a pattern approved by the ENGINEER, and at all splices, and shall be securely wired to each dowel intersected. When wire fabric is used, it replaces only the longitudinal and transverse bars and shall be securely wired together at all splices and to each dowel intersected. The bars shall be installed in the required position by the method and device shown on plans or by approved method permitted. If this method of placement provides inadequate, the work shall be completed using conventional methods.

3.3.4 Construction Joints - Intentional stoppage of the placing of the concrete shall be at either an expansion joint or at a weakened plane joint, if load transmission devices are specified.

3.4 Joints

3.4.1 General - All transverse and longitudinal joints when required in the pavement shall be of the type or alternate type shown on the plans and shall be constructed at required location, on required alignment, in required relationship to tie bars and joint assemblies, and in accordance with details shown on the plans. Such stakes, braces, brackets or other devices shall be used as necessary to keep the entire joint assembly in true vertical and horizontal position.

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Careful workmanship shall be exercised in the construction of all joints to insure that the concrete sections are completely separated by an open joint or by the joint materials and to insure that the joints will be true to the outline indicated.

3.4.2 Expansion Joints - Transverse expansion joints shall be formed perpendicular to the centerline and surface of the pavement and shall be constructed in accordance with the sequence of operations shown on plans. After the transverse finishing machine and before the longitudinal finishing machine has passed over the joint, the CONTRACTOR shall test the joint filler for correctness of position and make any required adjustment in position of the filler and shall install the joint seal space form in accordance with the plans. After removal of the joint seal form as required by the plans, the joint seal space above the joint filler shall be thoroughly sandblasted or machine routed to remove all projecting concrete, laitance, dirt or foreign matter. The concrete faces of the joint seal space shall be left true to line and section throughout the entire length of the joint. The joint faces shall be clean and dry at the time joint sealing filler is placed. The pavement adjacent to the joint shall be left free of joint sealing material. The joint seal space shall be exactly above and not narrower than the joint filler with no concrete overhangings.

3.4.3 Weakened Plane Joints - Weakened plane joints shall consist of transverse contraction joints and longitudinal joints and shall be formed or sawed as specified on the plans. When the joints are sawed, the saw shall be power driven, shall be manufactured especially for the purpose of sawing concrete, and shall be capable of performing the work. Saw blades shall be designed to make a clean smooth cut having a width and depth of cut as detailed on the plans. Tracks adequately anchored, chalk, string line or other approved methods shall be used to provide true alignment condition and the CONTRACTOR shall keep a standby power saw on the project at all times when concrete operations are under way.

If membrane curing is used, the portion of the seal which has been disturbed by sawing operations shall be restored by the CONTRACTOR by spraying the areas with additional curing seal.

3.4.4 Contraction Joints - Transverse contraction joints shall be formed or sawed joints perpendicular to the centerline and surface of the pavement and shall be constructed by the method, and in the sequence of operations, as shown on the plans. Where sawed joints are used, contraction joints shall be sawed as soon as sawing can be accomplished without damage to the pavement and before forty-eight (48) hours after the concrete has been placed, the exact time to be approved by the ENGINEER. All joints shall be completed before placing concrete in succeeding lanes and before permitting traffic to use the pavement.

3.4.5 Longitudinal Joints - Longitudinal joints shall be of the type or alternate types shown on the plans and shall be constructed of specified materials in accordance with provision of the plans. Longitudinal joints shall be constructed accurately

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to required lines, shall be perpendicular to the pavement surface at the joint, and the pavement surface over and adjacent to the joint shall be finished as specified.

Longitudinal joints shall be sawed as soon as sawing can be accomplished without damage to the pavement. Sawing shall not cause damage to the pavement and the groove shall be cut with a minimum of spalling. No traffic (including construction traffic) shall be permitted on the pavement until the longitudinal joint is cut.

- 3.4.6 Joint Sealer Material - After the joints in the hardened concrete have been thoroughly cleaned to the satisfaction of the ENGINEER, the material shall be installed into each joint by means of a powered, concrete joint sealing machine capable of continuously feeding the compound under pressure into the joint in such a way as to fill it solidly. The extruding nozzle tip of the sealing machine shall be of such design as to fill the joint opening uniformly from the bottom to the top in a neat and workmanlike manner. The joints shall be completely filled.
- 3.4.7 Joint Filler Boards - Boards shall be anchored as indicated by the plans.
- 3.4.8 Curbs - The curb shall be constructed in lengths equal to the adjoining pavement slab lengths and expansion joints shall be provided in the curb opposite each transverse expansion joint in the pavement. Expansion joint material shall be of the same thickness, type and quality as specified for the pavement and shall be of the section as shown for the curb. All expansion joints shall be carried through the curb.

When sawed joints are provided for the pavement, the curb shall be sawed as all transverse joints are being sawed to provide bond for the curb, deformed dowel bars shall be placed as indicated on the plans while the pavement concrete is still plastic. The concrete for the monolithic curb shall be placed within forty-five (45) minutes after placement of the pavement slab.

Weakened Plane joints can be formed in monolithic curbs at a spacing to coincide with the joints in the concrete pavement. When the concrete is sufficiently set, the joint on the face of curb shall be grooved with an approved type of grooving tool.

A finish coat of mortar shall be applied on the exposed surfaces of the monolithic curbs. The mortar shall be composed on one (1) part of Portland cement and two (2) parts of fine aggregate. A mortar coat will not be required for extruded curbs.

The curb face, lower radius and tip of curb shall be plastered with sand cement mortar. The mortar shall be applied with a template or "mule" made to conform to the curb dimensions shown on the plans. All exposed surfaces of the curb shall be finished with a steel trowel and brushed to smooth and uniform surface.

3.5 Spreading and Finishing

- 3.5.1 Machine Finishing - All concrete pavement shall be finished mechanically with approved power-driven machines, except as herein provided. Hand finishing will be permitted on the transition from a crowned section to a superelevation section without crown on curves, and on straight line superelevation sections less than 300 feet in length. Hand finishing will also be permitted on that portion of a widened pavement outside the normal pavement width, on sections where the pavement width is not uniform, or required monolithic widths are greater than that of available finishing machines.

Machine finishing of pavement shall include the use of power driven spreaders, power driven vibrators, power driven transverse strike-off, and screed, or such alternate equipment as may be substituted and approved.

All concrete pavement shall be consolidated by a mechanical vibrator. As soon as the concrete has been spread between the forms, the approved mechanical vibrator shall be operated to consolidate the concrete and remove all voids. Hand manipulated vibrators shall be used for areas not covered by the mechanical vibratory unit.

The transverse finishing machine shall first be operated to compact and finish the pavement to the required section and grade, without surface voids. The machine shall be operated over each area as many times and at such intervals as directed. At least two (2) trips will be required and the last trip over a given area shall be a continuous run of not less than forty (40) feet. After completion of finishing with the transverse finishing machine a transverse drag float may be used.

The consistency of the concrete as placed should allow the completion of all finishing operations without the addition of water to the surface. When field conditions are such that additional moisture is needed for the final concrete surface finishing operation, the required water shall be applied to the surface by fog spray only and shall be held to a minimum.

After finishing is complete and the concrete still workable, the surface shall be tested for trueness with an approved ten (10) foot steel straightedge. The straightedge shall be operated from the side of the pavement, placed parallel to the pavement centerline and passed across the slab to reveal any high spots or depressions. The straightedge shall be advanced along the pavement in successive stages of not more than one-half its length. Practically perfect contact of the straightedge with the surface will be required, and the pavement shall be leveled to this condition, in order to insure conformity with the surface test required below, after the pavement has fully hardened. Any correction of the surface required shall be accomplished by adding concrete if required and by operating the longitudinal float over the area. The surface test with the straightedge shall then be repeated.

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For one-lane pavement and uniform widening, the equipment for machine finishing of concrete pavement shall be as directed by the ENGINEER but shall not exceed the requirements of these specifications.

After completion of the straightedge operation, as soon as construction operations permit, texture shall be applied with 1/8 inch wide metal tines with clear spacing between the tines being not less than 1/4 inch nor more than 1/2 inch. If approved by the ENGINEER, other equipment and methods may be used, provided that a surface texture meeting the specified requirements is obtained. The texture shall be applied transversely. It is the intent that the average texture depth resulting from the number of tests directed by the ENGINEER be not less than 0.060 inch with a minimum texture depth of 0.050 inch for any one (1) test when tested in accordance with Test Method Tex 436-A. Should the texture depth fall below that intended, the finishing procedures shall be revised to produce the desired texture.

- 3.5.2 Hand Finishing - Hand finishing shall be restricted to only those conditions provided for above and upon specific authorization by the ENGINEER. When hand finishing is permitted, the concrete shall be struck off with an approved strike-off screed to such elevation that when consolidated and finished the surface of the pavement shall conform to the required section and grade. The strike template shall be moved forward with a combined transverse and longitudinal motion in the direction the work is progressing, maintaining the template in contact with the forms, and maintaining a slight excess of material in front of the cutting edge. The concrete shall then be tamped with an approved tamping template to compact the concrete thoroughly and eliminate surface voids and the surface screeded to required section.

After completion of a strike-off, consolidation and transverse screeding, a hand operated longitudinal float shall be operated to test and level the surface to the required grade.

Workers shall operate the float from approved bridges riding on the forms and spanning the pavement. The longitudinal float shall be held in contact with the surface and parallel to the centerline and operated with short longitudinal strokes while being passed from one side of the pavement to the other. If contact with the pavement is not made at all points, additional concrete shall be placed, if required, and screeded, and the float shall be used to produce a satisfactory surface. Care shall be exercised to keep the ends of the float from digging into the surface of the pavement. After a section has been smoothed so that the float maintains contact with the surface at all points in being passed from one side to the other, the bridges may be moved forward half (1/2) the length of the float and the operations repeated. Other operations and surface tests shall be as required for machine finishing.

- 3.5.3 Surface Test - After the concrete has been placed twelve (12) hours or more, the ENGINEER will test the surface of the pavement with a ten (10) foot straightedge placed parallel to the centerline. Unless specified otherwise, the

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surface shall not vary from the straightedge by more than 1/16-inch per foot from the nearest point of contact, and in no case shall the maximum ordinate from a ten (10) foot straightedge to the pavement greater than 1/8 inch. Any high spots causing a departure from the straightedge in excess of that specified shall be ground down by the CONTRACTOR to meet the surface test requirements. Where the texture of the pavement is removed by extensive grinding, the texture shall be restored by grooving the concrete to meet the surface finishing specifications.

3.6 Curing

3.6.1 General - All concrete pavement shall be cured by protecting it against loss of moisture for a period of not less than seventy-two (72) hours from the beginning of curing operations. Immediately after finishing operations have been completed, the entire surface of the newly laid concrete shall be covered and cured in accordance with the requirements specified.

3.6.2 Membrane Curing - Immediately after the finishing of the pavement has been completed and after the free surface moisture has disappeared, the pavement shall be sprayed uniformly with a curing compound. Should the film of compound be damaged from any cause before the expiration of seventy-two (72) hours after original application, the damaged portions shall be repaired immediately with additional compound. Unless otherwise specified on the plans, membrane curing shall be used when the concrete (except that concrete to be used as a base) is placed with a slipform paver.

3.7 Protection of Pavement and Opening to Traffic.

3.7.1 Protection of Pavement - The CONTRACTOR shall erect and maintain the barricades required by plans and such other standard and approved devices as will exclude public traffic and traffic of his employees and agents from the newly placed pavement for the periods of time hereinafter prescribed. Portions of the roadway or crossings of the roadbed required to be maintained open for use by traffic shall not be obstructed by the above-required barricades. Crossings of the pavement required by the plans, or by construction sequence, during the time prior to opening to traffic as herein specified, shall be provided with an adequate and substantial bridge, approved by the ENGINEER.

3.7.2 Opening Pavement to Traffic - The pavement shall be closed to all traffic, including vehicles of the CONTRACTOR, until the concrete is at least seven (7) days old.

At the end of the seven (7) day period and as long thereafter as ordered by the ENGINEER, and is so desired by the CONTRACTOR, the pavement may be opened for use by vehicles of the CONTRACTOR provided the gross weight (vehicle plus load) of such vehicles does not exceed 14,000 pounds. Such opening, however, shall in no manner relieve the CONTRACTOR from his responsibility of his warranty of the work. On those sections of the pavement

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thus opened to traffic, all joints shall first be sealed, the pavement cleaned and earth placed against the pavement edges before permitting vehicles thereon.

After the concrete in any section of pavement is fourteen (14) days old, or as long thereafter as ordered by the ENGINEER, such section or pavement may be opened to all traffic as required by plans or when so directed by the ENGINEER. On those sections of the pavement thus opened to traffic, all joints shall first be sealed, the pavement cleaned, earth placed against the pavement edges and all other work performed as required for the safety of traffic.

3.8 Penalty for Deficient Pavement Thickness

- 3.8.1 The unit bid price will be reduced ten percent (10%) per each 1/4-inch in thickness.

PART FOUR - MEASUREMENT AND PAYMENT

- 4.1. Measurement - Concrete pavement will be measured by the square yard of surface area of completed and accepted work. The surface area will be construed to also include that portion of the pavement slab extending beneath the curb.

When "monolithic curb" is required, its measurement will be by the linear foot complete in place.

- 4.2 Payment - The completed and accepted work performed and materials furnished, as prescribed by this item will be paid for at the unit price bid for "Concrete Pavement (Class "A" Concrete)" and for "Monolithic Curb" or the adjusted unit price for pavement of deficient thickness as provided under "Penalty for Deficient Thickness" which price shall be full compensation for sawcutting, jackhammering, removals, excavation, utilizing and/or disposing of all excavated materials, cleaning and compacting the base or subgrade, for shaping and fine grading, furnishing and applying of water, mortar, adhesives or other material, including reinforcing and dowel bars, if required, for furnishing, loading and unloading, storing, hauling and handling all ingredients and materials, including all freight and royalties involved, for mixing, placing, finishing, cleaning and sealing joints and curing all concrete, for furnishing all materials for sealing joints and placing joints and joint filler material in proper position, and for all manipulations, labor, equipment, appliances, tools and traffic provisions, and incidentals necessary to complete the work.

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PAVEMENT PATCHING AND REPAIR

PART ONE - GENERAL

- 1.1 Description Of Work - This item shall consist of the saw-cut and removal of designated pavement areas and the subsequent replacement of roadway materials with full depth patches. This item describes the materials and procedures for both concrete and asphalt/flex base repair systems.

Pavement patch repairs shall contain materials in conformity with the construction plans and with the Item for "Hot Mix Asphaltic Concrete Pavement" or the Item for "Concrete Pavement" as it applies.

PART TWO - PRODUCTS

- 2.1 Asphalt Pavements: Patch areas shall be full-depth repairs in areas designated in the construction plans and/or as identified on the ground by painted lines as instructed by the OWNER or ENGINEER. Asphalt street patches shall include a re-compacted sub-grade with a six (6) inch thick flexible base material (Type A, Grade 1) as described in the Item for "Flexible Base". The base course shall be placed and compacted to 95% Modified Proctor Density and then prepared for the surface course by the application of a prime coat, cut-back asphalt MC-30. Hot mix asphaltic pavement surfacing shall consist of Type D mix as described in the Item "Hot Mix Asphaltic Pavement".

Six (6) inch full depth Type D HMAC compacted in three (3) inch lifts may be used instead of the flexible base and surface course described above.

- 2.2 Concrete Pavements: Patch areas for concrete pavements shall be full depth repairs as designated in the construction plans and/or as identified on the ground by painted lines as instructed by the OWNER or ENGINEER. Concrete street patches shall consist of a re-compacted sub-grade with six (6) inches of Portland cement concrete as described in the Item "Concrete Pavement". Additional reinforcing steel and dowels shall be placed as designated in the construction plans and details.

PART THREE - EXECUTION

- 3.1 Asphalt Pavement Repairs: The existing asphalt pavement and base shall be saw-cut to neat lines as indicated in the construction plans and/or as painted in the field. Material shall then be excavated within the patch zone to a depth of eight (8) inches, regardless of the existing street pavement depth. The sub-grade soils shall then be compacted by mechanical means to achieve a density of 95% of the Standard Proctor Density. Care shall be given to avoid chipping the saw-cut edges or disturbing the surrounding pavement. Apply tack coat of emulsified asphalt SS-1 to all vertical faces before placing base material.

The patch area shall then be back-filled with a Type A, Grade 1 flexible base material, as shown on the plans and as described in the Item "Flexible Base", to a compacted depth of six (6) inches. Compaction shall be accomplished by mechanical means until a density not less than 95% of the Modified Proctor Density is achieved. The base material shall be treated with a cut-back asphalt prime coat (MC-30) at an application rate of 0.15 gallons per square yard, immediately prior to the placement of the surface course. Materials and placement of the prime coat and tack coat shall conform to the Item "Hot Mix Asphaltic Concrete Pavement".

CITY OF NACOGDOCHES

PAVEMENT PATCHING AND REPAIR

The final course in the asphalt roadway patch shall consist of a compacted two (2) inch lift of Type D asphaltic concrete, hot laid, conforming to the specifications outlined in the Item "Hot Mix Asphaltic Concrete Pavement". The edges shall be neat and tapered to meet existing pavement grades. Six (6) inch full depth Type D HMA compacted in three (3) inch lifts may be used instead of the flexible base and surface course described above.

- 3.2 Concrete Pavements: The existing concrete pavement shall be saw-cut to neat lines as indicated in the construction plans and/or as painted in the field. Material shall then be excavated within the patch zone to a depth of six (6) inches, or to the bottom of the existing concrete, whichever is greater. The sub-grade soils shall then be compacted by mechanical means to achieve a density of 95% of the Standard Proctor Density. Care shall be given to avoid chipping the saw-cut edges or disturbing the surrounding pavement.

The patch area shall then have steel reinforcing dowels, as indicated in the construction plans and details, placed in the adjoining edges of the existing pavement by core drilling and binding the dowels with epoxy capsule anchors. Steel reinforcing shall be placed in each patch greater than four (4) square feet in area, and tied to the sidewall dowels. The reinforcing steel mats shall be supported on steel or plastic chairs, at least three (3) inches in height, and secured to the sidewall dowels prior to placing concrete in the patch.

The concrete street patch shall be filled with a Class A Portland cement concrete mix in accordance with the specifications of the Item "Concrete Pavement" for a depth of not less than six (6) inches or to the top of the adjoining pavement, whichever is greater. Final finishes shall attempt to match existing street finishes and be performed in accordance with the referenced specification.

Traffic shall be diverted off the concrete patch for a period of not less than seven (7) days or until laboratory tests indicate that the compressive strength of the concrete has reached its 28 day design strength, whichever is longer.

- 3.3 All Pavements: Both asphalt and concrete patch repairs shall be performed in a manner acceptable to the ENGINEER and OWNER avoiding hazardous traffic situations and creating a minimum delay to adjoining property owners. All necessary traffic signs, barricades, steel cover plates and related traffic control measures shall be employed by the contractor, at his expense, to make the street trafficable and safe. In no case shall any patch excavation be left open overnight.

PART FOUR - MEASUREMENT AND PAYMENT

- 4.1 Both concrete and asphalt patches will be measured by calculating the internal area of a polygon figure as measured along the saw-cut edges at the surface. The measurement will be calculated to the nearest one tenth (1/10) of a square yard for each patch. Patches shall be designated by size as small patches, less than 22 square yards, or large patches, greater than 22 square yards.
- 4.2 The work performed and materials furnished as prescribed by this item will be paid for at the unit prices bid for small patches or large patches under either "Concrete Patching" or "Asphalt Patching", as is appropriate. Such prices shall be full compensation

CITY OF NACOGDOCHES
PAVEMENT PATCHING AND REPAIR

furnishing all materials, for the saw-cutting, excavation, material disposal, compaction, preparing, hauling and placing all materials, for all freight, manipulation, labor, tools, equipment, traffic control and incidentals necessary to complete the work.

CITY OF NACOGDOCHES

HOT MIX ASPHALTIC CONCRETE PAVEMENT

PART ONE - GENERAL

- 1.1 Description of Work - This item shall govern for the furnishing of materials, equipment, transporting and placement of Hot Mix Asphaltic Concrete (HMAC) Pavement in accordance with specifications contained herein.

PART TWO - PRODUCTS

- 2.1 Materials shall be Type D (unless shown otherwise in the plans) Hot Mix Asphaltic Concrete in accordance with *TxDOT Standard Specifications for Construction of Highways, Streets and Bridges*, Item 340, latest edition. A HMAC design shall be submitted to Owner for approval at least twenty-four (24) hours in advance of scheduled paving operations.

PART THREE - EXECUTION

- 3.1 Hot Mix Asphaltic Pavement - Shall be placed in accordance with TxDOT Specification Item 340, latest edition, and the following:
- a) The Contractor will be required to establish a rolling pattern that will achieve a minimum of 95% of the laboratory molded density for new paving and maximum in-place density for overlays. The Contractor shall be responsible for providing testing equipment that will verify compliance with density requirements. The Contractor shall be responsible for testing rolling pattern as outlined in TEX-207-F, Part IV to achieve maximum compaction. When changes in asphalt mixture or placement conditions occur, a new rolling pattern shall be established. At the Engineer's request, the Contractor shall provide a periodic verification that the rolling pattern is adequate to achieve the required density when varying site conditions are noted.
 - b) Thickness for compacted HMAC shall be as shown on plans.
 - c) The HMAC shall be placed and spread on the approved surface with a self-propelled spreading and finishing machine.
 - d) Contractor shall form crown in road surface to provide 2% side slope.
 - e) The final compacted thickness for the asphalt surface on existing pavement overlays is considered to be a nominal desired thickness. In no case shall any portion of the overlay be less than one (1) inch in thickness at specified edges or "humps" and thicknesses of one (1) inch over the nominal depth shall be avoided. All attempts shall be made to maintain the nominal thickness shown in the plans. The contractor shall use a ski or leveling arm on the spreading machine, when necessary, to assist in maintaining desired asphalt thicknesses.
- 3.2 The Owner will contract with an independent testing laboratory to perform the following tests:
- a) Hveem stability, laboratory molded density, asphalt cement content, and aggregate gradation from samples that will be taken randomly from haul trucks as HMAC is off-loaded to the lay down machine.

CITY OF NACOGDOCHES
HOT MIX ASPHALTIC CONCRETE PAVEMENT

- b) Core samples of completed surface to verify compliance with density and thickness requirements.
- c) Surface and ride quality shall meet TxDOT Specification Item 585, Surface Test Type A, latest edition.
- d) Haul trucks shall obtain a ticket at the HMAC plant clearly stating the "Type of Mix" and the "Total Weight" of the mix loaded on the truck. The tickets shall be given to the Owner's Representative before the HMAC is off-loaded to the lay down machine.

2025 Curb and Valley Gutter Project Bid Award Item 6A

Case Opperman, PE
Director of Public Works & City Engineer

...

February 18, 2025

Bond-Funded Street Improvements

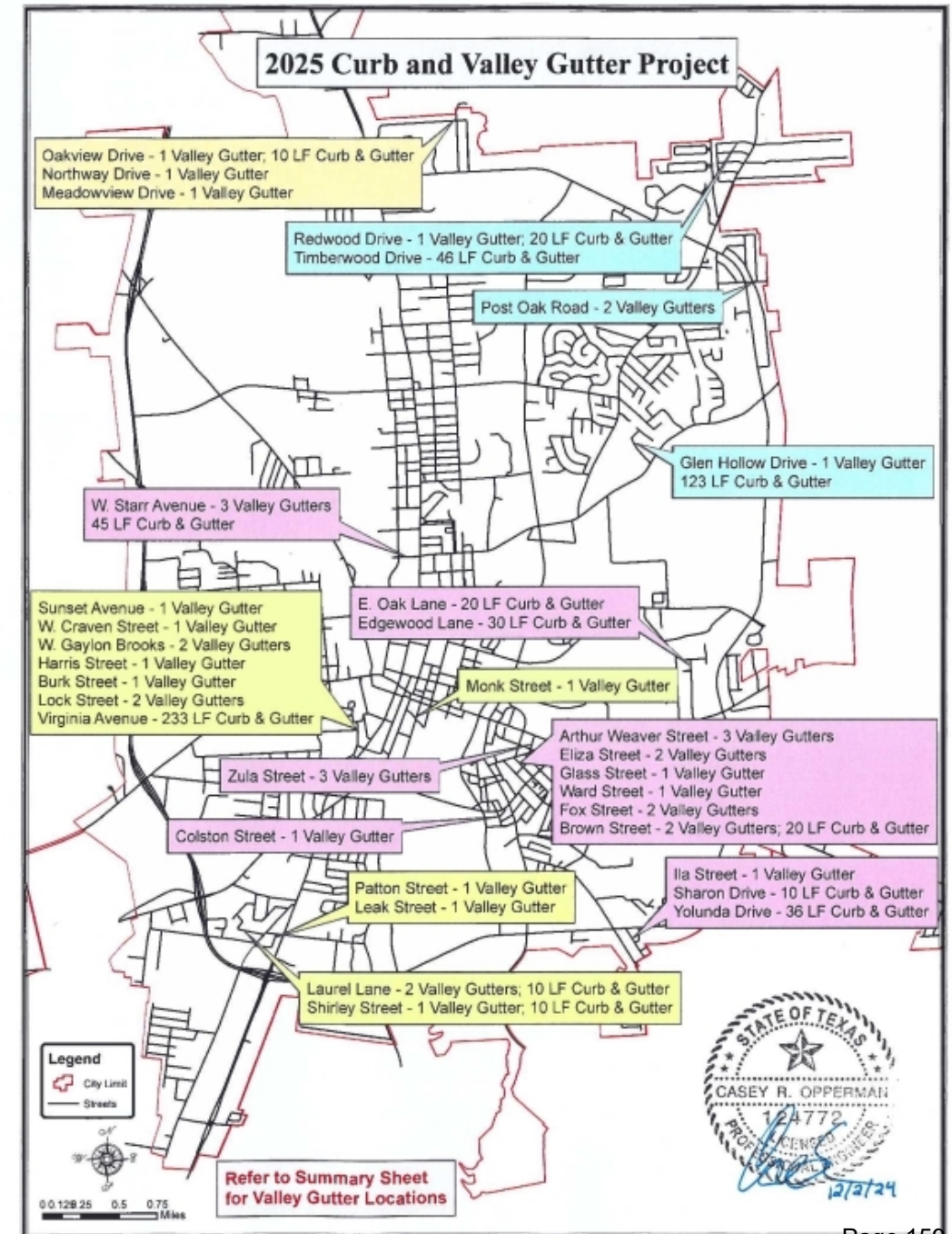
- Staff currently designing first bond-funded street project
- In advance, staff released project for curb and gutter replacement and valley gutter installation
 - 41 Concrete Valley Gutters, Approx. 613' Curb and Gutter Replacement
 - Can be done during winter months
 - Must occur ahead of paving in a project
 - Allow paving to commence quickly in warmer months without being held up

Bid Opening – February 10, 2025

DSP Development, LLC **\$ 396,294.04**

CoxJones **\$ 431,285.40**

JAAY Concrete Paving, Inc. **\$ 470,995.00**



DSP Development, LLC – Apple Springs, TX

- New company, still under construction on first municipal projects
- Owners under prior employment – 10+ years experience, 50+ projects
- Staff has reviewed qualifications
 - Current projects
 - Prior project types under previous employment
 - Equipment and manpower available
 - Conversations with KSA Engineers, subcontractor and banker
 - Engineering, Legal and Purchasing believe they meet the definition of qualified and responsible bidder

Budget is available for this contract from Tranche 1 Bond Funds

Questions?

PRESENTER:

ITEM/SUBJECT: Consider a Resolution authorizing the submission of a preliminary application to the Texas Department of Transportation for the 2025 Transportation Alternatives Set-Aside Program. (Director of Public Works)

SUMMARY/BACKGROUND: On January 3, 2025, the Texas Department of Transportation (TxDOT) announced a statewide [Call for Projects](#) for the Transportation Alternatives Set-Aside (TA) program for bicyclist and pedestrian infrastructure and planning. The TA program provides funding to plan for and construct a variety of alternative transportation projects that improve safety and mobility for non-motorized travelers and mitigate congestion by providing safe alternatives to motor vehicle transport. Through this program, TxDOT will select projects for recommendation to the Texas Transportation Commission for FY 2027-2029 federal appropriations consistent with anticipated funding levels associated with the Infrastructure Investment and Jobs Act and subsequent funding bills totaling approximately \$250 million. Projects located in all areas of the state, regardless of population size, may be submitted under this call. In 2023, about \$345 million in TA program funds were awarded to a total of 83 projects across Texas.

This Call for Projects features a two-step application process. The Preliminary Application (Step 1) provides high-level proposed project information to determine eligibility and funding opportunities. Following successful completion of Step 1, a Detailed Application (Step 2) provides more comprehensive project information. Staff is seeking Council support by Resolution for the submission of two Preliminary Applications for 2025 program funding. These include:

1. South Street sidewalk improvements – Approximately 6,600 LF of concrete sidewalk (6-ft wide; 6-in thick) along the northbound side of Business US Hwy No. 59-F (South Street) between Nazareth Way and Craven Street. The sidewalk will be near the existing curb completely within TxDOT right-of-way. Includes accessible ramps and crosswalks at street intersections. *NOTE: This project was submitted in the TxDOT 2023 TA Call for Projects but was not selected for funding.*
2. North Street Active Transportation Plan – The plan will focus on enhancing northbound and southbound bicycle and pedestrian mobility along Business U.S. Highway No. 59-F (North Street) between Pilar Street and Austin Street. Designs will be recommended based on the roadway and adjacent land use characteristics supported by appropriate signage, striping, and other streetscape elements.

TxDOT will notify the City regarding application eligibility by April 16, 2025, and, if eligible, a Detailed Application will be due by June 20, 2025. Although funding amounts shown in the attached applications are roughly estimated for purposes of submission, both projects may be eligible for Transportation Development Credits that allow 100% of federal TA funds to be

applied in lieu of a local match.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Case Opperman, Director of Public Works / City Engineer
oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS:

1. Resolution 2025 TxDOT TA Prelim
2. TA 2025 Prelim South St
3. TA 2025 Prelim North St

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF NACOGDOCHES, TEXAS CERTIFYING FUNDING AND SUPPORT FOR THE 2025 TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF TRANSPORTATION, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO RECEIVE FUNDING TO CONSTRUCT SIDEWALKS AND TO DEVELOP AN ACTIVE TRANSPORTATION PLAN THROUGH THE GRANT PROGRAM AND, IF APPROVED, TO EXECUTE THE GRANT AGREEMENT AND TAKE OTHER ACTIONS NECESSARY TO IMPLEMENT THE GRANT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 3, 2025, the Texas Department of Transportation (TxDOT) announced a statewide Call for Projects for the Transportation Alternatives Set-Aside (TA) program for bicyclist and pedestrian infrastructure and planning; and

WHEREAS, the City Council of the City of Nacogdoches has concluded that the extension of sidewalks along Business U.S. Highway No. 59-F between Nazareth Way and Craven Street (South Street) will improve pedestrian safety by providing a continuous pathway for non-vehicular access; and

WHEREAS, the City Council of the City of Nacogdoches acknowledges a need to identify and evaluate potential bicycle and pedestrian improvements along Business U.S. Highway No. 59-F between Main Street and College Street (North Street); and

WHEREAS, the City Council of the City of Nacogdoches finds the above transportation improvements and planning efforts:

- A. Are consistent with the Comprehensive Plan's transportation goals of upgrading facilities to enhance mobility and safety and providing for non-vehicular circulation;
- B. Could improve safety, access, or mobility for people of all ages and abilities engaged in active transportation to businesses, schools, and neighborhoods along these South Street and North Street corridors;
- C. Could provide transportation continuity by tying directly into other existing pedestrian infrastructure within the community; and
- D. May be located in or near census tracts which contain greater percentages of minorities and low-income households compared to the state average and will improve non-motorized access for persons in these census tracts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS, THAT:

SECTION 1. The City of Nacogdoches plans to submit two Preliminary Applications for Transportation Alternatives Set-Aside Program funding: one (1) for South Street sidewalk improvements; and one (1) for development of a North Street Active Transportation Plan.

SECTION 2. The City of Nacogdoches City Council is willing to commit to submission of a subsequent Detailed Application for each project if deemed eligible by TxDOT, and to carry out project development, implementation, construction, maintenance and management, as applicable, should a project receive TA funding authorization.

SECTION 3. The City of Nacogdoches City Council is willing and able to enter into an agreement with TxDOT, by either resolution or ordinance, should a proposed project receive TA funding authorization.

SECTION 4. The City of Nacogdoches City Council hereby specifically authorizes the City Manager, or City Manager's designee, to act for the City of Nacogdoches in coordinating with TxDOT for participation in the 2025 Transportation Alternatives (TA) Set-Aside Program and applications for financial assistance; and the Director of Public Works and the Executive Director of Development and Infrastructure are hereby officially designated as the representatives in this regard.

SECTION 5. The meeting at which this Resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, and this Resolution shall be effective immediately upon its passage.

APPROVED AND ADOPTED at a regular meeting of the Nacogdoches City Council on this 18th day of February 2025.

CITY OF NACOGDOCHES

Randy Johnson, Mayor

ATTEST:

Rhonda Lewis, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney



2025 Transportation Alternatives (TA) Call for Projects

Preliminary Application (PA)

Deadline to Submit PA: February 21, 2025

Project Sponsor

[Link to PA Instructions](#)

1. Contact information

Local Government/Project Sponsor Name: City of Nacogdoches

Contact Person: _____ Title: _____

Street Address: _____ City: _____

Zip Code: _____ Office Phone Number: _____ Email: _____

Other partnering entities: _____

2. Identify population area (based on project location)

An eligible project sponsor may represent a sub-area within its jurisdictional boundaries. Example: a County sponsors a project located within the boundaries of a City, Census Designated Place, Village, or Unincorporated Area – use the smaller population area where the project is located. For population numbers, use [Census data](#) from the 2020 Decennial Census.

Location Name: Nacogdoches (city) Population size: 32147

3. Is the project within the boundaries of a [Metropolitan Planning Organization \(MPO\)](#)?

☐ Yes ☒ No

If the project is within a MPO boundary, is the project within a Census Urbanized Area greater than 200,000, designated as a [Transportation Management Area](#)?

☐ Yes ☒ No

Project Information

4. Project name: South Street sidewalk improvements

Be concise and logical.

5. Eligible project type

Projects may include multiple project types; select all types that apply. (See instructions for details.)

- | | |
|---|---|
| ☐ Bikeway improvements | ☐ Other bicycle, pedestrian, or micromobility infrastructure installations |
| ☐ Shared use path improvements | ☐ Boulevard improvements to enhance pedestrian, bicyclist and transit access |
| ☒ Pedestrian improvements | ☐ Other _____ |
| ☐ Improvements for non-motorized transportation safety | |
| ☐ Planning document | |

6. Project location

Projects may include multiple project locations; select all types that apply.

- | | |
|---|---|
| ☒ On/along a TxDOT maintained roadway | ☐ On/along a non-TxDOT roadway |
| ☐ Not within the right-of-way of any roadway | |

7. Provide a Google map link: https://www.google.com/maps/d/u/0/edit?mid=10eInD0Vd5Eq_GPd_QqezzPjhdebLZx8&usp=sharing

See PA instructions for recommended tutorial links and minimum requirements.

8. Preliminary Scope of Work

Briefly describe the project, including project location, limits, facility type, and width. Descriptions that exceed the space provided below are not acceptable. (See instructions for details.)

Approximately 6,600 LF of concrete sidewalk (6-ft wide; 6-in thick) along the northbound side of Business US Hwy No. 59-F (South Street) between Nazareth Way and Craven Street. Sidewalk will be near the existing curb completely within TxDOT right-of-way. Includes accessible ramps and crosswalks at street intersections.

9. Project Category

Select the project category the Project Sponsor is interested in pursuing for this application. Please refer to the [Project Category Decision Tree](#) for additional assistance.

COMMUNITY BASED – preliminary engineering and construction activities.	☐
LARGE SCALE – preliminary engineering and construction activities for large projects of more than \$5 million in estimated costs.	☐
NETWORK ENHANCEMENTS – light construction/ installation for quick turnaround projects with limited or no design and no right of way acquisition.	☒
NON-INFRASTRUCTURE – planning documents to assist communities of any size develop non-motorized transportation networks	☐
<i>NOTE: For all projects a minimum 20% local match is required; however, project sponsors may be eligible for a reduction in the local match. See Program Guide for additional information.</i>	

10. Project costs

Provide a planning cost estimate for the total estimated cost for the following project activities:

Estimated cost to prepare planning document/conceptual design: (Non-infrastructure projects only)	0
Estimated cost to prepare construction plans, specifications, and estimates:	400000
Estimated cost to prepare environmental documentation:	7500
Estimated cost to acquire right-of-way:	00
Estimated construction cost:	1500000
Total project cost estimate:	1907500
Estimated Local Match (20% of above costs):	\$ 0

Estimated Local match is calculated after #11 completed. Attach a copy of the cost estimate. The breakdown of federal, state, and local percentages will be determined in Step 2 of the application process, if authorized to proceed.

11. Transportation Development Credits

If a project sponsor is in an economically disadvantaged county or its population is less than 200,000 and meets certain economic criteria, they are eligible for Transportation Development Credits that allow for 100% federal TA funds to be applied to the project in lieu of a local match. Refer to the map ([link](#)). Is the project sponsor eligible for Transportation Development Credits (TDCs) for this project?

☒ Yes ☐ No

12. Preferred TxDOT Involvement in Implementation Phase

If this project were awarded funding, in addition to TxDOT's oversight role, would the project sponsor prefer the TxDOT District manage any phases of the project?

☒ None ☒ Unsure ☒ Non-Infrastructure ☒ Construction ☒ Design and Construction

13. Local match

Identify source(s) of local matching funds: Transportation Credits and/or Municipal Budget

Examples include municipal budget, Transportation Development Credits, or donated funds from a third-party.

14. Project complexity

Is this project in a locally or regionally approved planning document?

(May include City/County/MPO, master/comprehensive, bicycle/pedestrian, capital improvement, or other transportation plans.)

☐ Yes ☒ No ☐ Unk

Will the project reduce automobile traffic capacity or require a limitation to property access?

☐ Yes ☒ No ☐ Unk

Will the project cross a railroad (RR) or is the project within 100-feet of RR right-of-way?

☐ Yes ☒ No ☐ Unk

Will the project require utility relocations?

☐ Yes ☒ No ☐ Unk

Will this project require acquisition of right-of-way or an easement (e.g. utility or railroad), or relocation?

☐ Yes ☒ No ☐ Unk

Will the project require land purchased or improved with Land and Water Conservation Funds?

☐ Yes ☒ No ☐ Unk

Will the project require land in: (Check all appropriate boxes)

Publicly owned: ☐ Park(s), ☐ Recreation area(s), ☐ Wildlife/waterfowl refuge(s),
OR ☐ Publicly/privately owned historical or archeological sites?

☐ Yes ☒ No ☐ Unk

Will the project be located within or around properties listed on the National Register of Historic Places?

☒ Yes ☐ No ☐ Unk

Will the project be located within range and/or potential habitat of state or federally protected species?

☐ Yes ☒ No ☐ Unk

Is there a likely possibility of encountering hazardous materials?

☐ Yes ☒ No ☐ Unk

Will the project require placement of fill in wetlands or waters of the U.S.?

☐ Yes ☒ No ☐ Unk

Will the project be located in the Edwards Aquifer Recharge/Contributing Zone or Coastal Management Zone?

☐ Yes ☒ No ☐ Unk



2025 Transportation Alternatives (TA) Call for Projects

Preliminary Application (PA)

Deadline to Submit PA: February 21, 2025

Project Sponsor

[Link to PA Instructions](#)

1. Contact information

Local Government/Project Sponsor Name: City of Nacogdoches

Contact Person: _____ Title: _____

Street Address: _____ City: _____

Zip Code: _____ Office Phone Number: _____ Email: _____

Other partnering entities: _____

2. Identify population area (based on project location)

An eligible project sponsor may represent a sub-area within its jurisdictional boundaries. Example: a County sponsors a project located within the boundaries of a City, Census Designated Place, Village, or Unincorporated Area – use the smaller population area where the project is located. For population numbers, use [Census data](#) from the 2020 Decennial Census.

Location Name: Nacogdoches (city) Population size: 32147

3. Is the project within the boundaries of a [Metropolitan Planning Organization \(MPO\)](#)?

☐ Yes ☒ No

If the project is within a MPO boundary, is the project within a Census Urbanized Area greater than 200,000, designated as a [Transportation Management Area](#)?

☐ Yes ☒ No

Project Information

4. Project name: North Street Active Transportation Plan

Be concise and logical.

5. Eligible project type

Projects may include multiple project types; select all types that apply. (See instructions for details.)

- | | |
|---|---|
| ☐ Bikeway improvements | ☐ Other bicycle, pedestrian, or micromobility infrastructure installations |
| ☐ Shared use path improvements | ☐ Boulevard improvements to enhance pedestrian, bicyclist and transit access |
| ☐ Pedestrian improvements | ☐ Other _____ |
| ☐ Improvements for non-motorized transportation safety | |
| ☒ Planning document | |

6. Project location

Projects may include multiple project locations; select all types that apply.

- | | |
|---|---|
| ☒ On/along a TxDOT maintained roadway | ☐ On/along a non-TxDOT roadway |
| ☐ Not within the right-of-way of any roadway | |

7. Provide a Google map link: <https://www.google.com/maps/d/u/0/edit?mid=1gugFFPRsgMbHHA2Phn4QUAX6QaIV2c&usp=sharing>

See PA instructions for recommended tutorial links and minimum requirements.

8. Preliminary Scope of Work

Briefly describe the project, including project location, limits, facility type, and width. Descriptions that exceed the space provided below are not acceptable. (See instructions for details.)

The plan will focus on enhancing northbound and southbound bicycle and pedestrian mobility along Business U.S. Highway No. 59-F between Pilar Street and Austin Street (North Street). Designs will be recommended based on roadway and adjacent land use characteristics supported by appropriate signage, striping and other streetscape elements.

9. Project Category

Select the project category the Project Sponsor is interested in pursuing for this application. Please refer to the [Project Category Decision Tree](#) for additional assistance.

COMMUNITY BASED – preliminary engineering and construction activities.	☐
LARGE SCALE – preliminary engineering and construction activities for large projects of more than \$5 million in estimated costs.	☐
NETWORK ENHANCEMENTS – light construction/ installation for quick turnaround projects with limited or no design and no right of way acquisition.	☐
NON-INFRASTRUCTURE – planning documents to assist communities of any size develop non-motorized transportation networks	☒
<i>NOTE: For all projects a minimum 20% local match is required; however, project sponsors may be eligible for a reduction in the local match. See Program Guide for additional information.</i>	

10. Project costs

Provide a planning cost estimate for the total estimated cost for the following project activities:

Estimated cost to prepare planning document/conceptual design: (Non-infrastructure projects only)	150000
Estimated cost to prepare construction plans, specifications, and estimates:	0
Estimated cost to prepare environmental documentation:	0
Estimated cost to acquire right-of-way:	0
Estimated construction cost:	0
Total project cost estimate:	150000
Estimated Local Match (20% of above costs):	\$ 0

Estimated Local match is calculated after #11 completed. Attach a copy of the cost estimate. The breakdown of federal, state, and local percentages will be determined in Step 2 of the application process, if authorized to proceed.

11. Transportation Development Credits

If a project sponsor is in an economically disadvantaged county or its population is less than 200,000 and meets certain economic criteria, they are eligible for Transportation Development Credits that allow for 100% federal TA funds to be applied to the project in lieu of a local match. Refer to the map ([link](#)). Is the project sponsor eligible for Transportation Development Credits (TDCs) for this project?

☒ Yes ☐ No

12. Preferred TxDOT Involvement in Implementation Phase

If this project were awarded funding, in addition to TxDOT's oversight role, would the project sponsor prefer the TxDOT District manage any phases of the project?

☒ None ☒ Unsure ☒ Non-Infrastructure ☒ Construction ☒ Design and Construction

13. Local match

Identify source(s) of local matching funds: Transportation Development Credits and/or Municipal Budget

Examples include municipal budget, Transportation Development Credits, or donated funds from a third-party.

14. Project complexity

Is this project in a locally or regionally approved planning document?

(May include City/County/MPO, master/comprehensive, bicycle/pedestrian, capital improvement, or other transportation plans.)

☐ Yes ☒ No ☐ Unk

Will the project reduce automobile traffic capacity or require a limitation to property access?

☐ Yes ☐ No ☒ Unk

Will the project cross a railroad (RR) or is the project within 100-feet of RR right-of-way?

☐ Yes ☒ No ☐ Unk

Will the project require utility relocations?

☐ Yes ☐ No ☒ Unk

Will this project require acquisition of right-of-way or an easement (e.g. utility or railroad), or relocation?

☐ Yes ☐ No ☒ Unk

Will the project require land purchased or improved with Land and Water Conservation Funds?

☐ Yes ☒ No ☐ Unk

Will the project require land in: (Check all appropriate boxes)

Publicly owned: ☐ Park(s), ☐ Recreation area(s), ☐ Wildlife/waterfowl refuge(s),
OR ☐ Publicly/privately owned historical or archeological sites?

☐ Yes ☒ No ☐ Unk

Will the project be located within or around properties listed on the National Register of Historic Places?

☒ Yes ☐ No ☐ Unk

Will the project be located within range and/or potential habitat of state or federally protected species?

☐ Yes ☐ No ☒ Unk

Is there a likely possibility of encountering hazardous materials?

☐ Yes ☐ No ☒ Unk

Will the project require placement of fill in wetlands or waters of the U.S.?

☐ Yes ☒ No ☐ Unk

Will the project be located in the Edwards Aquifer Recharge/Contributing Zone or Coastal Management Zone?

☐ Yes ☒ No ☐ Unk

PRESENTER: Kevin Sardinha, Accounting Manager

ITEM/SUBJECT: Consider approval of a budget amendment for the AMR Transmitter & Meter Replacement Capital Improvement Project Acceleration. (Finance Director)

SUMMARY/BACKGROUND: Consider approval of a budget amendment appropriating funds to accommodate the accelerated implementation timeline of the AMR Transmitter & Meter Replacement CIP project, which was originally adopted based on a two-year expenditure plan but will now be fully executed within the current fiscal year ending September 30, 2025.

FINANCIAL:

Item is not budgeted (*Budget Amendment required – see attached*)

Account No.: 30.36 680.97

Project No.: 159-04

Account Name: *Water Production CIP*

Amount: \$2,948,857.60

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Kevin Sardinha, Accounting Manager
sardinhak@nactx.us
(936) 559-2526

ATTACHMENTS: 1. Feb 18th 2025 Amend CIP & Budget for Meter Swap

**City of Nacogdoches,
Texas
Regular Council Meeting
February 18th, 2025
Regular Agenda
Item C**

ORIGINAL BUDGET & CAPITAL IMPROVEMENT PLAN:

PROJECT	Total Project Cost	Estimated PY Spent	Proposed FY 24-25	Future FY 25-26	Future FY 26-27	Future FY 27-28	Future FY 28-29	Future For Consideration
UTILITY FUND								
Waterworks:								
Water Line Additions/Replacements - ARPA	\$ 1,150	\$ 100	\$ 1,050					
Water Line Additions/Replacements	\$ 3,750		\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	
Water Line Developer Reimbursements	\$ 1,250		\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	
Major Water Line Repairs	\$ 5,000					\$ 2,500	\$ 2,500	
Water Well Rehab (one annually)	\$ 1,975	\$ 225	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
SCADA Replacements & Upgrades	\$ 2,575	\$ 10	\$ 765	\$ 700	\$ 750	\$ 350		
SWPS Transmission Line Replacement	\$ 4,550			\$ 450	\$ 4,100			
AMR Transmitter & Meter Replacement	\$ 4,772		\$ 2,000	\$ 2,772				
N Middle Plane Elevated Storage Tank	\$ 1,600			\$ 250	\$ 1,350			
SSPS - SWPS Interconnect	\$ 2,000							\$ 2,000
Direct Connect US 59 Water Line Relocation	\$ 956		\$ 956					
VFD for Motors at Surface Water Plant	\$ 1,600		\$ 1,600					
Water Treatment Filter Reconstruction	\$ 2,654	\$ 1,454	\$ 400		\$ 400		\$ 400	
SWTP LED Lighting	\$ 120		\$ 120					
Blowers at SWTP	\$ 800		\$ 800					
Waterworks Total	\$ 34,752	\$ 1,789	\$ 9,041	\$ 5,522	\$ 7,950	\$ 4,200	\$ 4,250	\$ 2,000

Proposed Amendment to the Budget & Capital Improvement Plan:

PROJECT	Total Project Cost	Estimated PY Spent	Proposed FY 24-25	Future FY 25-26	Future FY 26-27	Future FY 27-28	Future FY 28-29	Future For Consideration
UTILITY FUND								
Waterworks:								
Water Line Additions/Replacements - ARPA	\$ 1,150	\$ 100	\$ 1,050					
Water Line Additions/Replacements	\$ 3,750		\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	
Water Line Developer Reimbursements	\$ 1,250		\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	
Major Water Line Repairs	\$ 5,000					\$ 2,500	\$ 2,500	
Water Well Rehab (one annually)	\$ 1,975	\$ 225	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
SCADA Replacements & Upgrades	\$ 2,575	\$ 10	\$ 765	\$ 700	\$ 750	\$ 350		
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Water Treatment Filter Reconstruction	\$ 2,654	\$ 1,454	\$ 400		\$ 400		\$ 400	
SWTP LED Lighting	\$ 120		\$ 120					
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Waterworks Total	\$ 34,752	\$ 1,789	\$ 11,813	\$ 2,750	\$ 7,950	\$ 4,200	\$ 4,250	\$ 2,000

OCTOBER 8TH, 2024 CITY COUNCIL MEETING – ITEM H

Contract awarded to Aqua-Metric for \$4,863,057.60 versus budget requiring \$91,057.60 amendment and use of reserves.

ITEM PRESENTED WITH CORRECT AMOUNT BUT BUDGET AMENDMENT NOT REQUESTED:



City Council Meeting

Date: October 8, 2024

Agenda Item: 5.H.

PRESENTER: BD Rambin, Utility Billing Manager

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Thirkettle Corporation dba Aqua-Metric Sales Company for construction services for City of Nacogdoches AMI (Automated Meter Infrastructure) System water meter and transmitter replacement not to exceed the amount of \$4,863,057.60. (Customer Service/Utility Billing Manager)

SUMMARY/BACKGROUND: Meter and Transmitter Replacement for AMI System

AWARDED CONTRACT:

City Council Meeting 10.08.24 - October 08, 2024

Agenda

Agenda Packet

F. Consider approval of the Interlocal ...

Nacogdoches Contract

G. Consider approval of an extension ...

Item Report

Ground Lease
Agreement-TFS

H. Consider approval of a contract by ...

Item Report

Q Meter Exchange
Options V3 09-2024

Construction Agreement
Nacogdoches Aqua-
Metric (Final 100224)

I. Consider approval of minutes for th...

3 of 52

Automatic Zoom

2.04. All specifications and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the specifications, are to be returned to the City on request at the completion of the work. All Contract Documents are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement. The terms and conditions of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

3. AWARD OF CONTRACT

3.01. 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 in this Agreement.** 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 notice to proceed may be given by written notification or set 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 (A through F) and other attachments, particularly those required under Paragraphs 27 and 28 (Insurance & Bonds).**

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **four million eight hundred sixty-three thousand fifty-seven and 60/100 Dollars (\$4,863,057.60).**

SUBSEQUENT IT COSTS FOR METER PROJECT:



RFS Authorization Form

Please return this completed Request For Service form with authorized signature to Tyler Technologies. You may fax or email the form to your Tyler Technologies Contact or Relationship Manager. Unless otherwise specified, this project will be scheduled on the first available date following receipt of a signed copy of this form.

Case Number 11357119

RFS Date 01/13/2025
Department Interfaces

CLIENT INFORMATION

Name City of Nacogdoches, TX
Address PO Box 635030
Nacogdoches, TX 75963-5030
Phone (936) 559-2607

COSTS

Project Cost	\$10,800.00
Invoiced Upon Delivery	\$10,800.00
Total Amount to be Invoiced	\$10,800.00

CONTACT INFORMATION

Name	Title/Role	Phone	Email
B.D. Rambin	Utility Billing Manager	(936) 559-2594	rambinb@nactx.us

CONTINGENT REQUEST FOR INCIDENTALS:

\$75,000 request for unforeseeable emergency issues. The last meter swap was 15 years ago and the infrastructure is aged. If these funds are not needed, they return to reserves.

HOUSEKEEPING SUMMARY:

Awarded Contract:
(4,863,057.60)

Incidentals:
(85,800.00)

Project Total: (4,948,857.60)

FY25 Adopted Budget (Phase I): 2,000,000.00

Budget Adjustment: (2,948,857.60)

Phase II (FY26):
2,772,000.00

Total amendment to reserves: 176,857.60

QUESTIONS?

**THANK YOU FOR YOUR
CONSIDERATION.**