



October 10, 2023

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 either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments on a listed agenda item by telephone must contact the City Secretary's office by email at lewisr@nactx.us or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments must be received by 12:00 p.m. on Tuesday, October 10, 2023. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**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 speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
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 minutes for the September 7, 2023 City Council Work Session; the September 12, 2023, City Council Special Meeting, and the September 19, 2023 City Council Regular Meeting. (Deputy City Secretary)
 - B. Consider contract award of \$47,307.37 to WorkQuest and Oak Creek Center for City park clean-up. (Interim Community Services Director)
 - C. Consider contract award not to exceed \$17,341.76 to WorkQuest and Oak Creek Center for City roadside clean-up. (Interim Community Services Director).

- D. Consider approval of a minor contract amendment between the City of Nacogdoches and Mead & Hunt for hourly assistance with our Pretreatment Program. (Director Public Works/City Engineer)
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 an ordinance amending Ordinance No. 1978-09-23 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2023 and ending September 30, 2024 (Bayou Loco Dam Spillway) (Assistant Director of Public Works).
 - B. Consider approval of a contract by and between the City of Nacogdoches and DJ Hansen Construction Corp for the Bayou Loco Dam Spillway Rehabilitation Project in a not-to-exceed amount of \$595,340.00 (Assistant Director of Public Works).
 - C. Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LLC for the 2023 WWTP Clarifier Rehabilitation Project in a not-to-exceed an amount of \$1,439,472.09 (Assistant Director of Public Works).
 - D. Discussion regarding the Police Department's voluntary security camera program. (Police Chief)
 - E. Consider approval of Resolution 1352-10-23 regarding nominations for the Central Appraisal District Board of Directors. (Interim City Manager)
 - F. Consider approval of Resolution No. 1353-10-23 creating a Chapter 380 Economic Development Program and authorizing an agreement by and between the City of Nacogdoches and Z Prepay Communication Services, LLC regarding the development of a multi-family apartment complex. (Economic Development 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.
- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
 - 1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
 - 2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

- B. Consultation with City Attorney - Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, clearly conflicts with this chapter. (City Attorney)

8. ADJOURN.



Rhonda Lewis
Deputy 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

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on October 5, 2023 at 5:00 p.m. and remained posted until the meeting convened.

Rhonda Lewis, Deputy City Secretary



City Council Meeting

Date: October 10, 2023

Agenda Item: 5.A.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the September 7, 2023 City Council Work Session; the September 12, 2023, City Council Special Meeting, and the September 19, 2023 City Council Regular Meeting. (Deputy City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT: Rhonda Lewis, Deputy City Secretary
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS:

1. City Council Work Session Minutes 09.07.23
2. City Council Meeting Minutes 09.12.23
3. City Council Meeting Minutes 09.19.23



Work Session
Nacogdoches City Council
September 7, 2023
C.L. Simon Recreation Center
1112 North Street, Nacogdoches, TX 75961

DRAFT

City Council Present: Mayor Randy Johnson; Council Members Roy Boldon; Brad Maule; Chad Huckaby; and Kathleen Belanger

Others present: City Manager, Keith Kiplinger; City Attorney, Jerry Baker; Interim Community Services Director, Jessica Sowell; Main Street Manager, Tori Huddleston

- 1. Call to order at 5:30 p.m.
- 2. Pledge of Allegiance.
- 3. Open Forum – There were no comments in Open Forum.

4. **WORK SESSION**

- A. Hold discussion and give staff feedback on murals. (Interim Community Services Director)

Jessica Sowell, Interim Community Services Director, stated that Murals is a project that the Main Street Advisory Board has been interested in for several years and has included the City’s Main Street Manager in their efforts to move the project forward. She stated that the Board has engaged the Design Committee, has had community conversations, and researching other communities on this subject. Ms. Sowell introduced Lynn Myers, Acting Main Street Board Chairman.

Ms. Myers presented PowerPoint slides to Council explain what the Committees ideas are on moving forward with the murals. The Committee decided that the murals should tell a story, as in chapters in a book. Ms. Myers displayed photographs for their project called, “Brushing Up Nac”. She informed Council of the businesses interested in having a mural painted on their wall. Committee Member Brandon Rowell contacted the Coca Cola Distributor, who agreed to pay for the refurbishment of the mural on the General Mercantile & Old Time String Shop on East Pilar Street. Ms. Myers explained that each mural will be completed with a plaque with will include the name of the artist and the name(s) of the donors.

Ms. Sowell explained that the Committee is in the early stages of planning and has yet to present the Main Street Mural Project to the Main Street Advisory Board.

Council Member Kathleen Belanger presented a slide show, “Setting the Stage for Brushing Up Nac”. The PowerPoint outlined Principles and Philosophy of Murals, a broad Approval Process, Funding and the Immediate Steps needed to keep the project moving in the right direction. Ms. Belanger went over each item in the PowerPoint to ensure Council and the Committee was on the same page and in agreement with next steps in the project.

Meeting adjourned at 6:53 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Minutes unofficial until approved by City Council

Rhonda Lewis, Deputy City Secretary



**Special Session
Nacogdoches City Council
September 12, 2023 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street**

DRAFT

City Council present in person: Mayor Pro Tem Roy Boldon, Council Members Kathleen Belanger, Chad Huckaby and Brad Maule.

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum – There were no comments for Open Forum.
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.

There were no items for the Consent Agenda.

6. REGULAR AGENDA:

- A. **Public Hearing:** Hold a public hearing and receive citizen input on FY 2023-2024 Proposed Tax Rate (Director of Finance)

Pam Curbow, Director of Finance, went over the highlights of the FY2023-24 Property Taxes for Council and the public.

Mayor Pro Tem Boldon opened the public hearing portion of the meeting. There were no comments from the public and no comments from City Council.

- B. Consider an ordinance ratifying and setting tax rate on all taxable property for the tax year 2023 at a rate of \$0.47445 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of Nacogdoches City Council Agenda Page 2 September 12, 2023 January 1, 2023, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Director of Finance)

Pam Curbow asked City Council to approve this ordinance to adopt the proposed property tax rate for the 2023 tax year.

There were no comments from the public.

Council Member Belanger made a motion to adopt the 2023 Property Tax Rate. Council Member Huckaby duly seconded the motion and the motion carried by unanimous vote.

7. Adjourned 5:35 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary

Minutes unofficial until approved by City Council



Regular Session
Nacogdoches City Council
September 19, 2023 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

City Council present in person: Mayor Randy Johnson, Council Members, Chad Huckaby and Brad Maule. **Absent Council Members:** Kathleen Belanger and Roy Boldon

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum – Mayor Randy Johnson spoke during open forum stating that at the September 5, 2023 meeting he did not fully understand the term “Super Majority”, and its requirements for the votes on Regular agenda item 6.B. He apologized for the comment made after the vote, congratulating the applicant.
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 regarding the police department’s annual police car purchase. We are asking to buy our annual police cars, (four marked police cars and one civilian car) not to exceed the \$400,000 allotment. (Assistant Chief of Police)

Council Member Huckaby asked the Mayor to pull this item, 5.A., from the agenda.

Mayor Johnson made a motion to approve items B, C, and D, on the agenda. The motion was duly seconded by Council Member Huckaby and the motion passed unanimously to approve the remaining items on the Consent Agenda, with the exception of item A.

Council Member Huckaby asked for a brief overview of the item. Assistant Chief of Police, Dan Taravella, explained that the Police Department is asking for five (5) total vehicles, four (4) patrol cars and one (1) civilian vehicle. The cost includes the vehicles and the equipment and installation inside the vehicles.

Council Member Huckaby asked if the monies would come from the Replacement Fund. Assistant Chief Taravella said yes, from the Vehicle Equipment Replacement Fund.

Council Member Huckaby made a motion to approve item 5.A. as presented. Council Member Brad Maule duly seconded the motion and the motion was approved unanimously.

- B. Consider approval of a Ground Lease Agreement between the City of Nacogdoches and the Board of Regents of the Texas A&M University System, for the benefit of the Texas A&M Forest Service, to renew the lease of a certain tract of land owned by the City and located at 4126 Old Tyler Road. (City Attorney)
- C. Consider approval of minutes for the September 5, 2023 Regular Meeting. (Deputy City Secretary)
- D. Consider approval of an agreement between the City of Nacogdoches and the Convention and Visitors Bureau for professional services. (Interim Director CVB)

Council Member Huckaby made a motion to approve; Council Member Maule duly seconded, and the motion carried by unanimous vote.

6. **REGULAR AGENDA:**

Minutes unofficial until approved by City Council

- A. Receive an annual report from the Boys and Girls Club of Deep East Texas. (Community Services Interim Director and Steve Davidson, President Boys and girls Clubs of Deep East Texas)

Jessica Sowell introduced Steve Davidson who presented the annual report to Council. Mr. Davidson explained the statistical data and the functions of the Boys and Girls Clubs. He gave an overview of the facilities, such as, the memberships, the use of the pools, working hours and fees.

- B. Consider approval of an agreement between the City of Nacogdoches and the Boys and Girls Club of Deep East Texas for essential services in an amount not to exceed \$70,000. (Community Services Interim Director)

Jessica Sowell presented this item to Council. She explained the Boys and Girls Clubs provides the City with essential services to Nacogdoches, such as, pool facilities, staffing, pool operation hours and the after school programs.

Mayor Johnson asked if there was any public comment. Ms. Brandi Cartwright stated that she is proud that the City supports such a wonderful program in the Boys and Girls Clubs.

Mayor Johnson made a motion to approve Item 6.B. Council Member Huckaby duly seconded the motion and the item was approved by unanimously vote.

- C. Receive annual report from Keep Nacogdoches Beautiful. (Community Services Interim Director and Ashley Villareal, KNB Director)

Jessica Sowell introduced the Executive Director of Keep Nacogdoches Beautiful (KNB), Ashley Villareal. She gave an overview of the specific areas that KNB targets within the City, including volunteers, beautification of the City, recycling programs and environmental education in the community.

Council Member Huckaby asked what the status of recycling in the City of Nacogdoches. Ms. Villareal stated that the recycling programs' funding had been cut since she came on board with KNB. Council Member Huckaby asked what the City can do to help. Ms. Villareal stated that having additional locations to place the recycled items would help with the volume of items collected.

Mayor Johnson made a motion to approve Item 6.C. with the stated conditions. Council Member Huckaby duly seconded the motion. The motion was approved unanimously.

- D. Consider approval of an agreement between the City of Nacogdoches and Keep Nacogdoches Beautiful for essential services. (Community Services Interim Director)

Jessica Sowell presented the annual contract for Keep Nacogdoches Beautiful. She went over the contract details of the essential services provided by KNB, including, the planning, promoting and management of recycling efforts, beautification activities, and educational activities.

Mayor Johnson asked if there was any public comment. Ms. Brandi Cartwright stated that she is not able to donate to KNB, as she pays her water bill electronically. She asked that Council consider an option to donate in this manner to KNB.

Mayor Johnson made a motion to approve the annual contract for Keep Nacogdoches Beautiful; Council Member Huckaby duly seconded the motion. The motion was approved by unanimous vote.

- E. **Public Hearing:** Consider approval for a Specific Use Permit for Light Manufacturing/Assembly in a B-2, General Business district, on Lots 4 & 5 of the Reese No. 2 Subdivision located at 2524 South Street and Lot 77-B-1, City Block 56, located at 2516 South Street. This request has been submitted by Ceasar Escalante. (Planning Technician)

Juan Pollette, Planning Technician, gave an overview of the owner's request for the Specific Use Permit (SUP). He went over the Proposed SUP conditions that the applicant will have to adhere to. Mr. Pollette also presented a site plan to show the proposed 7' metal fence to block the day-to-day operations from the residents in the area. Mr. Pollette stated that the concerns of the surrounding property owner's were that the business was expanded beyond what the space is able to handle. No property owners attended the neighborhood meeting held to hear their concerns.

Council Member Brad Maule asked if the fence would block the existing trees from the public view and if there were any plans for landscaping. Mr. Pollette stated the tops of the trees would be visible as the fence would contain the trees within the business and the request did not require any additional landscaping.

The applicant, Ceasar Escalante, approached Council and explained the nature of his business and his request for expanding.

Council Member Huckaby made a motion to approved the Specific Use Permit as presented with the conditions from Planning and Zoning. Council Member Maule duly seconded the motion. The motion was passed unanimously.

- F. Consider approval of a contract by and between the City of Nacogdoches and Tiger Creek Enterprises for the FM 1878 Water Line Improvements Project in a not-to exceed the amount of \$119,047.50. (Assistant Director of Public Works)

Steve Bartlett, Director of Public Works, explained that he is seeking approval of the contract to install a 16" water line on FM 1878. The line will extend past the City limits, but in an area where the City serves the residents. Out of six (6) bids, Tiger Creek Enterprises came in with the lower bid.

Council Member Huckaby made a motion to approve Item 6.F. as written and Council Member Maule duly seconded the motion. The motion was approved by unanimous vote.

- G. Consider approval of an ordinance amending ARTICLE II, DIVISION 1, of the City of Nacogdoches Code of Ordinances to add Sections 98-30, 98-31, 98-32 and 98-33 to require any person excavating within the public right-of-way to obtain line location information; addressing construction around marked and unmarked utility lines within the public right-of-way; providing a penalty; providing an effective date; and providing for related matters. (Director of Public Works/City Engineer)

Steve Bartlett, Director of Public Works, stated that the City is currently inundated with fiber optic work in the area. This ordinance would provide some controls and allow enforcement penalties while preventing accidental "strikes" to private or public lines.

Council Member Huckaby mentioned that a specific resident had considerable damage to her home by an accidental sewage strike, and also stated that Council is determined to ensure that this will not happen to any other resident.

Council Member Maule made a motion to approve the item as written. Council Member Huckaby duly seconded the motion, and the item was approved unanimously.

- H. Consider approval of a contract between City of Nacogdoches and Craig's Dirt Work for the Lake Nacogdoches Accessible Walkway project in an amount not-to-exceed \$109,373.00. (Interim Community Services Director)

Jessica Sowell presented this item to Council for approval of a contract with Craig's Dirt Service. The contract would allow for a project on the Lake Nacogdoches Accessible Walkway. Ms. Sowell gave an overview of the project and the City's budget for the project. She explained that there would be purchase of beach sand for the project from available funds in the budget.

Mayor Johnson made a motion to approve the contract with Craig's Dirt Service. Council Member Huckaby duly seconded the motion, and the item was approved unanimously.

- I. Consider approval of a resolution related to the use of a general obligation bond if approved by the voters of the City of Nacogdoches for improvements to the City's airport. (City Attorney)

City Attorney, Jerry Baker, presented this resolution to Council stating that the resolution is related to the Proposition A General Obligation Bond. City Council would only approve the issuance of these bonds with a dollar-for-dollar match.

Council Member Huckaby made a motion to approve Item I as written. Council Member Maule duly seconded the motion, and the motion carried.

7. Adjourned 6:45 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary



City Council Meeting

Date: October 10, 2023

Agenda Item: 5.B.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Consider contract award of \$47,307.37 to WorkQuest and Oak Creek Center for City park clean-up. (Interim Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches contracts with Oak Creek Center to clean park pavilions and restrooms, restock supplies as needed, empty trash cans and pick up trash within 14 City parks. The City has contracted with Oak Creek since 2012. For the last 11 years, Oak Creek has cleaned the large parks three times per week and the smaller parks two times per week. Starting in FY 2022-2023, Oak Creek transitioned to cleaning the large parks five times per week. The list of large versus small parks is found on page four of the contract. Oak Creek employs over 100 people with intellectual developmental disabilities. Out of their 100 employees, 18 to 22 work in Nacogdoches on a weekly basis.

WorkQuest provides funding for Community Rehabilitation Programs such as Oak Creek Center, and Oak Creek then employs individuals in and around the community.

FINANCIAL:

Item is budgeted:

Account No.: 01.23.630.77

Account Name: *Janitorial Services*

Amount: \$47,307.37

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

Not Applicable

CITY CONTACT: Jessica Sowell, Interim Community Services Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS:

1. Contract No. PL2023 - State Use Contract
2. Texas State Use Program WorksWonders

STATE USE CONTRACT

This contract and agreement is entered into by and between the Receiving Party and the Performing Party (assigned CRP) based upon negotiated price and specifications and certified by WorkQuest, Inc. as a contract under the provisions of Chapter 122, Human Resources Code.

I. Contracting Parties:

Receiving Party:
City of Nacogdoches Parks & Recreation
1112 North Street
Nacogdoches, Texas 75961

Performing Party:
Oak Creek Day Habilitation/Vocational Center, Inc.
PO Box424
Lufkin, Texas 75902

II. Statement of Services to be Performed:

Litter Pickup at the City Parks

- 1) Performing Party to furnish all tools and equipment to perform duties.
- 2) Performing Party to furnish sufficient employees to complete all locations between sunrise and noon daily.
- 3) Bags will be supplied by the receiving party based on containers and total days to be cleaned. Additional bags will be supplied by the performing party.
- 4) Insurance will be provided by the contractor listing the City of Nacogdoches as "Additional Insured" for comprehensive general liability and comprehensive automobile liability. Workers Compensation insurance will be provided by the contractor:

a. General Liability:

Bodily Injury	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Property Damage	\$1,000,000 each occurrence

b. Auto Liability:

Bodily Injury	\$1,000,000 each person
	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

III. Contract Amount:

The total amount of this Contract shall not exceed \$47,307.37.

IV. Payment for Services:

The Receiving Party shall pay WorkQuest as assignee and servicing agent of Performing Party's interest in the payment under this contract (as directed), for goods and services received upon receipt of a proper invoice or voucher submitted to WorkQuest , within thirty (30) days from receipt of same.

Payment for services performed shall be billed monthly at a rate of \$3,942.28.

V. Term of Contract

This contract is to begin October 1,2023 - September 30, 2024, and shall be reviewed annually or as expressly agreed by the contracting parties.

This contract may be canceled by either party by giving thirty (30) days written notice.

THE UNDERSIGNED PARTIES do hereby certify that, (i) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected parties of Local and State Government, and (ii) the services, supplies or Contract, are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under Contract given to the lowest responsible bidder.

RECEIVING PARTY

Receiving Party further certifies that it has authority to contract for the above services by authority granted In Section 122.008, Chapter 122, Human Resources Code.

Name of Receiving Party

Authorized Signature

Date

PERFORMING PARTY

The undersigned signatory for the Performing Party hereby represents and warrants that s/he is an officer of the organization for which s/he has executed this Contract; and that the officer has full and complete authority to enter into this contract on behalf of the Performing Party and has legal authority to perform the activities provided for herein.

Name of Performing Party

Authorized Signature

Date

CERTIFYING PARTY

Name of Certifying Party

Authorized Signature

Date

ATTACHMENT A

The following Parks shall be cleaned as follows:

	Monday	Tuesday	Wednesday	Thursday	Friday
Festival Park	X	X	X	X	X
Banita Creek	X	X	X	X	X
Maroney	X	X	X	X	X
Pecan Acres	X	X	X	X	X
Pioneer	X	X	X	X	X
Clint Dempsey	X	X	X	X	X
Lake Nacogdoches East	X	X	X	X	X
Lake Nacogdoches West	X	X	X	X	X
Lake Nacogdoches Overlook	X	X	X	X	X
Robert McCrimmon		X		X	
Mill Pond		X		X	
Ritchie Street		X		X	
Lakeside		X		X	
Temple Spray Station		X		X	

Each park will have the following completed during each visit:

- 1) Remove all litter from the ground
- 2) Empty all trash cans into dumpsters and replace trash can liners
- 3) Clean restrooms and unclog toilets
- 4) Report any maintenance issues to City Parks Superintendent
- 5) Use blower on and around pavilions

Oak Creek Center will provide all cleaning agents for the restrooms. The City of Nacogdoches will provide toilet tissue and trash can liners.

Texas State Use Program WorksWonders

In 1978, the Texas State Use Program was implemented by WorkQuest, formerly TIBH Industries, to increase employment, wages and, ultimately, enhance the lives of Texans with disabilities. This initiative resulted from the efforts of the Texas Legislature, which created the State Use Program under Chapter 122 of the Human Resources Code. In the 40 years since its successful implementation, the State Use Program continues to set new marks for the number of people with disabilities employed. In the past year, more than \$39 million in wages were paid to these employees for work on state and local government contracts. To help enhance familiarity and increase involvement among purchasers from state agencies, municipalities, school districts and other political subdivisions, the State Use Program adopted a new moniker – *WorksWonders*. *WorksWonders* is a phrase demonstrating the mutually beneficial partnership involving people with disabilities and the state and local government entities that purchase the products, services and temporary employment services offered through nearly 120 statewide Community Rehabilitation Programs. It is our hope that more and more governmental entities take advantage of the many benefits associated with *WorksWonders*.

HOW IT WORKS

WorkQuest works with Community Rehabilitation Programs (CRPs) across Texas identifying and developing new products, services and temporary employment services to be offered through the *WorksWonders* Program.

- Using established criteria, WorkQuest reviews all requests and presents an application for inclusion into the *WorksWonders* Program, as well as a fair market price, to the Texas Workforce Commission.
- WorkQuest is directly involved in service contract negotiations, bringing the purchasing customer and vendor CRP to agreement on specifications and price.
- The Texas Workforce Commission determines whether each product or service is appropriate to be considered for purchase by public agencies.
- Once a product or service has been approved, WorkQuest works to develop a marketing plan for that product or service. WorkQuest's staff then implements the plan with state agencies, municipalities, school districts and other governmental entities. As products or services are bought by agencies, WorkQuest facilitates compensation between CRPs and those agencies.

- **WorkQuest Benefits**

The Governor-appointed Texas Workforce Commission is authorized by statute (1) to determine a fair market price for goods and services produced through the State Use *WorksWonders* Program (2). And, although political subdivisions are bound by law to get competitive bids, this restriction is waived (3) when purchases are made through WorkQuest.

Benefits of the Program

How We Help People With Disabilities

1. Provide stable, vocational rehabilitation for individuals with disabilities in the community.
2. Provide people with disabilities the opportunity to become self-sufficient.
3. Provide training, meaningful employment and fair wages for individuals with disabilities.

How We Help Customers

1. The program offers a wide variety of options with its products and services.
2. Each contract is negotiated individually, allowing for customization to meet specific wants and needs.

How We Help Taxpayers

1. The State Use Program has proven to reduce the cost of care for people with disabilities.
2. By adding employees with disabilities to the workforce, the program helps increase the tax base. National studies have shown a savings in public expenditures for purchases made through the State Use Program.
3. Since CRPs are located in large and small communities, the program also stimulates local area economic growth.

Contact information:

Deidra Davis » Region III, Regional Marketing Manager

101 South First Street // Lufkin, Texas 75901

Phone: 936-465-4328

E-mail: ddavis@workquest.com



City Council Meeting

Date: October 10, 2023

Agenda Item: 5.C.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Consider contract award not to exceed \$17,341.76 to WorkQuest and Oak Creek Center for City roadside clean-up. (Interim Community Services Director).

SUMMARY/BACKGROUND: Oak Creek provides roadside trash pick-up along approximately 21 roads inside the city limits on a 3 month rotation. The roads include the following: Staff Avenue (East and West), Pearl Street, Austin Street (East and West), North Street, South Street, Old Tyler Road, Old Lufkin Road, University Drive (North and South), Martin Luther King Boulevard, Woden Road, Shawnee Street, Rayburn Drive, Bennett Clark Road, Appleby Sand Road, Fredonia Street, Durst Street, Main Street (East and West), Martinsville Road, Gasaway Road and Sandy Lane.

The contract also includes a provision for emergency litter pick-up at a rate of \$40.00 per hour, not to exceed \$2,000.00 per year. This is used if city staff identify a section of road that needs to be cleaned, but it is not in the above list of roads.

FINANCIAL:

Item is budgeted:

Account No.: 01.18.630.77

Account Name: *Janitorial Services*

Amount: \$17,341.76

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

Not Applicable

CITY CONTACT: Jessica Sowell, Interim Community Services Director
sowellj@nactx.us
(936) 559-2940

ATTACHMENTS:

1. CL2023 - State Use Contract
2. Texas State Use Program WorksWonders

STATE USE CONTRACT

This contract and agreement is entered into by and between the Receiving Party and the Performing Party (assigned CRP) based upon negotiated price and specifications and certified by WorkQuest, Inc. as a contract under the provisions of Chapter 122, Human Resources Code.

I. Contracting Parties:

Receiving Party:
City of Nacogdoches Parks & Recreation
1112 North Street
Nacogdoches, Texas 75961

Performing Party:
Oak Creek Day Habilitation/Vocational Center, Inc.
PO Box424
Lufkin, Texas 75902

II. Statement of Services to be Performed:

City Litter Pickup

- 1) Performing Party to furnish all tools and equipment to perform duties.
- 2) Performing Party to furnish sufficient employees to complete all locations between sunrise and noon daily.
- 3) Bags will be supplied by the receiving party based on containers and total days to be cleaned. Additional bags will be supplied by the performing party.
- 4) Insurance will be provided by the contractor listing the City of Nacogdoches as "Additional Insured" for comprehensive general liability and comprehensive automobile liability. Workers Compensation insurance will be provided by the contractor:

a. General Liability:

Bodily Injury	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Property Damage	\$1,000,000 each occurrence

b. Auto Liability:

Bodily Injury	\$1,000,000 each person
	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

III. Contract Amount:

The total amount of this Contract shall not exceed \$17,341.76.

IV. Payment for Services:

The Receiving Party shall pay WorkQuest as assignee and servicing agent of Performing Party's interest in the payment under this contract (as directed), for goods and services received upon receipt of a proper invoice or voucher submitted to WorkQuest , within thirty (30) days from receipt of same.

Payment for services performed shall be billed monthly at a rate of \$1,278.48.

Payment for emergency pickup shall be at the rate of \$40.00 an hour and not to exceed \$2,000.00 for the year.

V. Term of Contract

This contract is to begin October 1,2023 - September 30, 2024, and shall be reviewed annually or as expressly agreed by the contracting parties.

This contract may be canceled by either party by giving thirty (30) days written notice.

THE UNDERSIGNED PARTIES do hereby certify that, (i) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected parties of Local and State Government, and (ii) the services, supplies or Contract, are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under Contract given to the lowest responsible bidder.

RECEIVING PARTY

Receiving Party further certifies that it has authority to contract for the above services by authority granted In Section 122.008, Chapter 122, Human Resources Code.

Name of Receiving Party

Authorized Signature

Date

PERFORMING PARTY

The undersigned signatory for the Performing Party hereby represents and warrants that s/he is an officer of the organization for which s/he has executed this Contract; and that the officer has full and complete authority to enter into this contract on behalf of the Performing Party and has legal authority to perform the activities provided for herein.

Name of Performing Party

Authorized Signature

Date

CERTIFYING PARTY

Name of Certifying Party

Authorized Signature

Date

ATTACHMENT A

The following named streets, as set forth below, shall herein be designated as the agreed upon stated locations for the Performing Party's services to be performed in the Litter Removal and Disposal regarding said Contract, and such terms shall be incorporated by reference herein, and stated as follows:

October 1, 2023 - September 30, 2024 litter removal and disposal will be performed at a frequency covering approximately 18 roads on a 3-month rotation during the stated term of said contract.

Starr East and West
Pearl Street
Austin East and West
North Street
South Street
Old Tyler Road
Old Lufkin Road
University North and South
Martin Luther King Blvd.
Woden Road
Shawnee Street
Rayburn Drive
Bennett Clark Road
Appleby Sand Road
Fredonia Street (Hwy 7 West)
Durst (Hwy 225)
Main West (Hwy 21 West)
Main East (Hwy 7 & 21 East)
Martinsville Road (University to Pane)
Gasaway Road
West Austin (Pearl to Old Tyler Road)
Sandy Lane
Old Tyler Road (Powers to West Austin)
University Drive (East Austin to North Loop)

Remove, Bag and dispose of litter from the ground.

Texas State Use Program WorksWonders

In 1978, the Texas State Use Program was implemented by WorkQuest, formerly TIBH Industries, to increase employment, wages and, ultimately, enhance the lives of Texans with disabilities. This initiative resulted from the efforts of the Texas Legislature, which created the State Use Program under Chapter 122 of the Human Resources Code. In the 40 years since its successful implementation, the State Use Program continues to set new marks for the number of people with disabilities employed. In the past year, more than \$39 million in wages were paid to these employees for work on state and local government contracts. To help enhance familiarity and increase involvement among purchasers from state agencies, municipalities, school districts and other political subdivisions, the State Use Program adopted a new moniker – *WorksWonders*. *WorksWonders* is a phrase demonstrating the mutually beneficial partnership involving people with disabilities and the state and local government entities that purchase the products, services and temporary employment services offered through nearly 120 statewide Community Rehabilitation Programs. It is our hope that more and more governmental entities take advantage of the many benefits associated with *WorksWonders*.

HOW IT WORKS

WorkQuest works with Community Rehabilitation Programs (CRPs) across Texas identifying and developing new products, services and temporary employment services to be offered through the *WorksWonders* Program.

- Using established criteria, WorkQuest reviews all requests and presents an application for inclusion into the *WorksWonders* Program, as well as a fair market price, to the Texas Workforce Commission.
- WorkQuest is directly involved in service contract negotiations, bringing the purchasing customer and vendor CRP to agreement on specifications and price.
- The Texas Workforce Commission determines whether each product or service is appropriate to be considered for purchase by public agencies.
- Once a product or service has been approved, WorkQuest works to develop a marketing plan for that product or service. WorkQuest's staff then implements the plan with state agencies, municipalities, school districts and other governmental entities. As products or services are bought by agencies, WorkQuest facilitates compensation between CRPs and those agencies.

- **WorkQuest Benefits**

The Governor-appointed Texas Workforce Commission is authorized by statute (1) to determine a fair market price for goods and services produced through the State Use *WorksWonders* Program (2). And, although political subdivisions are bound by law to get competitive bids, this restriction is waived (3) when purchases are made through WorkQuest.

Benefits of the Program

How We Help People With Disabilities

1. Provide stable, vocational rehabilitation for individuals with disabilities in the community.
2. Provide people with disabilities the opportunity to become self-sufficient.
3. Provide training, meaningful employment and fair wages for individuals with disabilities.

How We Help Customers

1. The program offers a wide variety of options with its products and services.
2. Each contract is negotiated individually, allowing for customization to meet specific wants and needs.

How We Help Taxpayers

1. The State Use Program has proven to reduce the cost of care for people with disabilities.
2. By adding employees with disabilities to the workforce, the program helps increase the tax base. National studies have shown a savings in public expenditures for purchases made through the State Use Program.
3. Since CRPs are located in large and small communities, the program also stimulates local area economic growth.

Contact information:

Deidra Davis » Region III, Regional Marketing Manager

101 South First Street // Lufkin, Texas 75901

Phone: 936-465-4328

E-mail: ddavis@workquest.com

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of a minor contract amendment between the City of Nacogdoches and Mead & Hunt for hourly assistance with our Pretreatment Program. (Director Public Works/City Engineer)

SUMMARY/BACKGROUND: The City currently has a contract with Mead & Hunt, an engineering firm with specialists in wastewater pretreatment. While their contract has not expired, we have a new budget approved for this fiscal year in an amount not-to-exceed \$175,000. The contract amendment acknowledges the new budget and restates the scope of services, including a provision for a negotiated adjustment in billing rates in 2024. Charges are only based on hourly rates and time spent for various assignments. Last year Mead & Hunt spent approximately \$70,000 of this designated budget.

The current regulatory environment for wastewater pretreatment oversight of our industrial partners has become very complex and requires the expertise of engineers who specialize in these permits and studies. Mead & Hunt, formally Perkins Engineering, has been assisting the City for the past three years with this effort.

FINANCIAL:

Item is budgeted:

Account No.: 30.39.630.71

Account Name: *WW Consulting*

Amount: \$175,000 budget

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

Infrastructure

CITY CONTACT: Steve Bartlett, Director Public Works/City Engineer
bartletts@nactx.us
(936) 559-2522

ATTACHMENTS:

1. 5D Presentation Mead & Hunt 2023-2024 Contract Amendment
2. Mead & Hunt 23-24 Contract Amendment

MEAD & HUNT CONTRACT FOR ENGINEERING SERVICES *(Pretreatment Program)*

- Mead & Hunt is currently our Engineering Consultant for our Pretreatment Program
- Annual Budget is hourly not-to-exceed \$175,000
- Assistance with unforeseen regulatory requirements from TCEQ caused Mead & Hunt to provide additional work outside their scope and fee
- Contract amendment confirms scope of work and annual budget
- Allows fee schedule adjustment in 2024 as defined in the contract. No budget changes, just hourly rate increases.



September 29, 2023

Mr. Steve Bartlett, PE
Director Public Works
City of Nacogdoches
202 East Pillar Street
Nacogdoches, TX 75961

Subject: Request for Amendment to Contract No. 22-10-116

Dear Mr. Bartlett:

Mead & Hunt, Inc. (Mead & Hunt) requests an amendment to Contract No. 22-10-116, which was executed by the City of Nacogdoches (City) on November 21, 2021 for assistance with the City's Texas Pollutant Discharge Elimination System Permit and Industrial Pretreatment Program (Program). The City approved additional funds for Mead & Hunt to continue providing on-call pretreatment program assistance for the 2023 – 2024 budget year. As of October 1, 2023, the contact amount for the additional services is One Hundred Seventy-Five Thousand and no/100 Dollars (\$175,000). The services the City may request are as follows:

- Continue assistance with obtaining approval of the Technically Based Local Limits submitted to Texas Commission on Environmental Quality (TCEQ) in September 2021.
- Assist with identifying and determining appropriate enforcement actions for industrial user non-compliance and drafting of enforcement documents.
- Review industrial user applications, self-monitoring reports, and other required documentation for compliance with pretreatment standards and requirements as requested.
- Draft Industrial Wastewater Discharge Permits for existing Significant Industrial Users to comply with the updated pretreatment program requirements.
- Support City staff through on-call assistance with sampling, inspections, industrial waste surveys, annual report preparation, enforcement, and other pretreatment related tasks.
- Conduct inspections of current and potential industrial users as requested.
- Assist with development of site-specific water quality standard for copper.
- Assist with regulatory reporting requirements for the Program.

The Terms and Conditions in Contract No. 22-10-116 will remain unchanged. Hourly Rates, however, will be adjusted on January 1, 2024, as provided in the contract. We appreciate the opportunity to continue to serve the City with this project. Please call me at (512) 735-1001 or contact me at Janet.Sims@meadhunt.com if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Janet Sims".

Janet M. Sims
Mead & Hunt

Accepted for the City of Nacogdoches

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider an ordinance amending Ordinance No. 1978-09-23 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2023 and ending September 30, 2024 (Bayou Loco Dam Spillway) (Assistant Director of Public Works).

SUMMARY/BACKGROUND: Bayou Loco Dam Emergency Spillway provides protection for areas downstream of Lake Nacogdoches in the event of a significant flood and is required by the Texas Commission on Environmental Quality (TCEQ) to be maintained in good condition.

Improvements to provide for the protection of the Spillway are necessary for this required maintenance and City Council has previously approved \$550,000 for Lake Nacogdoches TCEQ Required Spillway Repair in the Capital Improvements Program. Bids were received for this project on September 11, 2023 with DJ Hansen Construction as the low bidder in the amount of \$595,340 which exceeds the budgeted amount. Previously, funds had been allocated for design and construction phase services for Two Fifteen Consulting and ancillary costs for bid advertisement for a combined cost of \$20,400. Staff is requesting consideration of a budget amendment in the amount of \$150,000 to fund this construction which would allow for some contingencies for unforeseen change orders during construction. This amount would be from available reserve funds in the Utility Fund.

FINANCIAL:

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

Account No.: 30 179.36

Account Name: *Water Facilities CIP*

Amount: \$150,000

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

Infrastructure

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

ATTACHMENTS: 1. Ordinance
2. 6A PowerPoint Slide

AN ORDINANCE AMENDING ORDINANCE NO. 1978-09-23 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2023 and ending September 30, 2024.

WHEREAS, Bayou Loco Dam Emergency Spillway provides protection for areas downstream of Lake Nacogdoches in the event of a significant flood; and

WHEREAS, the Bayou Loco Dam Emergency Spillway is required by the Texas Commission on Environmental Quality to be maintained in good condition; and

WHEREAS, improvements to provide for the protection of the Spillway are necessary for this required maintenance; and

WHEREAS, the City Council previously approved \$550,000 for Lake Nacogdoches TCEQ Required Spillway Repair in the Capital Improvements Program; and

WHEREAS, previously allocated funds for these improvements in the amount of \$20,400 combined with proposed funding of these improvements in the amount of \$595,340 and \$84,260 in contingencies which may be needed in the improvements exceeds the budgeted amount; and

WHEREAS, with the adoption of this ordinance, the City is authorized to utilize available reserve funds in the Utility Fund in the amount of \$150,000; and

WHEREAS, with the adoption of this ordinance, the Public Works Department is authorized to expend funds as needed.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the payment of capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
30	179	36	Water Facilities CIP	Bayou Loco Dam Emergency Spillway	\$150,000

PASSED AND APPROVED this the 10th day of October, 2023.

Randy Johnson, Mayor
City of Nacogdoches

ATTEST:

City Secretary

Approved as to form: _____
Jerry Baker, City Attorney

Approved as to content: _____
Director of Finance

Budget Amendment Ordinance – Lake Nacogdoches Spillway

- Emergency Spillway needs reconstruction and erosion protection
- Current budget - \$550,000
- Previously allocated funds - \$20,400
- Low Bid for Construction - \$595,340
- Possible Contingencies - \$84,260
- ***Budget Amendment requested for \$150,000***
(total expenditure of \$700,000)
- Utilize available reserve funds in the Utility Fund



PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and DJ Hansen Construction Corp for the Bayou Loco Dam Spillway Rehabilitation Project in a not-to-exceed amount of \$595,340.00 (Assistant Director of Public Works).

SUMMARY/BACKGROUND: Bayou Loco Dam Emergency Spillway provides protection for areas downstream of Lake Nacogdoches in the event of a significant flood and is required by the Texas Commission on Environmental Quality (TCEQ) to be maintained in good condition. The Bayou Loco Dam Emergency Spillway Rehabilitation Project has been designed to provide regrading of the spillway and installation of stone riprap protection along its face to accomplish these maintenance requirements.

On September 11, 2023, the City received bids for this project and four (4) contractors submitted bids as follows:

<i>DJ Hansen Construction</i>	<i>\$ 595,340.00</i>
Shirley & Sons Construction	\$ 596,960.00
True Roads Construction	\$ 752,150.00
Solid Bridge Construction	\$ 999,800.00

DJ Hansen Construction was found to be lowest responsible bidder. They are a Bynum-based contractor who has not previously worked for the City nor for the City's engineering consultant (Two Fifteen Consulting) on any projects to date. Two Fifteen did reach out to references who confirmed that DJ Hansen had successfully performed projects of this nature before. With this reasonable evidence that the contractor is competent and qualified to complete this work, it is recommended that the base bid for this project be awarded to DJ Hansen Construction in the amount of \$595,340.00.

FINANCIAL:

Item is budgeted:

Account No.: 30 179.36

Account Name: *Water Facilities CIP*

Amount: \$700,000

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

Infrastructure

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

- ATTACHMENTS:**
1. Award Recommendation
 2. Bid Tab
 3. Contract
 4. 6B PowerPoint Slide

October 3, 2023

Mr. Casey R. Opperman
Assistant Director of Public Works/Assistant City Engineer
City of Nacogdoches, Texas
202 E. Pilar
Nacogdoches, Texas 75963

VIA ELECTRONIC MAIL (oppermanc@nactx.us)

**Re: Bayou Loco Dam Emergency Spillway Rehabilitation Project
Bid Summary and Award Recommendation**

Dear Mr. Opperman,

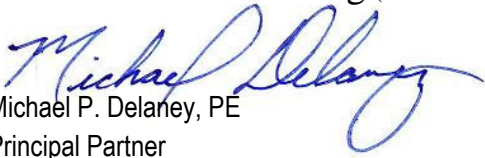
As you are aware, on Monday, September 11, 2023, the City of Nacogdoches received four (4) bids for the above referenced project. Enclosed is a copy of the bid summary for your review. The apparent low bidder at the public reading of the bids was DJ Hansen Construction of Ephraim, Utah (Corporate Office). DJ Hansen has Texas office located in Bynum, out of which this bid was submitted. A check of the arithmetic confirmed the as-read amounts.

We have not worked with DJ Hansen Construction in the past. This prompted us to conduct a review of the references listed in the bid packet for reference. The results of our reference checks and inquiries provided reasonable evidence that the contractor is competent and qualified of completing the scope of work as outlined in the project documents. Therefore, it is our recommendation the City accepts the low bid in the amount of **\$595,340.00** and awards the contract to DJ Hansen Construction.

As always, if you should have any questions or need any additional information please do not hesitate to call.

Sincerely,

Two Fifteen Consulting (TBPE F-17461)


Michael P. Delaney, PE
Principal Partner

Encl(1): Bid Tabulation

cc: Suzanne Hansen, DJ Hansen Construction (hansentrucks@gmail.com)

Bayou Loco Dam Emergency Spillway Rehabilitation Project

Item	Quan	Unit	Description	DJ Hansen Construction		Shirley & Sons		True Roads Construction		Solid Bridge Construction	
				Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL	Unit Price	TOTAL
1.	1	LS	Site cleaning, excavation, and earthwork	\$36,000.00	\$36,000.00	\$20,000.00	\$20,000.00	\$36,000.00	\$36,000.00	\$75,000.00	\$75,000.00
2.	2470	CY	Stone riprap protection (24" and 36" thick)	\$162.00	\$400,140.00	\$185.00	\$456,950.00	\$220.00	\$543,400.00	\$280.00	\$691,600.00
3.	590	CY	6" crushed stone bedding and filter fabric	\$160.00	\$94,400.00	\$135.00	\$79,650.00	\$225.00	\$132,750.00	\$280.00	\$165,200.00
4.	780	LF	Temporary earthen coffer dam	\$10.00	\$7,800.00	\$12.00	\$9,360.00	\$25.00	\$19,500.00	\$50.00	\$39,000.00
5.	1	LS	Site restoration and clean up	\$29,000.00	\$29,000.00	\$20,000.00	\$20,000.00	\$9,000.00	\$9,000.00	\$18,000.00	\$18,000.00
6.	1	LS	Erosion Controls	\$18,000.00	\$18,000.00	\$6,000.00	\$6,000.00	\$7,500.00	\$7,500.00	\$6,000.00	\$6,000.00
7.	1	LS	Traffic Controls	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00
TOTAL					\$595,340.00		\$596,960.00		\$752,150.00		\$999,800.00



**BIDDING
and
CONTRACT DOCUMENTS

FOR

CONSTRUCTION SERVICES
FOR
BAYOU LOCO DAM EMERGENCY SPILLWAY
REHABILITATION PROJECT**

Bid #: 23-10-129

**DUE DATE
September 11, 2023 @ 11:00 AM**

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

www.nactx.us

TABLE OF CONTENTS

INSTRUCTION TO BIDDERS

CONTRACTOR'S PROPOSAL

CONTRACTOR DATA SHEET

CERTIFICATION

GENERAL AND SPECIAL CONDITIONS OF AGREEMENT

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 Bayou Loco Dam Emergency Spillway Rehabilitation Project** until **11:00 AM, September 11, 2023** 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 approximately 2,470 cubic yards of stone riprap protection along the face of the emergency spillway of Bayou Loco Dam at Lake Nacogdoches (West Park). Project scope includes regrading, excavation, and haul-off of material as required for installation per plan documents.

COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents will be made available via www.civcastusa.com for no charge on a flash drive (or other electronic means) at:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

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, Bayou Loco Dam Emergency Spillway Rehabilitation 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
PO 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 Documents are available for no charge on a flash drive (or other electronic means) by contacting the following:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

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 – Assistant Director of Public Works
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 not be held for this project.

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
BAYOU LOCO DAM
EMERGENCY SPILLWAY REHABILITATION**

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1.	1	LS	Site cleaning, excavation, and earthwork, including all on-site cut and fill, imported fill, rough grading, fine grading, tree and vegetation removal, and haul-off and disposal of excess material, all materials & labor; complete, in place <u>thirty six thousand</u>	\$ <u>36,000 -</u>	\$ <u>36,000.00</u>
			per LS (written in words)		
2.	2470	CY	Stone Riprap Protection (24" thick and 36" thick) placed in accordance with TxDOT Specification Item 432 and the Plan Details including all materials & labor; complete, in place. <u>one hundred sixty two</u>	\$ <u>162 -</u>	\$ <u>400,140.00</u>
			per CY (written in words)		
3.	590	CY	6" thick crushed stone bedding and filter fabric installed in accordance with TxDOT Specification Item 432 and the Plan Details including all materials & labor; complete, in place. <u>one hundred sixty</u>	\$ <u>160 -</u>	\$ <u>94,400.00</u>
			per CY (written in words)		
4.	780	LF	Temporary earthen coffer dam only as necessary for installation of riprap toe trench and bedding material including all materials & labor; complete, in place. (ENGINEER DIRECTED ITEM) <u>Ten</u>	\$ <u>10 -</u>	\$ <u>7800.00</u>
			per LF (written in words)		
5.	1	LS	Site restoration and clean-up, including hydromulch seed and fertilizer, all materials & labor; complete, in place <u>twenty nine thousand</u>	\$ <u>29,000 -</u>	\$ <u>29,000.00</u>
			per LS (written in words)		

**CITY OF NACOGDOCHES
BAYOU LOCO DAM
EMERGENCY SPILLWAY REHABILITATION**

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
6.	1	LS	Temporary erosion controls, including sediment fencing, all materials & labor; complete, in place.	\$ <u>18,000-</u>	\$ <u>18,000.⁰⁰</u>
			<u>Eighteen thousand</u> per LS (written in words)		
7.	1	LS	Traffic control, all barricades, signage, notifications, flagmen, including all materials & labor	\$ <u>10,000-</u>	\$ <u>10,000.⁰⁰</u>
			<u>Ten thousand</u> per LS (written in words)		

TOTAL BASE BID (SUM ALL ITEMS)

595,340.00

Five hundred ninety five thousand
BASE BID (written in words)

TOTAL

three hundred forty dollars

TOTAL MATERIALS BID:

\$ 250,000.00

TOTAL LABOR BID:

\$ 395,340.00

BY:

Suzanne Hansen
Printed Name

Owner
Title

COMPANY:

Hansen Construction
Address

Phone No.

435-632-1070

City

State

Zip



Phone: 877 815 2800

PO Box 32577
Waco, Texas 76703-4200

BID BOND

Bond No. CNB-42548-00

KNOW ALL MEN BY THESE PRESENTS:

THAT we, DJ Hansen Construction Corp, as Principal, hereinafter called the Principal, and INSURORS INDEMNITY COMPANY, Waco, Texas, as Surety, hereinafter called the Surety, are held and firmly bound unto City of Nacogdoches, as Obligee, hereinafter called the Obligee, in the amount of 5 % of the amount of this bid not to exceed 5% of the Greatest Amount Bid Dollars (\$ 5% of G.A.B), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for

Bayou Loco Dam Emergency Spillway, Rip rap placement on dam, repair emergency spillway

NOW, THEREFORE, If the contract be timely awarded to the Principal and the Principal shall within such time as specified in the bid, enter into a contract in writing and give bond with good and sufficient surety, or, in the event of the failure of the Principal to enter into such Contract and give such bond or bonds; if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect

PROVIDED, HOWEVER, neither Principal nor Surety shall be bound hereunder unless Obligee prior to execution of the final contract shall furnish evidence of financing in a manner and form acceptable to Principal and Surety that financing has been firmly committed to cover the entire cost of the project.

SIGNED, SEALED AND DATED this 11th day of September, 2023.

Principal:

DJ Hansen Construction Corp

(Seal)

By: [Signature]

(title)

Surety:

INSURORS INDEMNITY COMPANY

(Seal)

By: [Signature]

Alec Kleiner, Attorney-in-Fact



Phone: 877 816 2800

PO Box 32577
Waco, Texas 76703-4200

IMPORTANT NOTICE - AVISO IMPORTANTE

To obtain information or make a complaint:

You may call Insurors Indemnity Company's toll-free telephone number for information or to make a complaint at:

1-877-816-2800

You may also write to Insurors Indemnity Company at:

P.O. Box 32577
Waco, TX 76703-4200
Or
225 South Fifth Street
Waco, TX 76701

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

1-800-252-3439

You may write the Texas Department of Insurance at:

Consumer Protection (111-1A)
P.O. Box 149091
Austin, TX 78714-9091
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Insurors Indemnity Company's para informacion o para someter una queja al

1-877-816-2800

Usted tambien puede escribir a Insurors Indemnity Company:

P.O. Box 32577
Waco, TX 76703-4200
O
225 South Fifth Street
Waco, TX 76701

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

Consumer Protection (111-1A)
P.O. Box 149091
Austin, TX 78714-9091
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concemiente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY
Waco, Texas**

KNOW ALL PERSONS BY THESE PRESENTS:

Number: CNB-42548-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of Texas, and authorized and licensed to do business in the State of Texas and the United States of America, does hereby make, constitute and appoint

Alec Kleiner of the City of Mesa, State of AZ

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

Attest:

Tammy Tieperman
Tammy Tieperman, Secretary

By:

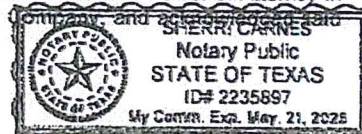
Dave E. Talbert
Dave E. Talbert, President

State of Texas

County of McLennan

On the 11th day of November, 2014, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and acknowledged said Power of Attorney to be the voluntary act and deed of the Company.

Sherry Carnes
Notary Public, State of Texas



Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 11th day of September, 2023

Tammy Tieperman
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 32577, WACO, TEXAS 76703 OR EMAIL US AT BONDDEPT@INSURORSINDEMNITY.COM.

CONTRACTOR DATA SHEET

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

Name of Company: DJ Hansen Construction Corp

Company Years in Business: 10+

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

Project	Municipality	\$ Amount	Type	Date
Elm Creek Sites	Elm Creek	350,000	Plunge pool dam	2021
Upper Washita	USDA/NRCS	795,000	Remedial Dam Rm.	2022
Upper Lake Fork	USDA/NRCS	1,498,176	Dam Repair	2020
McLennan County	McLennan County	998,000	Watershed	2023
Attoyac Bayou	USDA/NRCS	138,000	Remedial Repair	2023

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
David Hansen	30+	all above
Colton Hansen	5	
Bo Hansen	5	

Project Manager	Years Experience	Projects
David Hansen	30+	all above
Bo Hansen	5	

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

See attached

1.		

2.		

3.		

4.		

5.		

DJ Hansen Construction Corp
650 South 300 East
Ephraim, UT 84627
435-632-0929
hansentrucks@gmail.com

Utah General Contractor License B100 & E100
Incorporated since 2013
EIN 45-4282291
Registered to do business in Texas

Suzanne Hansen
President
650 S 300 E
Ephraim, UT 84627
435-632-1070
hansentrucks@gmail.com

David Hansen
Vice President
650 S 300 E
Ephraim, UT 84627
435-632-0929
davej.hansen@yahoo.com

Our main office is in Utah. We also have an office in Bynum, TX. We do most of our work in Texas. We have been in the construction business for over 30 years. We specialize in NAICS code 237990. We do excavation, dam repair, concrete work, and mostly civil engineering projects.

A few of our last projects are:

May 2021
Upper Washita River Watershed Site 23a Remedial Dam Repair
Canadian, TX
\$795,525.00
Remove and replace existing foundation drainage system. Install new foundation drainage system.
Worked with NRCS/USDA
Shane Ice
254-760-7445
shane.ice@usda.gov

October 2020
Upper Lake Fork Watershed Site 2
Greenville, TX
\$1,498,176.00
Dam Repair, new inlet tower
Worked with NRCS/USDA
Brannon Sledge
254-743-6354
brannon.sledge@usda.gov

2020-2021
Elm Creek Watershed
Repair Sites across Elm Creek Watershed
Worked with Elm Creek Water District to repair plunge pools and dams across the ELm Creek Watershed District.
Various Projects between \$125,000 and \$350,000.00
Calvin Sanders
sanders.mr@icloud.com
254-778-1961

We are licensed, bonded and insured

Bonding Solutions
Taylor Wilstead
1635 N Greenfield Rd
Mesa, AZ 85205
taylor@bondingsolutions.com
480-835-6745

Beehive Insurance Agency
302 W 5400 S
SLC, UT 84107
Lisa Gilbert
801-685-6868

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: Suzanne Hansen Title: Owner

Typed Name: Suzanne Hansen Company Name: DJ Hansen Construction

Phone No: 435-632-1070 Fax No: _____

Email: hansen trucks@gmail.com

Bid Address: 650 S. 300 E, Ephraim, Utah 84627
P.O. Box or Street City State Zip

Remit Address: Po Box 16, Bynum, TX 76631
P.O. Box or Street City State Zip

Federal Tax ID No: 45-4282291

DUNS No: 078445443

Date: 9/8/23

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

Applies to blasting operations

Collapse

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 **DJ Hansen Construction Corp.**, a limited liability corporation (the "Contractor"), for **Construction Services for Bayou Loco Dam Emergency Spillway Rehabilitation 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 Bayou Loco Dam Emergency Spillway Rehabilitation 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 **Five Hundred Ninety-Five Thousand Three Hundred Forty and 00/100 Dollars (\$595,340.00).**

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 insure 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 insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. 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 **60 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 Nacogdoches, 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 Nacogdoches 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.

DJ HANSEN CONSTRUCTION CORP

CITY OF NACOGDOCHES

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

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

General Decision Number: TX20230084 01/06/2023

Superseded General Decision Number: TX20220084

State: Texas

Construction Type: Heavy

Counties: Cass, Cherokee, Erath, Fannin, Franklin, Hood, Hopkins, Marion, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Rains, Red River, Somervell, Titus, Van Zandt and Wood Counties in Texas.

HEAVY CONSTRUCTION PROJECTS

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)(2)-(60).

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 \$16.20 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 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: 	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 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 2023.

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	01/06/2023

SUTX2009-129 04/21/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 13.00 **	0.00
LABORER: Common or General.....	\$ 8.61 **	0.00
LABORER: Pipelayer.....	\$ 9.94 **	0.00
OPERATOR: Backhoe/Trackhoe.....	\$ 11.75 **	0.00
OPERATOR: Bulldozer.....	\$ 14.25 **	0.00
OPERATOR: Loader (Front End)....	\$ 11.52 **	0.00
TRUCK DRIVER.....	\$ 10.80 **	0.26

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

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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) (ii)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write 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 by 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

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO

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 **Five Hundred Ninety-Five Thousand Three Hundred Forty and 00/100 Dollars (\$595,340.00)** 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 Bayou Loco Dam Emergency Spillway Rehabilitation 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 **Five Hundred Ninety-Five Thousand Three Hundred Forty and 00/100 Dollars (\$595,340.00)** 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 Bayou Loco Dam Emergency Spillway Rehabilitation 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

Bid Award – Lake Nacogdoches Spillway

- Emergency Spillway needs reconstruction and erosion protection

Bid Results:

<i>DJ Hansen Construction</i>	<i>\$ 595,340.00</i>
Shirley & Sons Construction	\$ 596,960.00
True Roads Construction	\$ 752,150.00
Solid Bridge Construction	\$ 999,800.00





City Council Meeting

Date: October 10, 2023

Agenda Item: 6.C.

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LLC for the 2023 WWTP Clarifier Rehabilitation Project in a not-to-exceed an amount of \$1,439,472.09 (Assistant Director of Public Works).

SUMMARY/BACKGROUND: Recently, Clarifier #4 at the Wastewater Treatment Plant (WWTP) failed, requiring full rehabilitation to be put back online in the wastewater treatment process. Clarifiers allow solids to settle out and return to the treatment process, resulting in a clear water that is then sent through the remainder of the process for final treatment and outfall into the creek. Clarifier #4 is one of four clarifiers available for treatment and provides necessary redundancy in the process, making its rehabilitation an urgent need. Clarifier #3 is also showing signs of impending issues and its rehabilitation has become a priority, as well.

On September 26, 2023, the City received bids for the 2023 WWTP Clarifier Rehabilitation Project with five (5) contractors submitting bids as follows:

Contractor Base Bid

(Clarifier #4) Add. Alt. Bid

(Clarifier #3)

Total

McKinney & Moore of Texas, LLC \$ 751,782.34 \$ 687,689.75 \$ 1,439,472.09

Horton Excavating \$ 848,500.00 \$ 734,000.00 \$ 1,582,500.00

McInnis Brothers Construction, Inc. \$ 899,900.00 \$ 868,900.00 \$ 1,768,800.00

Duplichain Contractors, LLC \$ 914,400.00 \$ 892,400.00 \$ 1,806,800.00

Allco, LLC \$ 975,362.13 \$ 900,837.13 \$ 1,876,199.26

McKinney & Moore of Texas, LLC was found to be the lowest responsible bidder. They are a Bullard-based contractor who is currently working for the City on another project and has successfully completed projects of a similar nature for other entities. It is recommended that both the base bid and the additive alternate bid be awarded to McKinney & Moore of Texas, LLC for the total amount of \$1,439,472.09. There is an adequate budget to fund this project.

FINANCIAL:

Item is budgeted:

Account No.: 30 179.39

Account Name: *Utility Fund CIP*

Amount: \$ 2,400,000

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

Infrastructure

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

ATTACHMENTS:

1. Award Recommendation
2. Contract
3. 6C PowerPoint Slide

October 3, 2023

City Council
City of Nacogdoches
202 E. Pilar
Nacogdoches, TX, 75961

Re: Recommendation of Award for the “2023 WWTP Clarifier Rehabilitation Project”

As you are aware, bids for the above-referenced project were solicited and opened on Tuesday, September 26th, 2023. A total of five bids were received and are summarized below. A complete bid tabulation is also attached. This project generally consists of the complete replacement of the Clarifier #4 equipment with an additive alternate consideration for replacing Clarifier #3 equipment as well.

Contractor	Base Bid Amount	Additive Alternate Bid Amount	Total Bid Amount
McKinney & Moore of Texas, LLC	\$751,782.34	\$687,689.75	\$1,439,472.09
Horton excavating	\$848,500.00	\$734,000.00	\$1,582,500.00
McInnis Brothers, Inc.	\$899,900.00	\$868,900.00	\$1,768,800.00
Duplichain Contractors, LLC	\$914,400.00	\$892,400.00	\$1,806,800.00
Allco, LLC	\$975,362.13	\$900,837.13	\$1,876,199.26

The lowest bidder for the project is:

McKinney & Moore of Texas, LLC
P.O. Box 908
Bullard, TX 75757
903-630-5655
email: tj@mckinneyandmoore.com

Our office has reviewed the qualifications of McKinney & Moore of Texas, LLC. Based on these qualifications, it is the recommendation of Schaumburg & Polk, Inc. that the City of Nacogdoches, award 2023 WWTP Clarifier Rehabilitation Project, for the total project amount of \$1,439,472.09. This amount includes the base bid clarifier #4 rehabilitation as well as the additive alternate clarifier #3 rehabilitation.

Sincerely,
Schaumburg & Polk, Inc.


Travis Reed, P.E.
Project Manager

City of Nacogdoches
2023 WWTP Clarifier Rehabilitation Project
September 26, 2023
City of Nacogdoches City Hall, 202 E. Pilar, Nacogdoches, TX 75961

Base Bid Items				McKinney & Moore		Horton Excavating		McInnis Brothers Construction, Inc.		Duplichain Contractors, LLC		Allco, LLC	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	1	LS	CONTRACTOR MOBILIZATION, BONDS AND INSURANCE	\$ 13,943.96	\$ 13,943.96	\$ 35,000.00	\$ 35,000.00	\$ 44,000.00	\$ 44,000.00	\$ 43,000.00	\$ 43,000.00	\$ 40,000.00	\$ 40,000.00
2	1	LS	EROSION CONTROL	4,499.48	4,499.48	500.00	500.00	1,500.00	1,500.00	1,000.00	1,000.00	3,120.00	3,120.00
3	1	LS	REMOVAL & DEMOLITION OF EXISTING SECONDARY CLARIFIER #4 EQUIPMENT	27,600.84	27,600.84	49,000.00	49,000.00	60,000.00	60,000.00	81,500.00	81,500.00	76,890.76	76,890.76
4	1	LS	PURCHASE & INSTALLATION OF SECONDARY CLARIFIER #4 FURNISHED EQUIPMENT	589,349.40	589,349.40	680,000.00	680,000.00	574,400.00	574,400.00	674,300.00	674,300.00	736,283.98	736,283.98
5	1	LS	CONCRETE REHABILITATION & EPOXY COATING AT CLARIFIER #4	92,619.70	92,619.70	65,000.00	65,000.00	199,000.00	199,000.00	93,600.00	93,600.00	94,964.00	94,964.00
6	1	LS	SALVAGE & REUSE EXISTING FRESH WATER DELIVERY SYSTEM TROUGH TO WEIRS AT CLARIFIER #4	8,768.96	8,768.96	4,000.00	4,000.00	6,000.00	6,000.00	6,000.00	6,000.00	9,103.39	9,103.39
7	1	LS	OWNER'S ALLOWANCE FOR FIELD CHANGES	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00
Total Base Bid (Items 1 - 7):				\$	751,782.34	\$	848,500.00	\$	899,900.00	\$	914,400.00	\$	975,362.13

ALTERNATE BID				McKinney & Moore		Horton Excavating		McInnis Brothers Construction, Inc.		Duplichain Contractors, LLC		Allco, LLC	
Bid No.	Quantity	Unit	Item Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1A	1	LS	SECONDARY CLARIFIER #3: REMOVAL, DEMOLITION OF EXISTING SECONDARY CLARIFIER EQUIPMENT, PURCHASE & INSTALLATION OF NEW SECONDARY CLARIFIER FURNISHED EQUIPMENT, CONCRETE REHABILITATION & EPOXY COATING ON EXPOSED CONCRETE	\$ 678,720.75	\$ 678,720.75	\$ 730,000.00	\$ 730,000.00	\$ 862,900.00	\$ 862,900.00	\$ 889,400.00	\$ 889,400.00	\$ 891,733.74	\$ 891,733.74
2A	1	LS	SALVAGE & REUSE EXISTING FRESH WATER DELIVERY SYSTEM TROUGH TO WEIRS AT CLARIFIER #3	8,969.00	8,969.00	4,000.00	4,000.00	6,000.00	6,000.00	3,000.00	3,000.00	9,103.39	9,103.39
Alternate Bid #1:				\$	687,689.75	\$	734,000.00	\$	868,900.00	\$	892,400.00	\$	900,837.13
Total Bid				\$	1,439,472.09	\$	1,582,500.00	\$	1,768,800.00	\$	1,806,800.00	\$	1,876,199.26



**BIDDING
and
CONTRACT DOCUMENTS

FOR

CONSTRUCTION SERVICES
FOR
2023 WWTP CLARIFIER REHABILITATION PROJECT

Bid #: 23-10-139**

**DUE DATE
SEPTEMBER 26, 2023 @ 2:00 PM**

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

www.nactx.us

TABLE OF CONTENTS

INSTRUCTION TO BIDDERS

CONTRACTOR'S PROPOSAL

CONTRACTOR DATA SHEET

CERTIFICATION

GENERAL AND SPECIAL CONDITIONS OF AGREEMENT

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 2023 WWTP Clarifier Rehabilitation Project** until **2:00 PM, September 26, 2023** 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

Complete rehabilitation of clarifiers at the Wastewater Treatment Plant including removal and demolition of existing clarifier equipment, furnish and installation of new clarifier equipment including, but not limited to, handrails, walkway, structural members, drive motor assembly, control panel, skim assembly and scum trough, concrete rehabilitation, epoxy coating and new PVC piping for fresh water delivery system to weirs, and all other work for a complete rehabilitation as specified in the plans and specifications.

A Pre-bid Meeting will be held at the Wastewater Treatment Plant, 2996 FM 1275, Nacogdoches, Texas at 11:00 AM on September 18, 2023. This meeting is not mandatory, but attendance is highly recommended.

COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents will be made available for no charge via www.civcastusa.com or on a flash drive (or other electronic means) at:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

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, 2023 WWTP Clarifier Rehabilitation 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
PO 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 Documents are available for no charge via www.civcastusa.com or on a flash drive (or other electronic means) by contacting the following:

City of Nacogdoches City Hall
Engineering Office
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

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 – Assistant Director of Public Works
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 the **Wastewater Treatment Plant, 2996 FM 1275, Nacogdoches, Texas at 11:00 AM on September 18, 2023**. 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
2023 WWTP CLARIFIER REHABILITATION PROJECT

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
GENERAL BID ITEMS				
1.	1	LS	CONTRACTOR MOBILIZATION, BONDS AND INSURANCE ALL IN ACCORDANCE WITH THE PLANS & SPECS, THE SUM OF <u>Thirteen thousand nine hundred + forty three</u> DOLLARS & <u>ninety six</u> CENTS Lump Sum (\$ <u>13,943.96</u>)	\$ <u>13,943.96</u>
2.	1	LS	EROSION CONTROL INCLUDING SWP3 SUBMISSION OF NOI AND NOT, INSTALLATION, INSPECTION, AND MAINTENANCE OF CONTROLS, AND SWP3 DOCUMENTATION THE SUM OF <u>Four thousand Four hundred + ninety nine</u> DOLLARS & <u>forty eight</u> CENTS Lump Sum (\$ <u>4,499.48</u>)	\$ <u>4,499.48</u>
3.	1	LS	REMOVAL & DEMOLITION OF EXISTING SECONDARY CLARIFIER #4 EQUIPMENT, INCLUDING, ACTIVITIES AND MATERIALS REQUIRED AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF <u>Twenty seven thousand six hundred</u> DOLLARS & <u>eighty four</u> CENTS Lump Sum (\$ <u>27,600.84</u>)	\$ <u>27,600.84</u>
4.	1	LS	PURCHASE & INSTALLATION OF SECONDARY CLARIFIER #4 FURNISHED EQUIPMENT, INCLUDING INSTALLING HANDRAILS & DRIVE MOTOR ASSEMBLY, INSTALLING BRIDGE MEMBERS, ALL FASTENERS, ANCHORS, ALL FIELD PREPARATION OF STEEL SURFACES, SKIM ASSEMBLY & SCUM TROUGH, COORDINATION WITH MANUFACTURER FOR STARTUP SERVICES, AND ALL APPURTENANCES FOR A COMPLETE AND OPERATIONAL SERVICES, ALL IN STRICT ACCORDANCE AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF <u>Five hundred eighty nine thousand three hundred + forty nine</u> DOLLARS & <u>forty</u> CENTS Lump Sum (\$ <u>589,349.40</u>)	\$ <u>589,349.40</u>

CITY OF NACOGDOCHES
2023 WWTP CLARIFIER REHABILITATION PROJECT

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
5.	1	LS	CONCRETE REHABILITATION & EPOXY COATING AT CLARIFIER #4, INCLUDING EXPOSED CONCRETE ABOVE THE MAX WATER LINE, ALL EQUIPMENT, ACTIVITIES AND MATERIALS REQUIRED AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF <u>Ninety two thousand six hundred + nineteen seventy</u> DOLLARS & CENTS Lump Sum (\$ <u>92,619.70</u>)	<u>\$92,619.70</u>
6.	1	LS	SALVAGE & REUSE EXISTING FRESH WATER DELIVERY SYSTEM TROUGH TO WEIRS AT CLARIFIER #4, INCLUDING NEW 1" PVC PIPING, ALL EQUIPMENT, HARDWARE, ACTIVITIES AND MATERIALS REQUIRED FOR A WORKING AND OPERABLE SYSTEM AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF <u>Eight thousand seven hundred + sixty eight ninety six</u> DOLLARS & CENTS Lump Sum (\$ <u>8,768.96</u>)	<u>\$8,768.96</u>
7.	1	LS	OWNER'S ALLOWANCE FOR FIELD CHANGES, INCLUDING ALL EQUIPMENT, ACTIVITIES AND MATERIALS REQUIRED AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF Fifteen Thousand DOLLARS & CENTS Lump Sum \$ 15,000.00	<u>\$15,000</u>
GENERAL BID ITEMS:			TOTAL BID (SUM ITEMS 1-7)	<u>\$751,782.34</u>

CITY OF NACOGDOCHES
2023 WWTP CLARIFIER REHABILITATION PROJECT

ITEM	QUANTITY	UNIT	DESCRIPTION & UNIT PRICE (FILL IN UNIT PRICE IN SCRIPT & NUMBERS)	TOTAL PRICE
------	----------	------	--	-------------

ADDITIVE ALTERNATE BID

1A 1 LS

Includes Re-grouting Cost
of Clarifier Floor

SECONDARY CLARIFIER #3: REMOVAL, DEMOLITION OF EXISTING SECONDARY CLARIFIER EQUIPMENT, PURCHASE & INSTALLATION OF NEW SECONDARY CLARIFIER FURNISHED EQUIPMENT, CONCRETE REHABILITATION & EPOXY COATING ON EXPOSED CONCRETE, INCLUDING INSTALLING HANDRAILS & DRIVE MOTOR ASSEMBLY, INSTALLING BRIDGE MEMBERS, ALL FASTENERS, ANCHORS, ALL FIELD PREPARATION OF STEEL SURFACES, SKIM ASSEMBLY & SCUM TROUGH, COORDINATION WITH MANUFACTURER FOR STARTUP SERVICES, ACTIVITIES AND MATERIALS REQUIRED AS PER THE PLANS AND SPECIFICATIONS, FOR AN ADDITIONAL 90 DAYS CONTRACT LENGTH, THE SUM OF

Six hundred seventy eight thousand
seven hundred + twenty DOLLARS &
Seventy Five CENTS

Lump Sum

(\$ 678,720.75)

\$ 678,720.75

2A 1 LS

SALVAGE & REUSE EXISTING FRESH WATER DELIVERY SYSTEM TROUGH TO WEIRS AT CLARIFIER #3, INCLUDING NEW 1" PVC PIPING, ALL EQUIPMENT, HARDWARE, ACTIVITIES AND MATERIALS REQUIRED FOR A WORKING AND OPERABLE SYSTEM AS PER THE PLANS AND SPECIFICATIONS, THE SUM OF

Eight thousand nine hundred
+ sixty nine DOLLARS &
no CENTS

Lump Sum

(\$ 8,689.00)

\$ 8,689.00

ADDITIVE ALTERNATE BID ITEMS:

TOTAL ADD ALT (SUM ITEMS 1-2)

687,689.75

BID OPENING SHEET

CITY OF NACOGDOCHES 2023 WWTP CLARIFIER REHABILITATION PROJECT

Awarded project may include base bid, alternate bids, or any combination of individual projects therein.

Final bid pricing will be tabulated by the Engineer. Bidder will be notified of errors or discrepancies in final bid tabulation.

Fill out all bid pricing in both words and numbers as directed on the Bid Proposal Form.

Bid bond and completed Bid Form with attachments must be included with the bid.

Addenda Acknowledged (list numbers) #1 9-21-23

TOTAL BASE BID, GENERAL

\$ 751,782.34

Name of Bidder: McKinney & Moore of Texas, LLC

Address: PO Box 908

Bullard, TX 75757

Phone: 903-630-3655

Email: tj@mckinneyandmoore.com

Signature: 

ADDENDUM 1

DATE: 9/21/2023

PROJECT: City of Nacogdoches, Texas
2023 WWTP Clarifier Rehabilitation Project

The following addendum to the Contract Documents is hereby incorporated into the project and shall be equally as binding as the original Contract Documents.

The contract documents, plans, and specifications for the above project are modified as follows:

Bid Opening Sheet Updates:

1. The original contract book did not include a bid opening sheet which included a signature line. Attached to this addendum includes the revised bid opening sheet which shall be included with all bids.

Technical Specifications:

464321.00 Circular Clarifier Equipment 1.7 Manufacturer Qualifications D:

1. The original technical specifications included equipment delivery to the site within 26 weeks of submittal approval. This addendum changes the max equipment delivery times to the site within 30 weeks of submittal approval.

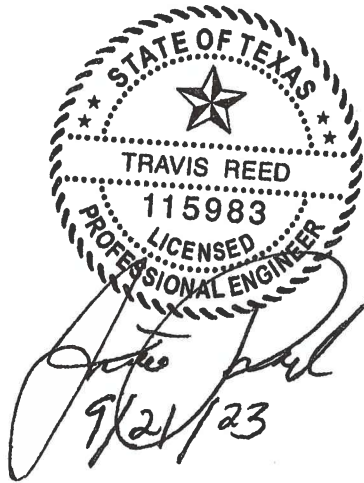
Clarification Items:

1. Materials for Weirs & Scum Baffles: The plans and Technical Specifications included some discrepancies on the materials used for the weirs and scum baffles, this addendum shall confirm that only stainless steel is to be used, Fiber-reinforced plastic is not acceptable.
2. Skimmers: The plans and Technical Specifications included some discrepancies on the number of skimmers per tank. However, this addendum shall confirm that each tank will have one skimmer assembly, not two.
3. Submerged and non-submerged Components: The plans and Technical Specifications included some discrepancies on the desired material of construction for the above mentioned. This addendum shall confirm that for all submerged and non-submerged components, shall be hot dipped galvanized.
4. Inlet Design: Traditional Energy Dissipating Inlet, and Influent Dispersion Wells designs are acceptable.
5. A pre-design drive by Clear Stream Environmental is an acceptable alternative to the specified worm gear drive.
6. Construction calendar days in the contract will not commence until delivery of the equipment.
7. Response to Question #1 - "Are there any electrical drawings/scope associated with this project?": **The new clarifier equipment will require new local controls provided by the manufacturer and installed by the contractor. The existing power supply to the clarifier is provided through a junction box mounted to the clarifier wall and shall be reused. No electrical engineering has been provided in the drawings. Electrical work shall be completed to NEC standards.**

If you have questions concerning this Addendum No. 1, please contact Travis Reed, P.E. of Schaumburg & Polk, Inc., 320 S Broadway Ave Suite 200, Tyler, Texas 75702 (903) 595-3913.

All bidders shall acknowledge receipt of this Addendum 1 by indicating in the appropriate space on the bid proposal and/or including a copy with your submitted bid.

End of Addendum No. 1
(2 Addendum Pages, 1 Bid Opening Sheet Attachment)



AIA Document 310 - 2010 Bid Bond

CONTRACTOR (Name, legal status and address):

McKinney and Moore of Texas, LLC
P.O. Box 908
Bullard, TX 75757

SURETY (Name, legal status and principal place of business):

FCCI Insurance Company
6300 University Parkway
Sarasota, FL 34240-8424

OWNER (Name, legal status and address):

City of Nacogdoches
202 East Pilar Street
Nacogdoches, TX 75961

Bond Amount: **Five Percent of the Greatest Amount Bid (5% GAB)**

PROJECT: (Name, location or address, and Project number, if any):

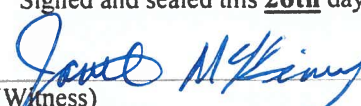
2023 WWTP Clarifier Rehabilitation Project, Nacogdoches, TX

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters in to a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding ninety (90) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond ninety (90) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed by the Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **26th** day of **September, 2023**


(Witness) _____ (Seal)


(Witness) _____ (Seal)

McKinney and Moore of Texas, LLC

(Principal) _____ (Seal)

(Name & Title): **T.J. McKinney, President**

FCCI Insurance Company

(Surety) _____

(Name & Title): **Allyson W. Dean, Attorney-in-Fact**

Language conforms to AIA Document A310 Bid Bond
BID70001ZZ0311f



GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Troy Russell Key; Debra Lee Moon; Andrea Rose Crawford; Sandra Lee Roney; Colin E. Conly;
John R. Ward; Monica Ruby Veazey; Thomas Douglas Moore; Emily Allison Mikeska; Allyson W. Dean;
Andrew Gareth Addison; Patrick Thomas Coyle; Michael Donald Hendrickson; Bryan Kelly Moore; Elizabeth Ortiz; Ana Owens; Betty J. Reeh

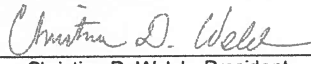
Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$20,000,000.00): \$20,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

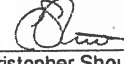
In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest:



Christina D. Welch, President
FCCI Insurance Company





Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

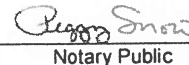
State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2027



PEGGY SNOW
Commission # HH 326535
Expires February 27, 2027



Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christopher Shoucair, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2027



PEGGY SNOW
Commission # HH 326535
Expires February 27, 2027



Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 26th day of September, 2023



Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call FCCI Insurance Group's (FCCI)* toll-free telephone number for information or to make a complaint at 1-800-226-3224.

You may also write to FCCI Insurance Group Compliance Department e-mail at StateComplaints@fcci-group.com.

For Claims, you may write to FCCI Insurance Group Claim Department e-mail at newclaim@fcci-group.com.

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at 1-800-252-3439.

You may write the Texas Department of Insurance:

PO Box 149104

Austin TX 78714-9104

Fax: 1-512-475- 1771

Web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES

Should you have a dispute concerning your premium or about a claim you should contact FCCI first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR BOND

This notice is for information only and does not become a part or condition of the attached documents.

*The FCCI Insurance Group includes the following insurance carriers: Brierfield Insurance Company, FCCI Advantage Insurance Company, FCCI Commercial Insurance Company, FCCI Insurance Company, Monroe Guaranty Insurance Company, and National Trust Insurance Company.

CONTRACTOR DATA SHEET



CONTRACTOR'S QUALIFICATION STATEMENT

FIRM	MCKINNEY & MOORE OF TEXAS, LLC				
ADDRESS	16600 St HWY 155, Suite 3007				
CITY	Tyler	STATE	TEXAS	ZIP	75703
PHONE	(903) 630-3655	CELL	(903) 780-7789		

LIMITED LIABILITY CORPORATION

Established under the laws of the State of Texas with the principal business in East Texas.

YEARS OF EXPERIENCE & PRINCIPALS OF FIRM:

NAME	TITLE	PHONE	NO. OF YEARS
T.J. MCKINNEY	MANAGING MEMBER	(903) 780-7789	22
JANET MCKINNEY	MANAGING MEMBER	(903) 521-8621	18
STAN MARTIN	OFFICE MANAGER	(903) 586-3911	40
GEORGE MCKINNEY	CONSULTANT	(903) 586-3911	50

FIRM HISTORY:

MCKINNEY & MOORE OF TEXAS, LLC	FROM	2022	TO	PRESENT
MCKINNEY & MOORE OF TEXAS, LP	FROM	2005	TO	2022
MCKINNEY & MOORE, INC	FROM	1975	TO	2005

FIRM'S AVERAGE ANNUAL CONSTRUCTION VOLUME: \$ 5 MIL

BANK REFERENCE:

AUSTIN BANK
 200 EAST COMMERCE ST., JACKSONVILLE, TX 75766
 CRYSTAL BATEMAN (903) 586-1526
CBATEMAN@AUSTINBANK.COM

BOND REFERENCE:

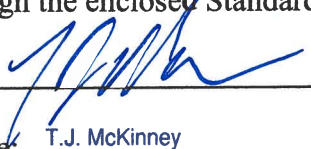
Mullis Newby Hurst
 5057 Keller Springs Rd, Suite 200, Addison, TX 75001
 Troy Key (297) 201-0105
Tkey@mnhins.com

MOST RECENT COMPLETED PROJECTS

COMPLETED PROJECTS	CONTRACT AMOUNT	COMPLETION YEAR	ENGINEER	ENG. PHONE #
Winona ISD Lift Station	\$ 374,294	2023	The C.T. Brannon Corporation	903-597-2122
City of Palestine - Sylvan St Sewer Line	\$ 237,655	2023	City	903-731-8441
City of Emory - Lift Station	\$ 197,623	2022	Hayter Engineering	903-785-0303
City of Palestine - RFP-018	\$ 157,600	2022	City	903-731-8441
City of Palestine - Waterline Replacement	\$ 246,501	2022	City	903-731-8441
Smith County Sand Flat WSC	\$ 402,575	2021	Hayes Engineering	903-758-2010
Murchison Sewer Improvements	\$ 126,916	2021	Velvin & Weeks	903-675-3903
Canton WWTP Rehab	\$ 182,266	2021	Capco Engineers	903-531-9670
COT Force Main & ARV Replacement	\$ 214,037	2021	Langan / Adams	903-324-8412
City of Yantis Lift Station Rehabilitation	\$ 207,945	2021	Hayter Engineering	903-785-0303
Beto Unit WWTP Refurbish Clarifier	\$ 335,543	2021	TDCJ	304-553-4873
Sand Flat WSC High Service Pump Station	\$ 397,600	2020	Hayes Engineering	903-758-2010
Kaufman Sewer Improvements	\$ 101,750	2020	Freeman-Millican	214-503-0555
City of Quinlan WWTP & Lift Station Imp	\$ 219,230	2019	Hayter Engineering	903-785-0303
Coffield Clarifier Repairs	\$ 42,750	2019	TDCJ	304-553-4873
Spring Hill ISD Baseball Complex	\$ 164,350	2019	N/A	903-939-0240
Brookshire WTP RAW Water Pump Station	\$ 143,825	2019	KSA Engineers	972-542-2995
Josephine WWTP	\$ 461,622	2019	DBI Engineers	972-787-7777

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: President

Typed Name: T.J. McKinney Company Name: McKinney & Moore of Texas, LLC

Phone No: 903-630-3655 Fax No: _____

Email: tj@mckinneyandmoore.com

Bid Address: PO Box 908 Bullard TX 75757
P.O. Box or Street City State Zip

Remit Address: _____
P.O. Box or Street City State Zip

Federal Tax ID No: 88-4139601

DUNS No: 18841396015

Date: 04 / 28 / 2023

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

Applies to blasting operations

Collapse

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 **McKinney & Moore of Texas, LLC**, a limited liability corporation (the "Contractor"), for **Construction Services for 2023 WWTP Clarifier Rehabilitation 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 2023 WWTP Clarifier Rehabilitation 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 **One Million Four Hundred Thirty-Nine Thousand Four Hundred Seventy-Two and 09/100 Dollars (\$1,439,472.09).**

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 insure 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 insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. 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 **90 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 Nacogdoches, 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 Nacogdoches 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.

MCKINNEY & MOORE OF TEXAS, LLC

CITY OF NACOGDOCHES

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

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

General Decision Number: TX20230084 01/06/2023

Superseded General Decision Number: TX20220084

State: Texas

Construction Type: Heavy

Counties: Cass, Cherokee, Erath, Fannin, Franklin, Hood, Hopkins, Marion, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Rains, Red River, Somervell, Titus, Van Zandt and Wood Counties in Texas.

HEAVY CONSTRUCTION PROJECTS

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)(2)-(60).

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 \$16.20 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 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 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 2023.

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 01/06/2023

SUTX2009-129 04/21/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 13.00 **	0.00
LABORER: Common or General.....	\$ 8.61 **	0.00
LABORER: Pipelayer.....	\$ 9.94 **	0.00
OPERATOR: Backhoe/Trackhoe.....	\$ 11.75 **	0.00
OPERATOR: Bulldozer.....	\$ 14.25 **	0.00
OPERATOR: Loader (Front End)....	\$ 11.52 **	0.00
TRUCK DRIVER.....	\$ 10.80 **	0.26

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

=====
** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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) (ii)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request

review and reconsideration from the Wage and Hour Administrator
(See 29 CFR Part 1.8 and 29 CFR Part 7). Write 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 by 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

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO

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 **One Million Four Hundred Thirty-Nine Thousand Four Hundred Seventy-Two and 09/100 Dollars (\$1,439,472.09)** 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 2023 WWTP Clarifier Rehabilitation 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 **One Million Four Hundred Thirty-Nine Thousand Four Hundred Seventy-Two and 09/100 Dollars (\$1,439,472.09)** 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 2023 WWTP Clarifier Rehabilitation 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

CITY OF NACOGDOCHES, TEXAS

TECHNICAL SPECIFICATIONS

FOR

2023 WWTP CLARIFIER REHABILITATION PROJECT



SCHAUMBURG & POLK, INC.

BEAUMONT | HOUSTON | RICHARDSON
KYLE | PORT ARTHUR | TERRELL | TYLER

320 S. Broadway Ave, Suite 200
Tyler, TX 75702
903.595.3913

Firm Registration No. F-520



SET NO.	JOB NO. 918112.00
	DATE 08/23

AUGUST 2023

TECHNICAL SPECIFICATIONS – TABLE OF CONTENTS
CITY OF NACOGDOCHES, TX
2023 WWTP CLARIFIER REHABILITATION PROJECT

Division	Section Title	Pages
----------	---------------	-------

SPECIFICATIONS GROUP

Site and Infrastructure Subgroup

DIVISION03 - CONCRETE

031000.00	CONCRETE FORMING & ACCESSORIES	9
032000.00	CONCRETE REINFORCINGS	5
033000.00	CAST-IN-PLACE CONCRETE	10
033900.00	CONCRETE CURING	2
036000.00	GROUTING	5

DIVISION 09 - FINISHES

099656.00	TNEMEC EPOXY COATINGS	6
-----------	-----------------------	---

Process Equipment Subgroup

DIVISION 46 - WATER AND WASTEWATER EQUIPMENT

464321.00	CIRCULAR CLARIFIER EQUIPMENT	10
-----------	------------------------------	----

SECTION 03 10 00 – CONCRETE FORMING & ACCESSORIES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Formwork for cast-in place concrete.
2. Shoring, bracing, and anchorage.
3. Form accessories.
4. Form stripping.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

- A. All items including but not limited to materials, equipment, overhead, coordination, testing, labor, and supervision required for a complete and operable project shall be included in the bid for the project. All measurement and payment shall be based on the items of work that are specifically listed in the Bid Proposal. Any items not specifically listed in the Bid Proposal shall be considered subsidiary to unit cost items within the Bid Proposal and no additional payment shall be made for subsidiary items.

1.3 REFERENCES

A. American Concrete Institute:

1. ACI 117 - Standard Specifications for Tolerances for Concrete Construction and Materials.
2. ACI 301 - Specifications for Structural Concrete.
3. ACI 318 - Building Code Requirements for Structural Concrete.
4. ACI 347 - Guide to Formwork for Concrete.

B. American Forest and Paper Association:

1. AF&PA - National Design Specifications for Wood Construction.

C. The Engineered Wood Association:

1. APA/EWA PS 1 - Voluntary Product Standard for Construction and Industrial Plywood.

D. American Society of Mechanical Engineers:

1. ASME A17.1 - Safety Code for Elevators and Escalators.

E. ASTM International:

1. ASTM D1751 - Standard Specification for Preformed Expansion Joint Filler for Concrete Paving and Structural Construction (Nonextruding and Resilient Bituminous Types).
2. ASTM E96/E96M - Standard Test Methods for Water Vapor Transmission of Materials.

F. West Coast Lumber Inspection Bureau:

1. WCLIB - Standard Grading Rules for West Coast Lumber.

1.4 DESIGN REQUIREMENTS

- A. Design, engineer and construct formwork, shoring and bracing in accordance with the ACI to conform to design requirements to achieve concrete shape, line and dimension as indicated in the plan Drawings.

1.5 SUBMITTALS

- A. If a releasing agent is used, provide a product data and application method submittal.
- B. Only provide the following formwork submittals when structures exceed 20' in length or when noted in the Plan Drawings.

1. Shop Drawings Signed and sealed by professional engineer.

- a. Submit formwork, shoring, and reshoring shop drawings.
- b. Indicate the following:

- 1) Pertinent dimensions, openings, methods of construction, types of connections, materials, joint arrangement and details, ties and shores, location of framing, studding and bracing, and temporary supports.
- 2) Means of leakage prevention for concrete exposed to view in finished construction.
- 3) Sequence and timing of erection and stripping assumed compressive strength at time of stripping, height of lift and height of drop during placement.
- 4) Vertical, horizontal and special loads in accordance with ACI 347, Section 2.2 and camber diagrams, when applicable.
- 5) Notes to formwork erector showing size and location of conduits and piping embedded in concrete in accordance with ACI 318, Section 6.3.
- 6) Procedure and schedule for removal of shores and installation and removal of reshores.

2. Product Data: Submit data on void form materials and installation requirements.

3. Design Data: Signed and sealed by professional engineer.

- a. Indicate design data for any required formwork, shoring, and reshores.
- b. Indicate loads transferred to structure during process of concreting, shoring and reshoring.
- c. Include structural calculations to support design.

1.6 QUALITY ASSURANCE

- A. Perform Work in accordance with the ACI.
- B. For wood products furnished for work of this Section, comply with AF&PA.
- C. Perform Work in accordance with all local and state standard specifications.

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Deliver void forms and installation instructions in manufacturer's packaging.
- B. Store off ground in ventilated and protected manner to prevent deterioration from moisture.

1.8 COORDINATION

- A. Coordinate this Section with other sections of work, requiring attachment of components to formwork.

PART 2 - PRODUCTS

2.1 WOOD FORM MATERIALS

- A. Form Materials: At discretion of Contractor.
 - 1. Forms shall be of suitable material and of a type, size, shape, quality and strength to insure construction as designed.
 - 2. Wood products for use in forming concrete shall conform to ACI Standard SP-4 Formwork for Concrete.
 - 3. The forms shall be true to line and grade, mortar tight and sufficiently rigid to resist deflection during placing of the concrete. The responsibilities for adequacy shall rest with the CONTRACTOR.
 - 4. All dirt, chips, sawdust, nails and other foreign matter shall be completely removed from forms before any concrete is deposited therein. The surfaces of forms shall be smooth and free from irregularities, dents, sags and holes that would deface the finished surfaces. Forms previously used shall be thoroughly cleaned of all dirt, mortar and foreign matter before being reused.

2.2 PREFABRICATED FORMS

- A. Furnish and install materials in accordance with state, local, and manufacturer's specifications & standards.
- B. Preformed Steel Forms: Minimum 16gage matched, tight fitting, stiffened to support weight of concrete without deflection detrimental to tolerances and appearance of finished surfaces.
- C. Glass Fiber Fabric Reinforced Plastic Forms: Matched, tight fitting, stiffened to support weight of concrete without deflection detrimental to tolerances and appearance of finished concrete surfaces.
- D. Pan Type: Steel or Glass fiber of size and profile required.
- E. Tubular Column Type: Round, spirally wound laminated fiber, wood, or glass fiber material, surface treated with release agent, non-reusable, sizes as indicated in drawings.
- F. Void Forms: Moisture resistant treated paper faces, biodegradable, structurally sufficient to support weight of wet concrete mix until initial set; min 2inches thick.
- G. Steel Forms: Sheet steel, suitably reinforced, and designed for particular use indicated on Drawings.

- H. Form Liners: Smooth, durable, grainless and non-staining hardboard, unless otherwise indicated on Drawings.
- I. Framing, Studding and Bracing: Stud or No. 3 structural light framing grade.

2.3 FORMWORK ACCESSORIES

- A. Form Ties: Metal form ties of an approved type or an approved substitute shall be used to hold forms in place. All metal ties or other appliances used inside the forms to hold them in correct alignment shall be removed to a depth of at least ½-inches from the surface of the concrete. Burning off of rods, bolts or ties shall not be permitted. The cavities produced shall be carefully cleaned and completely filled with retempered sand-cement mortar mixed in proportions of 1-to-3 and the concrete shall be left smooth and even.
- B. Spreaders: Standard, non-corrosive metal form clamp assembly, of type acting as spreaders and leaving no metal within 1 inch of concrete face. Wire ties, wood spreaders, through bolts or pipe spreaders are not permitted.
- C. Form Anchors and Hangers:
 - 1. Do not use anchors and hangers exposed concrete leaving exposed metal at concrete surface.
 - 2. Symmetrically arrange hangers supporting forms from structural steel members to minimize twisting or rotation of member.
 - 3. Penetration of structural steel members is not permitted.
- D. Form Release Agent: The contractor is allowed, but not required to use form release agents. Colorless mineral oil that will not stain concrete, or absorb moisture, or impair natural bonding or color characteristics of coating intended for use on concrete. Care shall be exercised that no releasing agent is deposited on previously placed concrete, reinforcement or embedded metal items.
- E. Vapor Retarder: Where indicated on Drawings, 8 mil thick polyethylene sheet.
- F. Bituminous Joint Filler: ASTM D1751.
- G. Nails, Spikes, Lag Bolts, Through Bolts, Anchorages: Size, strength and character to maintain formwork in place while placing concrete.
- H. Water Stops: Type & size as indicated in drawings. Minimum requirements: Rubber/PVC, minimum 1,750 psi tensile strength, minimum 50 degrees F to plus 175 degrees F working temperature range, min 6 inch wide, maximum possible lengths, ribbed profile, preformed corner sections, heat welded jointing. Water stops are not required where walls act strictly as baffles. Water stops must be cast in to concrete on both sides formed into keyways. Not to be inserted into concrete after concrete is poured.

2.4 COATINGS

- A. Coatings for Aluminum: Polyamide epoxy finish coat with paint manufacturer's recommended primer for aluminum substrate. Apply one coat primer and one coat finish

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify lines, levels, and centers before proceeding with formwork. Verify dimensions agree with Drawings.
- B. When formwork is placed after reinforcement resulting in insufficient concrete cover over reinforcement before proceeding, request instructions from Engineer.

3.2 INSTALLATION

- A. Earth Forms: Earth forms are not permitted unless contractor receives written approval from engineer. When approved, the following shall apply:
 - 1. Trench earth forms neatly, accurately, and at least 2 inches wider than footing widths indicated on Drawings.
 - 2. Trim sides and bottom of earth forms.
 - 3. Construct wood edge strips at top of each side of trench to secure reinforcing and prevent trench from sloughing.
 - 4. Form sides of footings where earth sloughs.
 - 5. Tamp earth forms firm and clean forms of debris and loose material before depositing concrete.
- B. Formwork - General:
 - 1. Provide top form for sloped surfaces steeper than 1.5 horizontal to 1 vertical to hold shape of concrete during placement, unless it can be demonstrated that top forms can be omitted.
 - 2. Construct forms to correct shape and dimensions, mortar-tight, braced, and of sufficient strength to maintain shape and position under imposed loads from construction operations.
 - 3. Camber forms where necessary to produce level finished soffits unless otherwise shown on Drawings.
 - 4. Carefully verify horizontal and vertical positions of forms. Correct misaligned or misplaced forms before placing concrete.
 - 5. Complete wedging and bracing before placing concrete.
- C. Forms for Smooth Finish Concrete:
 - 1. Smooth finish concrete is required for all surfaces that shall not be completely enclosed or hidden below the permanent surface of the ground.
 - 2. Use steel, plywood or lined board forms.
 - 3. Use clean and smooth plywood and form liners, uniform in size, and free from surface and edge damage capable of affecting resulting concrete finish.
 - 4. Install form lining with close-fitting square joints between separate sheets without springing into place.
 - 5. Use full size sheets of form lines and plywood wherever possible.
 - 6. Tape joints to prevent protrusions in concrete.
 - 7. Use care in forming and stripping wood forms to protect corners and edges.
 - 8. Level and continue horizontal joints.
 - 9. Keep wood forms wet until stripped.
 - 10. Any lumber or material which becomes badly checked or warped prior to placing concrete shall not be used.

D. Architectural Form Liners:

1. Erect architectural side of formwork first.
2. Attach form liner to forms before installing form ties.
3. Install form liners square, with joints and pattern aligned.
4. Seal form liner joints to prevent grout leaks.
5. Dress joints and edges to match form liner pattern and texture.

E. Forms for Surfaces to Receive Membrane Waterproofing: Use plywood or steel forms. After erection of forms, tape form joints to prevent protrusions in concrete.

F. Framing, Studding and Bracing:

1. Space studs at 16 inches on center maximum for boards and 12 inches on center maximum for plywood.
2. Size framing, bracing, centering, and supporting members with sufficient strength to maintain shape and position under imposed loads from construction operations.
3. Construct beam soffits of material minimum of 2 inches thick.
4. Distribute bracing loads over base area on which bracing is erected.
5. When placed on ground, protect against undermining, settlement or accidental impact.

G. Erect formwork, shoring, and bracing to achieve design requirements, in accordance with requirements of ACI 301 and ACI 318.

H. Arrange and assemble formwork to permit dismantling and stripping. Do not damage concrete during stripping. Permit removal of remaining principal shores.

I. Obtain Architect/Engineer's approval before framing openings in structural members not indicated on Drawings.

J. Install fillet and chamfer strips on external corners of beams, joists and, columns

K. Install void forms in accordance with manufacturer's recommendations.

L. Do not reuse wood formwork more than 3 times for concrete surfaces to be exposed to view. Do not patch formwork.

3.3 APPLICATION - FORM RELEASE AGENT

A. Apply form release agent on formwork in accordance with manufacturer's recommendations.

B. Apply PRIOR to placement of reinforcing steel, anchoring devices, and embedded items. Care shall be exercised that no releasing agent is deposited on previously placed concrete, reinforcement or embedded metal items.

C. Do not apply form release agent where concrete surfaces are indicated to receive special finishes or applied coverings that are affected by agent. Soak inside surfaces of untreated forms with clean water. Keep surfaces coated prior to placement of concrete.

D. Reuse and Coating of Forms: Thoroughly clean forms and reapply form coating before each reuse. For exposed work, do not reuse forms with damaged faces or edges. Apply form coating to forms in accordance with manufacturer's specifications. Do not coat forms for concrete indicated to receive "scored finish". Apply form coatings before placing reinforcing steel.

3.4 INSTALLATION - INSERTS, EMBEDDED PARTS, AND OPENINGS

- A. Install formed openings for items to be embedded in or passing through concrete work.
- B. Locate and set in place items required to be cast directly into concrete.
- C. Coordinate with Work of other sections & plan drawings in forming and placing openings, slots, reglets, recesses, sleeves, bolts, anchors, other inserts, and components of other Work.
- D. Install accessories straight, level, and plumb. Ensure items are not disturbed during concrete placement.
- E. Install water stops continuous without displacing reinforcement. Heat seal joints watertight
- F. Provide temporary ports or openings in formwork where required to facilitate cleaning and inspection. Locate openings at bottom of forms to allow flushing water to drain.
- G. Close temporary openings with tight fitting panels, flush with inside face of forms, and neatly fitted so joints will not be apparent in exposed concrete surfaces.
- H. Form Ties:
 - 1. Use sufficient strength and sufficient quantity to prevent spreading of forms.
 - 2. Place ties at least 1 inch away from finished surface of concrete.
 - 3. Leave inner rods in concrete when forms are stripped.
 - 4. Space form ties equidistant, symmetrical and aligned vertically and horizontally unless otherwise shown on Drawings.
- I. Arrangement: Arrange formwork to allow proper erection sequence and to permit form removal without damage to concrete.
- J. Construction Joints:
 - 1. Install surfaced pouring strip where construction joints intersect exposed surfaces to provide straight line at joints.
 - 2. Just prior to subsequent concrete placement, remove strip and tighten forms to conceal shrinkage.
 - 3. Show no overlapping of construction joints. Construct joints to present same appearance as butted plywood joints.
 - 4. Arrange joints in continuous line straight, true and sharp.
- K. Embedded Items:
 - 1. Make provisions for pipes, sleeves, anchors, inserts, reglets, anchor slots, nailers, water stops, and other features.
 - 2. Do not embed wood or uncoated aluminum in concrete.
 - 3. Obtain installation and setting information for embedded items furnished under other Specification sections.
 - 4. Securely anchor embedded items in correct location and alignment prior to placing concrete.
 - 5. Verify conduits and pipes, including those made of coated aluminum, meet requirements of ACI 318 for size and location limitations.
- L. Openings for Items Passing Through Concrete:

1. Frame openings in concrete where indicated on Drawings. Establish exact locations, sizes, and other conditions required for openings and attachment of work specified under other sections.
2. Coordinate work to avoid cutting and patching of concrete after placement.
3. Perform cutting and repairing of concrete required as result of failure to provide required openings.

M. Screeds:

1. Set screeds and establish levels for tops of concrete slabs and levels for finish on slabs.
2. Slope slabs to drain where required or as shown on Drawings.
3. Before depositing concrete, remove debris from space to be occupied by concrete and thoroughly wet forms. Remove freestanding water.

N. Scream Supports:

1. For concrete over waterproof membranes and vapor retarder membranes, use cradle, pad or base type screed supports which will not puncture membrane.
2. Staking through membrane is not be permitted.

O. Cleanouts and Access Panels:

1. Provide removable cleanout sections or access panels at bottoms of forms to permit inspection and effective cleaning of loose dirt, debris and waste material.
2. Clean forms and surfaces against which concrete is to be placed. Remove chips, saw dust and other debris. Thoroughly blow out forms with compressed air just before concrete is placed.

3.5 FORM CLEANING

- A. Clean forms as erection proceeds, to remove foreign matter within forms.
- B. Clean formed cavities of debris prior to placing concrete.
- C. Flush with water or use compressed air to remove remaining foreign matter. Ensure that water and debris drain to exterior through clean-out ports.
- D. During cold weather, remove ice and snow from within forms. Do not use de-icing salts. Do not use water to clean out forms, unless formwork and concrete construction proceed within heated enclosure. Use compressed air or other means to remove foreign matter.

3.6 FORM REMOVAL

- A. Do not remove forms or bracing until concrete has gained sufficient strength to carry its own weight and imposed loads and removal has been approved by Architect/Engineer.
- B. Loosen forms carefully. Do not wedge pry bars, hammers, or tools against finish concrete surfaces scheduled for exposure to view. Do not jar the formwork during the initial set.
- C. Store removed forms in manner that surfaces to be in contact with fresh concrete will not be damaged. Discard damaged forms.
- D. Leave forms in place for minimum number of days as specified in ACI 347.

3.7 ERECTION TOLERANCES

- A. Construct formwork to maintain tolerances required by ACI 301 and ACI 318.

3.8 FIELD QUALITY CONTROL

- A. Inspect erected formwork, shoring, and bracing to ensure that work is in accordance with formwork design, and that supports, fastenings, wedges, ties, and items are secure.
- B. Notify Architect/Engineer after placement of reinforcing steel in forms, but prior to placing concrete. Contractor shall give the owner & engineer a minimum 24 hours notice before beginning placement of concrete to permit the inspection of forms & rebar
- C. Schedule concrete placement to permit formwork inspection before placing concrete.

END OF SECTION

SECTION 03 20 00 - CONCRETE REINFORCING

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Reinforcing bars.
2. Welded wire fabric.
3. Reinforcement accessories.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

- A. All items including but not limited to materials, equipment, overhead, coordination, testing, labor, and supervision required for a complete and operable project shall be included in the bid for the project. All measurement and payment shall be based on the items of work that are specifically listed in the Bid Proposal. Any items not specifically listed in the Bid Proposal shall be considered subsidiary to unit cost items within the Bid Proposal and no additional payment shall be made for subsidiary items.

1.3 REFERENCES

A. American Concrete Institute:

1. ACI 301 - Specifications for Structural Concrete.
2. ACI 318 - Building Code Requirements for Structural Concrete.
3. ACI 530.1 - Specifications for Masonry Structures.
4. ACI SP-66 - ACI Detailing Manual.

B. ASTM International:

1. ASTM A82/A82M - Standard Specification for Steel Wire, Plain, for Concrete Reinforcement.
2. ASTM A184/A184M - Standard Specification for Fabricated Deformed Steel Bar Mats for Concrete Reinforcement.
3. A185/A185M-07 Standard Specification for Steel Welded Wire Reinforcement, Plain, for Concrete.
4. ASTM A496/A496M - Standard Specification for Steel Wire, Deformed, for Concrete Reinforcement.
5. ASTM A497/A497M - Standard Specification for Steel Welded Wire Fabric, Deformed, for Concrete Reinforcement.
6. ASTM A615/A615M - Standard Specification for Deformed and Plain Billet-Steel Bars for Concrete Reinforcement.
7. ASTM A704/A704M - Standard Specification for Welded Steel Plain Bar or Rod Mats for Concrete Reinforcement.
8. ASTM A706/A706M - Standard Specification for Low-Alloy Steel Deformed and Plain Bars for Concrete Reinforcement.
9. ASTM A767/A767M - Standard Specification for Zinc-Coated (Galvanized) Steel Bars for Concrete Reinforcement.
10. ASTM A775/A775M - Standard Specification for Epoxy-Coated Steel Reinforcing Bars.

11. ASTM A884/A884M - Standard Specification for Epoxy-Coated Steel Wire and Welded Wire Reinforcement.
12. ASTM A934/A934M - Standard Specification for Epoxy-Coated Prefabricated Steel Reinforcing Bars.
13. ASTM A996/A996M - Standard Specification for Rail-Steel and Axle-Steel Deformed Bars for Concrete Reinforcement.

C. American Welding Society:

1. AWS D1.4 - Structural Welding Code - Reinforcing Steel.

D. Concrete Reinforcing Steel Institute:

1. CRSI - Manual of Standard Practice.
2. CRSI - Placing Reinforcing Bars.

1.4 SUBMITTALS

- A. Shop Drawings: Indicate bar sizes, spacing's, locations, and quantities of reinforcing steel and welded wire fabric, bending and cutting schedules, and supporting and spacing devices
- B. Certificates: Submit AWS qualification certificate for welders employed on the Work.
- C. Manufacturer's Certificate: Certify Products meet or exceed specified requirements.
 1. Submit certified copies of mill test report of reinforcement materials analysis.

1.5 QUALITY ASSURANCE

- A. Perform Work in accordance with ACI 301 and ACI 318
- B. Prepare shop drawings in accordance with ACI SP-66.
- C. Perform Work in accordance with state and local standard specifications.

1.6 QUALIFICATIONS

- A. Welders: AWS qualified within previous 12 months.

1.7 COORDINATION

- A. Coordinate with placement of formwork, formed openings and other Work.

PART 2 - PRODUCTS

2.1 REINFORCEMENT

- A. Reinforcing Steel: ASTM A615/A615M, 60 ksi yield grade, deformed billet bars, uncoated finish.

- B. Deformed Reinforcement: ASTM A996/A996M; 60 ksi yield strength, Type R steel bars, unfinished.
- C. Welded Deformed Wire Fabric: ASTM A497/A497M; in flat sheets; unfinished.
- D. Structural steel shall be A-36 unless otherwise noted on plans.

2.2 ACCESSORY MATERIALS

- A. Tie Wire: Minimum 16 gage annealed type.
- B. Chairs, Bolsters, Bar Supports, Spacers: Sized and shaped for strength and support of reinforcement during concrete placement conditions including load bearing pad on bottom to prevent vapor retarder puncture.
- C. Special Chairs, Bolsters, Bar Supports, Spacers Adjacent to Weather Exposed Concrete Surfaces: Plastic-coated steel type; size and shape to meet Project conditions.

2.3 FABRICATION

- A. Fabricate concrete reinforcement in accordance with CRSI Manual of Practice ACI 318.
- B. Form standard hooks for 180 degree bends, 90 degree bend, stirrup and tie hooks, as indicated on Drawings.
- C. Form reinforcement bends with minimum diameters in accordance with ACI 318.
- D. Fabricate column reinforcement with offset bends at reinforcement splices.
- E. Form spiral column reinforcement from minimum 3/8 inch diameter continuous deformed bar or wire.
- F. Form ties and stirrups from the following:
 - 1. For bars No. 10 and Smaller: No. 3 deformed bars.
 - 2. For bars No. 11 and Larger: No. 4 deformed bars.
- G. Weld reinforcement in accordance with AWS D1.4.
- H. Locate reinforcement splices not indicated on Drawings, at point of minimum stress.

PART 3 - EXECUTION

3.1 PLACEMENT

- A. Place, support and secure reinforcement against displacement. Do not deviate from required position beyond specified tolerance.
 - 1. Do not weld crossing reinforcement bars for assembly except as permitted by Engineer.
- B. Do not displace or damage vapor retarder.

- C. Accommodate placement of formed openings.
- D. Space reinforcement bars with minimum clear spacing in accordance with ACI 318.
 - 1. Where bars are indicated in multiple layers, place upper bars directly above lower bars.
- E. Maintain concrete cover around reinforcement in accordance with ACI 318 as follows:

Reinforcement Location		Minimum Concrete Cover
Footings and Concrete Formed Against Earth		3 inches
Concrete exposed to earth or weather	No. 6 bars and larger	2 inches
	No. 5 bars and smaller	1-1/2 inches
Supported Slabs, Walls, and Joists	No. 14 bars and larger	1-1/2 inches
	No. 11 bars and smaller	3/4 inches
Beams and Columns		1-1/2 inches
Shell and Folded Plate Members	No. 6 bars and larger	3/4 inches
	No. 5 bars and smaller	1/2 inches

- F. If applicable, bond and ground reinforcement in accordance with the requirements outlined in the electrical plans.

3.2 ERECTION TOLERANCES

- A. Install reinforcement within the following tolerances for flexural members, walls, and compression members:

Reinforcement Depth	Depth Tolerance	Concrete Cover Tolerance
Greater than 8 inches	plus or minus 3/8 inch	minus 3/8 inch
Less than 8 inches	plus or minus 1/2 inch	minus 1/2 inch

- B. Install reinforcement within the tolerances specified in ACI 530.1 for foundation walls.

3.3 FIELD QUALITY CONTROL

- A. Perform field inspection and testing in accordance with ACI 318.
- B. Provide free access to Work and cooperate with appointed firm.
- C. Reinforcement Inspection:
 - 1. Placement Acceptance: Specified and ACI 318 material requirements and specified placement tolerances.
 - 2. Welding: Inspect welds in accordance with AWS D1.1.
 - 3. Periodic Placement Inspection: Inspect for correct materials, fabrication, sizes, locations, spacing, concrete cover, and splicing.
 - 4. Weldability Inspection: Inspect for reinforcement weldability when formed from steel other than ASTM A706/A706M.
 - 5. Continuous Weld Inspection: Inspect reinforcement as required by ACI 318.
 - 6. Periodic Weld Inspection: Other welded connections.

END OF SECTION

SECTION 03 30 00 - CAST-IN-PLACE CONCRETE

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes Cast-in-Place Concrete for Following Items:

1. Building frame members.
2. Beams, lintels, and columns.
3. Shear walls.
4. Retaining walls.
5. Foundation walls.
6. Footings.
7. Supported slabs.
8. Slabs on grade.
9. Control, expansion, and contraction joint devices.
10. Equipment pads.
11. Light pole base.
12. Flagpole base.
13. Thrust blocks.
14. Manholes.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

A. All items including but not limited to materials, equipment, overhead, coordination, testing, labor, and supervision required for a complete and operable project shall be included in the bid for the project. All measurement and payment shall be based on the items of work that are specifically listed in the Bid Proposal. Any items not specifically listed in the Bid Proposal shall be considered subsidiary to unit cost items within the Bid Proposal and no additional payment shall be made for subsidiary items.

1.3 REFERENCE STANDARDS

A. American Concrete Institute:

1. ACI 301 - Specifications for Structural Concrete.
2. ACI 305R - Guide to Hot Weather Concreting.
3. ACI 306.1 - Standard Specification for Cold Weather Concreting.
4. ACI 308.1 - Specification for Curing Concrete.
5. ACI 318 - Building Code Requirements for Structural Concrete.

B. ASTM International:

1. ASTM B221 - Standard Specification for Aluminum and Aluminum-Alloy Extruded Bars, Rods, Wire, Profiles, and Tubes.
2. ASTM C31 - Standard Practice for Making and Curing Concrete Test Specimens in the Field.
3. ASTM C33 - Standard Specification for Concrete Aggregates.
4. ASTM C39 - Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens.

5. ASTM C42 - Standard Test Method for Obtaining and Testing Drilled Cores and Sawed Beams of Concrete.
6. ASTM C94 - Standard Specification for Ready-Mixed Concrete.
7. ASTM C143 - Standard Test Method for Slump of Hydraulic-Cement Concrete.
8. ASTM C150 - Standard Specification for Portland Cement.
9. ASTM C172 - Standard Practice for Sampling Freshly Mixed Concrete.
10. ASTM C173 - Standard Test Method for Air Content of Freshly Mixed Concrete by the Volumetric Method.
11. ASTM C231 - Standard Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method.
12. ASTM C260 - Standard Specification for Air-Entraining Admixtures for Concrete.
13. ASTM C330 - Standard Specification for Lightweight Aggregates for Structural Concrete.
14. ASTM C494 - Standard Specification for Chemical Admixtures for Concrete.
15. ASTM C595 - Standard Specification for Blended Hydraulic Cements.
16. ASTM C618 - Standard Specification for Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use in Concrete.
17. ASTM C685 - Standard Specification for Concrete Made by Volumetric Batching and Continuous Mixing.
18. ASTM C845 - Standard Specification for Expansive Hydraulic Cement.
19. ASTM C989 - Standard Specification for Slag Cement for Use in Concrete and Mortars.
20. ASTM C1017 - Standard Specification for Chemical Admixtures for Use in Producing Flowing Concrete.
21. ASTM C1064 - Standard Test Method for Temperature of Freshly Mixed Hydraulic-Cement Concrete.
22. ASTM C1107 - Standard Specification for Packaged Dry, Hydraulic-Cement Grout (Nonshrink).
23. ASTM C1116 - Standard Specification for Fiber-Reinforced Concrete.
24. ASTM C1157 - Standard Performance Specification for Hydraulic Cement.
25. ASTM C1218 - Standard Test Method for Water-Soluble Chloride in Mortar and Concrete.
26. ASTM C1240 - Standard Specification for Silica Fume Used in Cementitious Mixtures.
27. ASTM D994 - Standard Specification for Preformed Expansion Joint Filler for Concrete (Bituminous Type).
28. ASTM D1751 - Standard Specification for Preformed Expansion Joint Filler for Concrete Paving and Structural Construction (Nonextruding and Resilient Bituminous Types).
29. ASTM D1752 - Standard Specification for Preformed Sponge Rubber Cork and Recycled PVC Expansion Joint Fillers for Concrete Paving and Structural Construction.
30. ASTM D6690 - Standard Specification for Joint and Crack Sealants, Hot Applied, for Concrete and Asphalt Pavements.
31. ASTM E96 - Standard Test Methods for Water Vapor Transmission of Materials.
32. ASTM E119 - Standard Test Methods for Fire Tests of Building Construction and Materials.
33. ASTM E1643 - Standard Practice for Selection, Design, Installation, and Inspection of Water Vapor Retarders Used in Contact with Earth or Granular Fill Under Concrete Slabs.
34. ASTM E1745 - Standard Specification for Plastic Water Vapor Retarders Used in Contact with Soil or Granular Fill under Concrete Slabs.

1.4 COORDINATION

- A. Coordinate placement of joint devices with erection of concrete formwork and placement of form accessories.

1.5 SUBMITTALS

- A. Product Data: Submit data on joint devices and attachment accessories.
- B. Design Data:
 - 1. Submit concrete mix design for each concrete strength.
 - 2. Submit separate mix designs if admixtures are required for following:
 - a. Hot and cold weather concrete Work.
 - b. Air entrained concrete Work.
 - 3. Identify mix ingredients and proportions, including admixtures.
 - 4. Identify chloride content of admixtures and whether or not chlorides were added during manufacture.
- C. Manufacturer's Certificate: Certify that products meet or exceed specified requirements.
- D. Manufacturer Instructions: Submit installation procedures and interfacing required with adjacent Work.
- E. Field Quality-Control Submittals: Indicate results of Contractor-furnished tests and inspections.

1.6 CLOSEOUT SUBMITTALS

- A. Project Record Documents: Record actual locations of embedded utilities and components concealed from view in finished construction.

1.7 QUALITY ASSURANCE

- A. Concrete mixing plant shall conform to TxDOT standards and be certified in the state of Texas.
- B. Perform Work according to ACI 318.
- C. Comply with ACI 305R when pouring concrete during hot weather.
- D. Comply with ACI 306.1 when pouring concrete during cold weather.
- E. Acquire cement and aggregate from one source for Work.
- F. Perform Work according to city standards.

1.8 AMBIENT CONDITIONS

- A. Maintain concrete temperature after installation at minimum 50 degrees F for minimum seven days.
- B. Maintain high-early strength concrete temperature after installation at minimum 50 degrees F for minimum three days.

PART 2 - PRODUCTS

2.1 MATERIALS

A. Concrete:

1. Cement:
 - a. Comply with ASTM C150
 - b. Type: Portland.
2. Blended Cement:
 - a. Comply with ASTM C595.
3. Hydraulic Cement:
 - a. Comply with ASTM C1157.
4. Normal Weight Aggregates:
 - a. Comply with ASTM C33.
 - b. Coarse Aggregate Maximum Size: According to ACI 318.
5. Lightweight Aggregate:
 - a. Comply with ASTM C330.
 - b. Coarse Aggregate Maximum Size: According to ACI 318.
6. Water:
 - a. Comply with ACI 318.
 - b. Potable, without deleterious amounts of chloride ions.
 - c. Furnish materials according to city standards.
7. Air Entrainment: Comply with ASTM C260.
8. Chemical:
 - a. Comply with ASTM C494.
9. Fly Ash Calcined Pozzolan: Comply with ASTM C618, Class C.
10. Silica Fume: Comply with ASTM C1240.
11. Slag:
 - a. Description: Ground-granulated blast-furnace slag.
 - b. Comply with ASTM C989.
 - c. Grade 100.
12. Plasticizing:

- a. Comply with ASTM C1017.
- b. Type I, plasticizing.

B. Joint Devices and Filler:

1. Joint Filler, Type A:

- a. Description: Asphalt-impregnated fiberboard or felt.
- b. Comply with ASTM D1751 D994.
- c. Thickness: 1/4 inch.
- d. Profile: Tongue-and-groove.

2. Joint Filler, Type B:

- a. Description: Recycled PVC.
- b. Comply with ASTM D1752.
- c. Thickness: 1/4 inch.

3. Joint Filler, Type C:

- a. Description: Premolded sponge rubber.
- b. Comply with ASTM D1752.
- c. Thickness: 1/4 inch.

4. Construction Joint Devices:

- a. Material: Integral extruded plastic.
- b. Thickness: 1/2 inch.
- c. Profile: Tongue-and-groove with removable top strip exposing sealant trough and knockout holes spaced at 6 inches o.c.

5. Expansion and Contraction Joint Devices:

- a. Comply with ASTM B221.
- b. Material: Extruded aluminum.
- c. Filler Strip: Resilient neoprene with Shore A hardness of 35 to permit plus or minus 25 percent joint movement with full recovery.
- d. Cover Plate: Extruded aluminum, of longest manufactured length at each location, and recessed mounted.
- e. Color: As selected.

6. Sealant:

- a. Description: two-part liquid neoprene.

2.2 CONCRETE MIX

A. Select proportions for concrete according to ACI 318 field test data.

B. Performance and Design Criteria:

Class of Concrete ¹	Minimum Cementitious Lb./CY	28 Day Min. Compressive Strength ² psi	28 Day Min. Beam Strength ^{2,3} psi	Maximum Water/Cementitious Ratio	Coarse Aggregate Maximum Size ⁴
--------------------------------	-----------------------------	--	---	----------------------------------	--

A	470	3000	500	0.58	1.5"
B	376	2000	330	0.71	1.5"
C	564	3600	600	0.53	1.5"
D	282	1500	250	0.97	1.5"
E	564	3000	500	0.62	1.5"
F	611	4200	700	0.49	1.5"
S	564	3600	600	0.44	1.5"
H ⁵	611	See Plans	N/A	0.49	1"
M	As directed	As directed	As Directed	As Directed	As Directed

- (1) All exposed horizontal concrete shall have entrained air
- (2) Min strength required by owner
- (3) ASTM C78 (Third Point); Reduced by 10% when Typ II Cement used
- (4) Smaller nominal max size aggregate may be used if strength satisfied
- (5) Prestressed concrete

C. Admixtures:

1. Include admixture types and quantities indicated in concrete mix designs only if approved by Architect/Engineer.
2. Do not use calcium chloride or admixtures containing calcium chloride.
3. Add air entrainment admixture to concrete mix for Work exposed to freezing and thawing.
4. For concrete exposed to deicing chemicals, limit fly ash, pozzolans, silica fumes, and slag content as required by applicable code.

D. Average Compressive Strength Reduction: Permitted according to ACI 318.

E. Ready-Mixed Concrete: Mix and deliver concrete according to ASTM C94 & C685.

F. Site-Mixed Concrete: Mix concrete according to ACI 318.

2.3 ACCESSORIES

A. Vapor Retarder:

1. Description: Clear polyethylene film.
2. Comply with ASTM E1745, Class A B C.
3. Thickness: 6 mils.
4. Type: As recommended for below-grade application.
5. Joint Tape: As recommended by manufacturer.

B. Non-shrink Grout:

1. Description: Premixed compound consisting of non-metallic aggregate, cement, and water-reducing and plasticizing agents.
2. Comply with ASTM C1107.
3. Minimum Compressive Strength: 2,400 psi in 48 hours and 7,000 psi in 28 days.

C. Concrete Reinforcing Fibers:

1. Description: High-strength industrial-grade fibers specifically engineered for secondary reinforcement of concrete.
2. Comply with ASTM C1116.
3. Tensile Strength: 130 ksi.
4. Toughness: 15 ksi.
5. Fiber Length: 3/4 inch.
6. Fiber Count: 34 million/lb.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify requirements for concrete cover over reinforcement.
- B. Verify that anchors, seats, plates, reinforcement, and other items to be cast into concrete are accurately placed, positioned securely, and will not interfere with placing concrete.

3.2 PREPARATION

- A. Previously Placed Concrete:
 1. Prepare previously placed concrete by cleaning with steel brush and applying bonding agent.
 2. Remove laitance, coatings, and unsound materials.
- B. In locations where new concrete is doweled to existing work, drill holes in existing concrete, blow/clean all holes thoroughly, insert steel dowels, and pack solid with non-shrink grout or epoxy.
- C. Remove debris and ice from formwork, reinforcement, and concrete substrates.
- D. Remove water from areas receiving concrete before concrete is placed.

3.3 INSTALLATION

- A. Placing Concrete:
 1. Place concrete according to ACI 318.
 2. Notify testing laboratory and Engineer minimum 24 hours prior to commencement of operations.
 3. Ensure that reinforcement, inserts, embedded parts, formed expansion and contraction joints, not disturbed during concrete placement.
 4. Install vapor retarder under interior slabs on grade according to ASTM E1643.
 5. Lap joints minimum 6 inches and seal watertight by taping edges and ends.
 6. Repairs:

- a. Repair vapor retarder damaged during placement of concrete reinforcement.
 - b. Using vapor retarder material, lap over damaged areas minimum 6 inches and seal watertight.
7. Joint Filler:
 - a. Separate slabs on grade from vertical surfaces with 1/4-inch-thick joint filler.
 - b. Place joint filler in floor slab pattern placement sequence; set top to required elevations; secure to resist movement by wet concrete.
 - c. Extend joint filler from bottom of slab to within 1/2 inch of finished slab surface.
8. Joint Devices:
 - a. Coordination: Install construction joint devices in coordination with floor slab pattern placement sequence; set top to required elevations; secure to resist movement by wet concrete.
 - b. Install joint device anchors, maintaining correct position to allow joint cover to be flush with floor and wall finish.
 - c. Install joint covers in longest practical length when adjacent construction activity is complete.
9. Deposit concrete at final position, preventing segregation of mix.
10. Place concrete in continuous operation for each panel or section as determined by predetermined joints.
11. Consolidate concrete.
12. Maintain records of concrete placement, including date, location, quantity, air temperature, and test samples taken.
13. Place concrete continuously between predetermined expansion, control, and construction joints.
14. Place floor slabs in indicated checkerboard or saw-cut pattern.
15. Saw-Cut Joints:
 - a. Saw-cut joints within 12 hours after placing.
 - b. Use 3/16 inch thick blade.
 - c. Cut into 1/4 depth of slab thickness.
16. Screeding:
 - a. Screed floors and slabs on grade level.
 - b. Surface Flatness: maximum 1/4 inch in 10 feet.
- B. Concrete Finishing:
 1. Provide formed concrete surfaces to be left exposed with smooth-rubbed finish.
 2. Finish concrete floor surfaces as specified in Section 03 35 00 - Concrete Finishing and ACI 318.
 3. Steel trowel all floor or slab surfaces.
 4. In areas with floor drains, maintain floor elevation at walls and pitch surfaces uniformly to drains at 1/8 inch per foot nominal or as indicated on Drawings.
- C. Curing and Protection:
 1. Immediately after placement, protect concrete from premature drying, excessively hot or cold temperatures, and mechanical injury.
 2. Protect concrete footings from freezing for minimum of 7 days.

3. Maintain concrete with minimal moisture loss at relatively constant temperature for period as necessary for hydration of cement and hardening of concrete.
4. Cure floor surfaces according to ACI 318.

3.4 FIELD QUALITY CONTROL

- A. Perform inspection and testing according to ACI 318.
- B. Provide unrestricted access to Work and cooperate with appointed testing and inspection firm.
- C. Submit proposed mix design of each class of concrete to inspection and testing firm for review prior to commencement of Work.
- D. Field verify locations of all surrounding structures and piping prior to soil disturbing activities or placement of concrete formwork.
- E. Concrete Inspections:
 1. Continuous Placement Inspection: Inspect for proper installation procedures.
 2. Periodic Curing Inspection: Inspect for specified curing temperature and procedures.
- F. Strength Test Samples:
 1. Sampling Procedures: Comply with ASTM C172.
 2. Cylinder Molding and Curing Procedures:
 - a. Comply with ASTM C31.
 - b. Cylinder Specimens: Field cured.
 3. Test cylinders shall be prepared by the contractor for owner's use in quality assurance. A minimum of one set of concrete cylinders shall be prepared for each structure, for each day's pour, and for each 50 CY of concrete poured. Each test set shall consist of at least 4 cylinders. The contractor may at his option elect to prepare additional cylinders for his own use.
 4. Sample concrete and make one set of three cylinders for every 75 cu. yd. or less of each class of concrete placed each day, and for every 5,000 sq. ft. of surface area for slabs and walls.
 5. If volume of concrete for a class of concrete would provide less than five sets of cylinders, take samples from five randomly selected batches, or from every batch if less than five batches are used.
 6. Make one additional cylinder during cold weather concreting and field cure.
- G. Field Testing:
 1. Slump Test Method: Comply with ASTM C143.
 2. Air Content Test Method: Comply with ASTM C173 C231.
 3. Temperature Test Method: Comply with ASTM C1064.
 4. Compressive Strength Concrete:
 - a. Measure slump and temperature for each sample.
 - b. Measure air content in air-entrained concrete for each sample.
- H. Cylinder Compressive Strength Testing:
 1. Test Method: Comply with ASTM C39.
 2. Test Acceptance: According to ACI 318.

3. Test one cylinder at seven days.
4. Test one cylinder at 28 days.
5. Retain one cylinder for 90 days for testing when requested by Engineer.
6. Dispose of remaining cylinders if testing is not required.

I. Core Compressive Strength Testing:

1. Sampling and Testing Procedures: Comply with ASTM C42.
2. Test Acceptance: According to ACI 318.
3. Drill three cores for each failed strength test from failed concrete.

J. Water-Soluble Chloride Ion Concentration Test Method:

1. Comply with ASTM C1218.
2. Test at 28 days.
3. Maximum Chloride Ion Concentration: As permitted by applicable code.

K. Patching:

1. Allow Architect/Engineer to inspect concrete surfaces immediately upon removal of forms.
2. Honeycombing or Embedded Debris in Concrete:
 - a. Not acceptable.
 - b. Notify Architect/Engineer upon discovery.
3. Patch imperfections according to ACI 318.

L. Defective Concrete:

1. Description: Concrete not conforming to required lines, details, dimensions, tolerances, or specified requirements.
2. Repair or replacement of defective concrete will be determined by Architect/Engineer.
3. Do not patch, fill, touch up, repair, or replace exposed concrete except upon express direction of Architect/Engineer for each individual area.

3.5 ATTACHMENTS

A. Schedule - Concrete Strengths unless otherwise noted on plan drawings:

1. Sidewalks & Driveways = 3,600 psi @ 28 days.
2. Foundations and slabs on grade = 3,600 psi @ 28 days.
3. Structures = 4,200 psi @ 28 days.
4. Roadway = 4,200 psi @ 28 days.

END OF SECTION

SECTION 03 39 00 - CONCRETE CURING

PART 1 - GENERAL

1.1 SUMMARY

- A. Section includes initial and final curing of horizontal and vertical concrete surfaces.

1.2 REFERENCES

- A. American Concrete Institute:

1. ACI 301 - Specifications for Structural Concrete.
2. ACI 302.1 - Guide for Concrete Floor and Slab Construction.
3. ACI 308.1 - Standard Specification for Curing Concrete.
4. ACI 318 - Building Code Requirements for Structural Concrete.

- B. ASTM International:

1. ASTM C171 - Standard Specification for Sheet Materials for Curing Concrete.
2. ASTM C309 - Standard Specification for Liquid Membrane-Forming Compounds for Curing Concrete.
3. ASTM C1315 - Standard Specification for Liquid Membrane-Forming Compounds Having Special Properties for Curing and Sealing Concrete.
4. ASTM D2103 - Standard Specification for Polyethylene Film and Sheeting.

1.3 SUBMITTALS

- A. Product Data: Submit data on all curing compounds compatibilities, and limitations.

1.4 QUALITY ASSURANCE

- A. Perform Work in accordance with ACI 318.
- B. Perform Work in accordance with state and local standard specifications.

1.5 DELIVERY, STORAGE, AND HANDLING

- A. Deliver curing materials in manufacturer's packaging including application instructions.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Membrane Curing Compound: ASTM C309, Type 1D, Class A.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify substrate surfaces are ready to be cured.

3.2 INSTALLATION – HORIZONTAL AND VERTICAL SURFACES

- A. Cure concrete in accordance with ACI 308.1 using membrane curing method.
- B. Membrane Curing Compound: Apply curing compound in two coats with second coat applied at right angles to first.

3.3 PROTECTION OF FINISHED WORK

- A. Do not permit traffic over unprotected floor surface.

END OF SECTION

SECTION 03 60 00 - GROUTING

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Portland cement grout.
 - 2. Rapid curing epoxy grout.
 - 3. Non-shrink cementitious grout.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

- A. All items including but not limited to materials, equipment, overhead, coordination, testing, labor, and supervision required for a complete and operable project shall be included in the bid for the project. All measurement and payment shall be based on the items of work that are specifically listed in the Bid Proposal. Any items not specifically listed in the Bid Proposal shall be considered subsidiary to unit cost items within the Bid Proposal and no additional payment shall be made for subsidiary items.

1.3 REFERENCES

- A. American Concrete Institute:
 - 1. ACI 301 - Specifications for Structural Concrete.
 - 2. ACI 318 - Building Code Requirements for Structural Concrete.
- B. American Society of Testing and Materials:
 - 1. ASTM C33 - Standard Specification for Concrete Aggregates.
 - 2. ASTM C40 - Test Method for Organic Impurities in Fine Aggregates for Concrete.
 - 3. ASTM C150 - Standard Specification for Portland Cement.
 - 4. ASTM C191 - Test Method for Time of Setting of Hydraulic Cement by Vicat Needle.
 - 5. ASTM C307 - Test Method for Tensile Strength of Chemical-Resistant Mortar, Grouts, and Monolithic Surfacing.
 - 6. ASTM C531 - Test Method for Linear Shrinkage and Coefficient of Thermal Expansion of Chemical-Resistant Mortars, Grouts, Monolithic Surfacing, and Polymer Concretes.
 - 7. ASTM C579 - Test Method for Compressive Strength of Chemical-Resistant Mortars, Grouts, monolithic Surfacing and Polymer Concretes.
 - 8. ASTM C827 - Test Method for Change in Height at Early Ages of Cylindrical Specimens from Cementitious Mixtures.
- C. U. S. Army Corps of Engineers Concrete Research Division (CRD):
 - 1. CRD C621 - Non-Shrink Grout.

1.4 SUBMITTALS

- A. Product Data: Submit product data on grout.

- B. Manufacturer's Installation Instructions: Submit manufacturer's instructions for mixing, handling, surface preparation and placing epoxy type and non-shrink type grouts.
- C. Manufacturer's Certificate: Certify Products meet or exceed specified requirements.

1.5 QUALITY ASSURANCE

- A. Perform Work in accordance with state and local standard specifications

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver grout in manufacturer's unopened containers with proper labels intact.
- B. Store grout in a dry shelter, protect from moisture.

1.7 ENVIRONMENTAL REQUIREMENTS

- A. Do not perform grouting if temperatures exceed 95 degrees F.
- B. Maintain minimum temperature of 40 degrees F before, during, and after grouting, until grout has set.

PART 2 - PRODUCTS

2.1 PORTLAND CEMENT GROUT MATERIALS

- A. Portland Cement: ASTM C150, Type I and II.
- B. Water:
 - 1. Potable; containing no impurities, suspended particles, algae or dissolved natural salts in quantities capable of causing:
 - a. Corrosion of steel.
 - b. Volume change increasing shrinkage cracking.
 - c. Efflorescence.
 - d. Excess air entraining.
- C. Fine Aggregate:
 - 1. Washed natural sand.
 - 2. Gradation in accordance with ASTM C33 and represented by smooth granulometric curve within required limits.
 - 3. Free from injurious amounts of organic impurities as determined by ASTM C40.
- D. Mix:
 - 1. Portland cement, sand and water. Do not use ferrous aggregate or staining ingredients in grout mixes.

2.2 RAPID CURING EPOXY GROUT

- A. Furnish materials in accordance with state and local standard specifications.
- B. Rapid Curing Epoxy Grout: High strength, three component epoxy grout formulated with thermosetting resins and inert fillers. Rapid-curing, high adhesion, and resistant to ordinary chemicals, acids and alkalies.

Property	Test	Result
Compressive Strength	ASTM C579	12,000 psi at 7 days
Tensile Strength	ASTM C307	2,000 psi minimum
Coefficient of Expansion	ASTM C531	30x10-6 in per degree F
Shrinkage	ASTM C827	None

2.3 NON-SHRINK CEMENTITIOUS GROUT

- A. Furnish materials in accordance with state and local standard specifications.
- B. Non-shrink Cementitious Grout: Pre-mixed ready for use formulation requiring only addition of water; non-shrink, non-corrosive, non-metallic, non-gas forming, no chlorides.
- C. Properties: Certified to maintain initial placement volume or expand after set and meet the following minimum properties when tested in accordance with CRD-C621, for Type D non-shrink grout:

Property	Test	Time	Result
Setting Time	ASTM C191	Initial	2 hours (Approx)
		Final	3 hours (Approx)
Expansion			0.10% - 0.4% Maximum
Compressive Strength	CRD-C621	1 day	4,000 psi
		7 days	7,000 psi
		28 days	10,000 psi to 10,800 psi

2.4 FORMWORK

- A. Refer to Section 03 10 00 for formwork requirements.

2.5 CURING

- A. Prevent rapid loss of water from grout during first 48 hours by use of approved membrane curing compound or with use of wet burlap method.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify areas to receive grout.

3.2 PREPARATION

- A. Remove defective concrete, laitance, dirt, oil, grease and other foreign material from concrete surfaces by brushing, hammering, chipping or other similar means until sound, clean concrete surface is achieved.
- B. Rough concrete lightly, but not enough to interfere with placement of grout.
- C. Remove foreign materials from metal surfaces in contact with grout.
- D. Align, level and maintain final positioning of components to be grouted.
- E. Saturate concrete surfaces with clean water; remove excess water, leave none standing.

3.3 INSTALLATION - FORMWORK

- A. Construct leakproof forms anchored and shored to withstand grout pressures.
- B. Install formwork with clearances to permit proper placement of grout.

3.4 MIXING

- A. Mix and prepare rapid curing epoxy grout in accordance with manufacturer's instructions.
 - 1. Capable of developing minimum compressive strength of 2400 psi in 48 hours and 7000 psi in 28 days.

3.5 PLACING GROUT

- A. Place grout material quickly and continuously.
- B. Do not use pneumatic-pressure or dry-packing methods.
- C. Apply grout from one side only to avoid entrapping air.
- D. Do not vibrate placed grout mixture, or permit placement when area is being vibrated by nearby equipment.
- E. Thoroughly compact final installation and eliminate air pockets.
- F. Do not remove leveling shims for at least 48 hours after grout has been placed.

3.6 CURING

- A. Immediately after placement, protect grout from premature drying, excessively hot or cold temperatures, and mechanical injury.
- B. After grout has attained its initial set, keep damp for minimum of 3 days.

3.7 FIELD QUALITY CONTROL

- A. Field inspection and testing will be performed in accordance with ACI 301 and ACI 318.
- B. Submit proposed mix design of each class of grout to inspection and testing firm for review prior to commencement of Work.
- C. Tests of grout components may be performed to ensure conformance with specified requirements.

END OF SECTION

**SECTION 099656 -TNEMEC EPOXY COATINGS
WASTEWATER TREATMENT PLANTS**

PART 1 - GENERAL

1.01 SCOPE

- A.** The work of this section includes the coating of all interior surfaces and exterior surfaces.

1.02 RELATED WORK SPECIFIED ELSEWHERE (If Applicable)

Specifier Notes: Reference other sections of the specification, which relate to or affect this section, such as piping, pump houses, etc.

1.03 REFERENCE SPECIFICATIONS AND STANDARDS

- A.** Without limiting the general aspects of other requirements of these specifications, all surface preparation, coating and painting of interior and exterior surfaces and inspection shall conform to the applicable requirements of SSPC (Society for Protective Coatings), NACE International, ASTM (American Society for Testing and Materials), AWWA and the manufacturer's printed instructions.
- 1. ASTM** (American Society for Testing and Materials)
 - ASTM D 520 Standard Specification for Zinc Dust Pigment
 - ASTM D 4417 Standard Test Methods for Field Measurement of Surface Profile of Blast Cleaned Steel
 - ASTM E 337 Standard Practice Test Method for Measuring Humidity with a Psychrometer
 - ASTM D2200 Standard Methods of Evaluating Degree of Rusting on Painted Surfaces
 - ASTM D6386 Standard Practice for Preparation of Zinc (Hot-Dip Galvanized) Coated Iron and Steel Product and Hardware Surfaces for Painting
 - 2. ANSI** (American National Standards Institute)
 - ANSI/ASC 29.4 Exhaust Systems Abrasive Blasting Operations – Ventilation and Safe Practice
 - ANSI/NSF Standard 61 Drinking Water Components
 - 3. AWWA** (American Water Works Association)
 - AWWA D 102 Coating Steel Water Storage Tanks
 - 4. Consumer Product Safety Act, Part 1303**
 - 5. ICRI** (International Concrete Restoration Institute)
 - Technical Guideline No. 310.2-1997 Selecting and Specifying Concrete Surface Preparation for Sealers, Coatings, and Polymer Overlays

6. ***NACE International***
 - NACE Publication TPC2 Coatings and Linings for Immersion Service: Chapter 1 Safety, Chapter Surface Preparation, Chapter 3 Curing, and Chapter 4 Inspection
 - NACE Standard SP0178 Standard Recommended Practice – Fabrication Details, Surface Finish Requirements and Proper Design Considerations for Tanks and Vessels to be Lined for Immersion Service
 - NACE Standard SP0188 Standard Recommended Practice – Discontinuity (Holiday) Testing of Protective Coatings
 - NACE Standard RP0287 Field Measurement of Surface Profile of Abrasive Blast-Cleaned Steel Surfaces Using a Replica Tape
 - NACE Standard RP0288 Standard Recommended Practice, Inspection of Linings on Steel and Concrete
7. **OSHA** (Occupational Safety & Health Administration)
 - 1915.35 Standards – 29 CFR – Painting
8. **SSPC** (Society for Protective Coatings)
 - SSPC-SP2 Hand Tool Cleaning
 - SSPC-SP3 Power Tool Cleaning
 - SSPC-SP11 Power Tool Cleaning to Bare Metal
 - SSPC-SP13 Surface Preparation of Concrete
 - SSPC-PA-1 Shop, Field and Maintenance Painting
 - SSPC-PA-2 Measurement of Dry Film Thickness with Magnetic Gages
 - SSPC-PA-3 Guide to Safety in Paint Application
 - SSPC-Guide 12 Guide for Illumination of Industrial Painting Project
 - SSPC-VIS 1-89 Pictorial Surface Preparation Standards for Painting Steel Surfaces
 - SSPC Paint Spec 36 Two Component Weatherable Aliphatic Polyurethane Topcoat, Performance-Based
9. ***SSPC/NACE Joint Standards***
 - SSPC-SP5/NACE 1 White Metal Blast Cleaning
 - SSPC-SP6/NACE 3 Commercial Blast Cleaning
 - SSPC-SP7/NACE 4 Brush-Off Blast Cleaning
 - SSPC-SP10/NACE 2 Near-White Metal Blast Cleaning
 - SSPC-SP13/NACE 6 Surface Preparation of Concrete
10. ***NAPF*** (*National Association of Pipe Fabricators*)
 - NAPF 500-03-01 Solvent Cleaning
 - NAPF 500-03-04 Abrasive Blast Cleaning for Ductile Iron Pipe
 - NAPF 500-03-05 Abrasive Blast Cleaning for Cast Ductile Iron Fittings

- B.** The Engineer's decision shall be final as the interpretation and/or conflict between any of the referenced specifications and standards contained herein.

1.04 CONTRACTOR

- A.** The Contractor shall have three years practical experience and successful history in the application of specified product to surfaces of steel water tanks. Upon request, he shall substantiate this requirement by furnishing a list of references and job completions.

- B. The Contractor shall submit with his bid a written statement by the coatings manufacturer stating that the Contractor is familiar with the materials specified and has workers capable of performing the work specified herein.
- C. The personnel performing the work shall be knowledgeable and have the required experience and skill to adequately perform the work for this project, in accordance with SSPC-PA1, "Shop, Field and Maintenance Painting".

1.05 QUALITY ASSURANCE

- A. **General:** Quality assurance procedures and practices shall be utilized to monitor all phases of surface preparation, application and inspection throughout the duration of the project. Procedures or practices not specifically defined herein may be utilized provided they meet recognized and accepted professional standards and are approved by the Engineer.
- B. **Surface Preparation:** Surface preparation will be based upon comparison with: "Pictorial Surface Preparation Standards for Painting Steel Surfaces: SSPC-VIS 1-89", ASTM Designation D2200-95, "Pictorial Surface Preparation Standards for Painting Steel Surfaces", ASTM D 4417-91, Method A and/or Method C "Field Measurement of Surface Profile of Blast Cleaned Steel" or NACE Standard RP0287-87 "Field Measurement of Surface Profile of Abrasive Blast Cleaned Steel Surfaces Using a Replica Tape". Surface preparation of concrete will be based on comparison with ICRI Technical Guideline 310.2-1997 comparators in conjunction with SSCP-SP13. In all cases the written standard shall take precedence over the visual standard. In addition, NACE Standard SP0178, "Fabrication Details, Surface Finish Requirements, and Proper Design Considerations for Tanks and Vessels to be Lined for Immersion Service", along with the Visual Comparator, shall be used to verify the surface preparation of welds.
- C. **Application:** No coating or paint shall be applied when: 1) the surrounding air temperature or the temperature of the surface to be coated or painted is below the minimum surface temperature for the products specified herein, 2) rain, snow, fog or mist is present, 3) the surface temperature is less than 5F above the dew point, 4) the air temperature is expected to drop below the minimum temperature for the products specified within six hours after application of coating. Dewpoint shall be measured by use of an instrument such as a Sling Psychrometer in conjunction with U.S. Department of Commerce Weather Bureau Psychrometric Tables. If any of the above conditions are prevalent, coating or painting shall be delayed or postponed until conditions are favorable. The day's coating or painting shall be completed in time to permit the film sufficient drying time prior to damage by atmospheric conditions.
- D. **Coating Thickness:** Thickness of coatings and paint shall be measured checked according to the procedures outlined in SSPC-PA 2 "Measurement of Dry Film Thickness with Magnetic Gages", May 2012 Edition. Dry film thickness shall be a Level 2 as defined in Paragraph 9.2, excepting that no single gage reading shall be less than 80% of the specified dry film thickness. Areas that fail to meet these criteria shall be corrected at no expense to the Owner. Use of an instrument such as a Tooke Gauge, precision groove grinder, etc. is permitted if a destructive test is deemed necessary by the Engineer and the total DFT is less than 50 mils.
- E. **Holiday (Pinhole) Testing:** The integrity of coated surfaces scheduled for immersion shall be tested for holidays in accordance with NACE Standard SP0188. For dry films less than 20 mils, a non-destructive holiday detector shall not exceed 67.5 volts, nor shall destructive holiday detector exceed the voltage recommended by the manufacturer of the coating system. A solution of 1 ounce non-sudsing type wetting agent, such as Kodak Photo-Flo,

and 1 gallon of tap water shall be used to perform the holiday testing. For coating thickness at 20 mils and greater, a high voltage Tinker & Rasor AP/W holiday tester shall be used. Contact coating manufacturer for voltage recommendations and curing parameters.

All pinholes and/or holidays shall be marked and repaired in accordance with the manufacturer's printed recommendations and retested. No pinholes or other irregularities will be permitted in the final coating.

- F. **Inspection Devices:** The contractor shall furnish, until final acceptance of coating and painting is accepted, inspection devices in good working condition for detection of holidays and measurement of dry film thickness of coating and paint. The Contractor shall also furnish U.S. Department of Commerce, National Bureau of Standards certified thickness calibration plates and/or plastic shims, depending upon the thickness gauge used, to test the accuracy of dry film thickness gauges and certified instrumentation to test the accuracy of holiday detectors. Dry film gauges and holiday detectors shall be made available for the Engineer's use at all times until final acceptance of application. Holiday detection devices shall be operated in the presence of the Engineer.
- G. **Inspection:** *Inspection for this project shall consist of 'hold point' inspections. The Engineer or his representative shall inspect the surface prior to abrasive blasting, after abrasive blasting but prior to application of coating materials, and between subsequent coats of material. Final inspection shall take place after all coatings are applied, but prior to placing the tank in service. Contractor will ensure that sufficient rigging is in place so that the Engineer or his representative shall be able to conduct the required inspections.*
- H. **Warranty Inspection:** Warranty inspection shall be conducted during the eleventh month following acceptance of all coating and painting work. All defective work shall be repaired in accordance with this specification and to the satisfaction of the Engineer and/or Owner.

1.06 SAFETY AND HEALTH REQUIREMENTS

- A. **General:** In accordance with requirements set forth by regulatory agencies applicable to the construction industry and manufacturer's printed instructions and appropriate technical bulletins and manuals, the Contractor shall provide and require use of personal protective lifesaving equipment for persons working on or about the project site.
- B. **Head and Face Protection and Respiratory Devices:** Equipment shall include protective helmets which shall be worn by all persons while in the vicinity of the work. In addition, workers engaged in or near the work during sandblasting shall wear eye and face protection devices and air purifying halfmask or mouthpiece respirators with appropriate filters. Barrier creams shall be used on any exposed areas of skin.
- C. **Ventilation:** Where ventilation is used to control hazardous exposure, all equipment shall be explosion-proof. Ventilation shall reduce the concentration of air contaminants to a degree a hazard does not exist. Air circulation and exhausting of solvent vapors shall be continued until coatings have fully cured.
- D. **Sound Levels:** Whenever the occupational noise exposure exceeds maximum allowable sound levels, the Contractor shall provide and require the use of approved ear protection devices.
- E. **Illumination:** Adequate illumination shall be provided while work is in progress, including explosion-proof lights and electrical equipment. Whenever required by the Engineer, the Contractor shall provide additional illumination and necessary supports to cover all areas to

be inspected. The level of illumination for inspection purposes shall be determined by the inspector.

- F. **Temporary Ladders and Scaffolding:** All temporary ladders and scaffolding shall conform to applicable safety requirements. They shall be erected where requested by the Engineer to facilitate inspection and be moved by the Contractor to locations requested by the Engineer.

1.07 PRODUCT DELIVERY, STORAGE & HANDLING

- A. All materials shall be brought to the jobsite in original sealed containers. They shall not be used until the Engineer has inspected the contents and obtained data from information on containers or label. Materials exceeding storage life recommended by the manufacturer shall be rejected.
- B. All coatings and paints shall be stored in enclosed structures to protect them from weather and excessive heat or cold. Flammable coatings and paints must be stored to conform with City, County, State and Federal safety codes for flammable coating or paint materials. At all times coatings and paints shall be protected from freezing.

1.08 JOB CONDITIONS

PART 2 - MATERIALS

2.01 ACCEPTABLE MANUFACTURERS

- A. Materials specified are those that have been evaluated for the specific service. Products of the Tnemec Company, Inc. are listed to establish a standard of quality. Equivalent materials of other manufacturer's may be submitted on written approval of the Engineer. As part of the proof of equality, the Engineer will require at the cost of the Contractor, certified test reports from a nationally known, reputable and independent testing laboratory conducting comparative tests as directed by the Engineer between the product specified and the requested substitution.
- B. Requests for substitution shall include manufacturer's literature for each product giving name, product number, generic type, descriptive information, solids by volume, recommended dry film thickness and certified lab test reports showing results to equal the performance criteria of the products specified herein. In addition, a list of five projects shall be submitted in which each product has been used and rendered satisfactory service.
- C. All requests for product substitution shall be made at least 10 days prior to the bid date.
- D. Any material savings shall be passed to the owner in the form of a contract dollar reduction.
- E. Manufacturer's color charts shall be submitted to the Engineer at least 30 days prior to coating and/or paint application. General Contractor and Painting Contractor shall coordinate work so as to allow sufficient time (normally seven to ten days) for paint to be delivered to the job site.

2.02 GENERAL REQUIREMENTS

- A. All materials shall be lead-free as defined by the Consumer Product Safety Act, Part 1303.

- B. All zinc dust pigment contained in any zinc-rich material shall meet the requirements of ASTM D 520 Type III as regards zinc content and purity.
- C. No coatings shall contain Methylene Dianiline (MDA). All coatings, including all colors, shall be lead-free.
- D. All catalyzed polyurethane products shall meet the minimum requirements of SSPC Paint Specification Number 36, Level 3 Performance Level.

2.03 MATERIAL PREPARATION

- A. Mix and thin materials according to manufacturer's latest printed instructions.
- B. Do not use materials beyond manufacturer's recommended shelf life.
- C. Do not use mixed materials beyond manufacturer's recommended pot life.
- D. Do not split kits of multi-component products.

2.04 SUBMERGED & INTERMITTENTLY SUBMERGED COATING SCHEDULE: The number of coats called for in this schedule shall be considered minimum. If more coats are required for complete coverage and uniform appearance, they shall be applied. The Owner will select colors from standard manufacturer's color samples.

A. Primary & Secondary Clarifiers, Gates, Troughs, Weirs, Pipes, Fittings, Baffles, Flights, and Skimming Arms.

1. **Surface Preparation Prior to Abrasive Blast Cleaning:** Weld flux and spatter shall be removed by power tool cleaning. Sharp projections shall be ground to a smooth contour. All welds shall be ground to a smooth contour as per NACE Standard SP0178, Designation D.
2. **Surface Preparation:** SSPC-SP10 Near-White Metal Blast Cleaning. Anchor profile shall be angular with a 2.0 mil profile as per ASTM D 4417, Method C or NACE Standard RP0287.
3. **Coating System:**
 - First Coat: Tnemec Series 66HS Hi-Build Epoxoline applied at 3.0 to 5.0 dry mils.
 - Stripe Coat: Tnemec Series 66HS Hi-Build Epoxoline applied by brush to all weld seams, edges, corners, nuts, bolts, etc.
 - Second Coat: Tnemec Series 22 Epoxoline applied at 16.0 to 20.0 dry mils.

Total minimum dry film thickness shall be **19.0** mils.

C. Concrete Primary & Secondary Clarifiers, & Filters

1. **Surface Preparation:** Allow new concrete to cure 28 days. Level protrusions and mortar spatter. Abrasive blast as per SSPC-SP13/NACE 6 for "Severe Service", achieving a surface profile equal to ICRI CSP-5. Fill voids and bugholes with Tnemec Series 218 MortarClad.
2. **Coating System:**

First Coat: Tnemec Series 218 MortarClad applied at a minimum of 1/16th inch nominal dry film thickness.

Second Coat: Tnemec Series G435 Perma-Glaze applied at 80.0 dry mils.

Total minimum dry film thickness shall be **140.0** mils (including Series 218).

SECTION 46 43 21 - CIRCULAR CLARIFIER EQUIPMENT

PART 1 - GENERAL

1.1 SUMMARY

A. General Installation Notes:

1. **113' - 7" inside diameter secondary clarifier #4 (14' SWD with a floor slope of 1:12) Influent well diameter = 15' - 4". Additive Alternate Bid includes clarifier #3.**
2. The contractor shall furnish and install a center feed/peripheral overflow type clarifier suitable for installation in the existing clarifier. The mechanism shall be a center-column supported, center-feed, peripheral overflow type with a center drive mechanism rotating a suspended cage with two sludge scraper arms and skimmers attached. The contractor shall field verify all concrete tank dimensions prior to issuing a purchase order or submitting shop drawings.
3. The equipment furnished for each clarifier mechanism shall include but not be limited to: center assembly with drive unit, center column, influent feedwell, center cage, scraper arms, skimmers, access bridge with operating platform, access stairs, scum collection system, and anchor bolts. No underwater bearings to carry any part of the vertical thrust load will be permitted and all gearing must be completely enclosed and oil lubricated.
4. Like items of equipment specified herein shall be the end products of one manufacturer in order to achieve standardization for operation, maintenance, spare parts, and manufacture's service.
5. Except where specifically indicated otherwise, all plates and structural members designated for submerged service shall have a minimum thickness of 1/4". Stainless steel anchor bolts, with necessary stainless steel hex nuts and washers, shall be provided for all parts of the clarifier mechanism to be secured to the tank. All fasteners for high strength connections shall be ASTM A 325 high strength bolts and Grade 5 bolts for secondary connections. All handrail bolts and squeegee bolts shall be 304 stainless steel minimum.

B. Section Includes:

1. Access bridge and walkway.
2. Clarifier drive mechanism.
3. Rake arms and solids collectors.
4. Weirs and baffles.
5. Influent feedwell.

1.2 DEFINITIONS

- #### A. FRP: Fiberglass-reinforced plastic.

1.3 REFERENCE STANDARDS

A. American Bearing Manufacturers Association:

1. ABMA 9 - Load Ratings and Fatigue Life for Ball Bearings.
2. ABMA 11 - Load Ratings and Fatigue Life for Roller Bearings.

B. American Gear Manufacturers Association:

1. AGMA 6001 - Design and Selection of Components for Enclosed Gear Drives.
2. AGMA 6013 - Standard for Industrial Enclosed Gear Drives.
3. AGMA 6034 - Practice for Enclosed Cylindrical Wormgear Speed Reducers and Gearmotors.
4. AGMA 6113 - Standard for Industrial Enclosed Gear Drives (Metric Edition).
5. ANSI/AGMA 2001-D04, "Fundamental Rating Factors and Calculation Methods for Involute Spur and Helical Gear Teeth"

C. American Society of Mechanical Engineers:

1. ASME B17.1 - Keys and Keyseats.
2. ASME B17.2 - Woodruff Keys and Keyseats.
3. ASME B29.100 - Double-Pitch Roller Chains, Attachments, and Sprockets.

D. American Society for Testing and Materials (ASTM) International:

1. ASTM B209 - Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate.
2. ASTM 36/A 36M - Standard Specifications for Structural Steel.
3. ASTM 48 - Standard Specification for Gray Iron Castings.
4. ASTM 148/A 148M - Standard Specification for Steel Castings, High Strength, for Structural Purposes.
5. ASTM 276 - Standard Specification for Stainless Steel Bars and Shapes.
6. ASTM 325 - Standard Specification for High-Strength Bolts for Structural Steel Joints.
7. ASTM 536 - Standard Specification for Ductile Iron Castings.

E. American Institute of Steel Construction (AISC):

1. Specification for Structural Steel Buildings - Allowable Stress Design and Plastic Design.
2. Code of Standard Practice for Steel Bridges and Buildings.

1.4 SUBMITTALS

- A. Product Data: Submit manufacturer's Product Data for system materials and component equipment, including electrical characteristics.
- B. Shop Drawings: Manufacturer to submit shop drawings within a **maximum lead time of 8 weeks**. Manufacturer's who cannot meet this time requirement will not be considered an accepted manufacturer.
 1. Indicate system materials and component equipment.
 2. Submit wiring and control diagrams, installation and anchoring requirements, fasteners, and other details.
- C. Manufacturer's Certificate: Certify that products meet or exceed specified requirements.
 1. Certify that installation is completed according to manufacturer's instructions.
- D. Manufacturer's Instructions: Submit detailed instructions on installation requirements, including storage and handling procedures.
- E. Source Quality-Control Submittals: Indicate results of factory tests and inspections.
- F. Field Quality-Control Submittals: Indicate results of Contractor-furnished tests and inspections.

- G. Manufacturer Reports: Indicate that equipment has been installed according to manufacturer's instructions.
- H. Qualifications Statement:
 - 1. Submit qualifications for manufacturer.

1.5 CLOSEOUT SUBMITTALS

- A. Project Record Documents: Record actual locations of installed clarifiers and components. Contractor must keep up-to-date accurate record drawings. Pay applications and retainage may be withheld until record drawings are received.
- B. Operation and Maintenance Data: Submit maintenance instructions and manuals for equipment and accessories. They shall include the following information as a minimum requirement:
 - 1. Assembly, erection, installation, and adjustment instructions & drawings.
 - 2. Operating, lubrication and maintenance instructions.
 - 3. Complete descriptive literature of all materials and components furnished.

1.6 MAINTENANCE MATERIAL SUBMITTALS

- A. Spare Parts:
 - 1. Furnish two sets of manufacturer's recommended spare parts.
- B. Tools: Furnish special wrenches and other devices required for Owner to maintain and calibrate equipment.

1.7 MANUFACTURER QUALIFICATIONS

All manufacturers must meet the full extent of this specification.

- A. Company specializing in manufacturing products specified in this Section with minimum 5 years' documented experience within the state of Texas.
- B. Only manufacturers regularly engaged in the manufacture of the clarifier equipment as specified herein and who can demonstrate equipment of this specified design, in actual service for a period of not less than 10 years will be considered for pre-approval as acceptable manufacturers. Manufacturers shall show evidence of quality assurance in manufacturing and supplying equipment essential in details to the equipment herein specified.
- C. The Engineer may require evidence, in the form of operating records, from these plants to substantiate any claims concerning the ability of the equipment to perform as required.
- D. **All clarifier equipment component shall be delivered to the site within 26 weeks of submittal approval. Manufacturer's who cannot meet this time requirement will not be considered an accepted manufacturer.**

1.8 DELIVERY, STORAGE, AND HANDLING

- A. Inspection: Accept materials on-Site and inspect for damage.

- B. Store materials according to manufacturer's instructions and specifications.

1.9 EXISTING CONDITIONS

A. Field Measurements:

1. Contractor shall verify ALL field measurements prior to fabrication.
2. Indicate field measurements on Shop Drawings.

1.10 WARRANTY

- A. Furnish minimum 5-year manufacturer's warranty for circular clarifier equipment and accessories including but not limited to structural frame, connections, motor, drive gears, drive housing, and all castings. Manufacturer warrants that these components shall be replaced if damaged or defective in the normal use of the equipment (includes labor and material costs).

PART 2 - PRODUCTS

2.1 CIRCULAR CLARIFIER EQUIPMENT

- A. Description: Drive mechanism rotates sludge collector assembly, which moves settled secondary sludge to collection hopper or collects settled secondary biosolids for recirculation.
- B. Performance and Design Criteria:
 1. Clarifier Mechanism: Continuous use under design load.
 2. Access Bridge Minimum Design Load: 100 psf live load plus the associated dead loads with deflection limited to 1/360 of span.
 3. Turntable Bearing Assembly: Select components for easy replacement of balls, rollers, and raceways.
- C. Sludge Collector Assembly (2 arms):
 1. Sludge Collector: Structural steel.
 - a. Material: Steel plate.
 - b. Minimum Thickness: 1/4 inch.
 - c. The header shall be parallel to the tank floor and have a series of inlet orifices such that the entire tank bottom is swept clean in a single revolution.
 - d. The header shall be designed to uniformly remove sludge in proportion to the area swept with the removal of a larger volume of sludge at greater distances from the tank center.
 - e. Sludge shall be transported through the header to the center manifold, with removal being accomplished by hydrostatic pressure.
 - f. Provide a fully tapered, rectangular-shaped Unitube header varying in cross section from a maximum near the tank center to a minimum at the outer wall.
 - g. Fabricate header from 1/4" thick steel plate and hot-dip galvanized after fabrication. Provide steel plate counterweights not exceeding 50# each as necessary for proper equipment balance. Field welding of galvanized header or supports will not be allowed.
 - h. Longitudinal cross sectional axis to be mounted at an angle of 45 degrees to tank bottom to trap sludge.

- i. Provide a 2" fluidizing vane as an integral part of header. Attach neoprene squeegee to fluidizing vane provided with 1" vertical adjustment.
 - j. Manufacturer to size and space header inlet orifices at regular intervals not exceeding 30".
 - k. Orifice design to be proportionate to the volume of sludge withdrawn from the entire tank floor at all flows.
 - l. Provide header flange with silicone seal for bolted connection to center manifold. Header shall be tie bar supported.
 - m. Alternate Manufacturers shall submit header verification field data in accordance with the Substitute Equipment Section of this specification.
 - n. Sludge withdrawal by means of individual riser pipes or stepped header construction will not be acceptable.
 - o.
2. Center Pier:
- a. Size: **36"** Diameter.
 - b. Material: Structural steel not less than 1/4" thick to withstand twice the torque of the drive mechanism. Anchored per the manufacturer's specification. When replacing an existing center pier, rotate bolt pattern.
 - c. Drive to be positioned, leveled and grouted in place on top of pier with a non shrink grout.
 - d. Center pier shall have a minimum of four (4) overflow areas at its upper end to diffuse flow into the flocculation feedwell at a velocity not to exceed 1.75 fps at maximum design mixed liquor flow.

D. Drive Assembly:

- 1. Description: Motor, speed reduction and turntable gearing, turntable bearing assembly chain drives, and drive assembly bearings.
- 2. Speed Reduction and Turntable Gearing:
 - a. Comply with AGMA 6034.
 - b. Primary and Intermediate Speed Reducers: Worm gearing.
 - c. Turntable: Wormgear reduction unit.
 - d. Worm Gears: Cast bronze.
 - e. Spur Gear: comply with ANSI/AGMA 2001-D04
 - 1) Type: Internal.
 - 2) Material: Ductile Iron, ASTM A536
 - f. Shaft Material: Steel.
 - g. Gear Shafts and Bolting: Comply with AGMA 6001.
 - h. Housings:
 - 1) Fully enclosed.
 - 2) Material: Cast Iron, ASTM A48, Grade 40
 - 3) Provide dust and oil seals.
- 3. Turntable Bearing Assembly:
 - a. Base: Cast iron. ASTM A48, Grade 40 or Steel, ASTM A37
 - b. Turntable: Cast integrally (or fabricated independent) with spur gear.
- 4. Drive Assembly Bearings:

- a. Type: Ball; comply with ABMA 9.
- 5. Lubrication:
 - a. Type: Oil.
- 6. Key-Mounted Connections: Comply with ASME B17.1.
- 7. Chain Drives and Belt Drives:
 - a. Chain:
 - 1) Type: Roller.
 - 2) Comply with ASME B29.100.
 - 3) Links: Steel.
 - b. Sprockets:
 - 1) Comply with ASME B29.100.
 - 2) Material: Steel.
 - c. Drive Guards:
 - 1) Material: Type 316 stainless steel.
 - 2) Occupational Safety and Health Administration (OSHA) approved.
- E. Scum Removal Assembly:
 - 1. Description: Skimmer assembly continuously moves surface scum to tank periphery and automatically flushes scum into scum trough. (2) scum skimmers shall be provided to sweep the surface scum twice per revolution per clarifier.
 - 2. Scum Baffle:
 - a. Description: Baffle attached to effluent trough to keep floating scum from reaching effluent weirs.
 - b. Material: FRP.
 - c. Minimum Thickness: 1/4 inch.
 - d. Width: 9 inches, adjustable to 3 inches above maximum water level.
 - e. Attach to effluent trough with FRP brackets and stainless-steel bolts.
 - 3. Skimmer Assembly:
 - a. Description: Fixed skimming blade, hinged or pivoting plow blade with wiper blades, and support legs. The scum blade shall span the full length between the flocculation feedwell and scum trough.
 - b. Skimming Blade Material: Steel.
 - c. Plow Blade Material: Steel.
 - d. Wiper Blades:
 - 1) Material: 65 Duro Neoprene.
 - 2) Grease and oil resistant.
 - 3) Backing Plate: Bronze
 - 4) The wiper assembly shall be the same dimension of the scum trough cage
 - e. Support Legs Material: Steel.

4. Scum Trough:

- a. Material: Welded steel.
- b. Minimum Thickness: 1/4 inch.
- c. Minimum Length: 4'
- d. Provide flanged connection for scum discharge pipe.
- e. Steel approach lip and back plate to allow skimmer arm a smooth transition from the trough to the water surface.
- f. Collector Pipe:
 - 1) Material: Steel construction.
 - 2) Comply with ASTM A53, Schedule 20 minimum.
- g. Scum Flush
 - 1) Type: Automatic
 - 2) The flushing device shall be held open to allow 15 to 25 gallons of flushing water per trip.

F. Walkway and Operating Platform:

1. Surface Material: 1-1/4" aluminum grating minimum. Surface material must meet specified design loads.
2. Minimum Walkway Width: 36 inches, 1-1/4" x 3/16" aluminum grating extending over the entire bridge length.
3. Design: Walkway shall be supported at the center by the drive unit and supported on the opposite end by the tank wall. Walkway shall be designed to withstand all dead loads plus a minimum live load of 100 LBS/SF with a max deflection of L/360 over the entire span.
4. Double Railing:
 - a. Material: 1-1/2" schedule 40 aluminum and schedule 80 for posts. Post spacing not to exceed 5'.
 - b. Minimum Height: 42 inches, on both sides of walkway and around outside of operating platform.
 - c. Must meet OSHA compliance standards
 - d. Include minimum 4" toe kick along both sides of bridge and bridge extension.
 - e. Provide a minimum 8' x 10' rectangular platform to provide a 2' working clearance around the drive.

G. Influent Feedwell:

1. Material: Steel.
2. Minimum Thickness: 3/16" plate
3. Shall be FEDWA energy dissipating inlet (EDI) design or prior approved equal.
4. Feedwell shall be of adequate size to diffuse the flow into the tank at a uniform flow through velocity.
- 5.

H. Center Cage, Truss Arm and Manifold

1. Center cage to be of an all-welded box truss construction made up of structural steel members having a minimum thickness of 1/4"
2. Provide one (1) truss arm per skimmer assembly.

3. Truss arm shall be furnished with a minimum triangular three-point contact design for ease of installation and alignment. Truss shall be constructed with 1/4" minimum thick members. Truss shall be pinned at the base for vertical adjustment and connected to the center cage through strut and adjustable clevis assembly. Tie-rod and turnbuckle designs that do not provide lateral support will not be acceptable.
4. Provide a cylindrical manifold with two (2) seals for bolted connection to the sludge collection header and bottom of cage. A bottom seal plate shall be furnished by the equipment Manufacturer securely anchored to the floor and grouted in place after final adjustment.

I. Effluent Weir Plates:

1. Material: FRP.
2. Minimum Vertical Adjustment: 3 inches.
3. Type: V-notch at 6" spacing. See drawings for more information

J. Anchor Bolts:

1. All equipment anchor bolts shall be Type 316 stainless steel.
2. Equipment Manufacturer shall furnish steel template and grout shield to accurately locate center pier anchors and allow for grouting beneath the pier and manifold seal plate after final plumbing.

K. Operation:

1. Electrical Characteristics: As specified in electrical technical specifications.
2. Control Panel:
 - a. Must be provided by the manufacturer as a part of the clarifier equipment
 - b. Mounted and installed per manufacturer's requirements.
3. Controls:
 - a. Overload Protection: Indicate load on the mechanism continuously, annunciate an alarm if impending excessive load, and stop mechanism if excessive load reached.
 - b. Alarm: Audible horn or bell, relay, reset button, test circuit, and ON-OFF switch.
4. Disconnect Switch: Factory-mounted in control panel.

2.2 SOURCE QUALITY CONTROL

- A. Certificate of Compliance: When fabricator is approved by authorities having jurisdiction, submit certificate of compliance indicating Work performed at fabricator's facility conforms to Contract Documents.

1. Specified shop tests are not required for Work performed by approved fabricator.

2.3 SURFACE PREPARATION AND FINISHING COATINGS

1. The center drive mechanism shall be shipped, assembled and finish painted with manufacturer's standard paint system.
2. All ferrous surfaces shall be hot-dipped galvanized.

3. Submerged and/or non-submerged components shall be prepared by blasting to SSPC-SP10 and prime painted with one (1) shop coat of Tnemec Series N140F epoxy, 4-6 mils DFT. Finish coats are to be applied in the field by the Contractor.
4. Stainless steel shall be mechanically treated by waterjet and bead blast in accordance with ASTM A380 Standard Practice for Cleaning, Descaling, and Passivation of Stainless-Steel Parts, Equipment, and Systems
5. Galvanized and stainless-steel components will be shipped unpainted.

PART 3 - TESTING

3.1 CLARIFIER START-UP

- A. A start-up inspection and test shall be performed on each clarifier to verify proper installation, alignment, and operation in accordance with the Tow-Bro clarifier design manual or approved equal manufacturers instruction.
- B. Testing shall include the following:
 1. Drive
 - a. Alignment and Installation
 - b. Lubrication
 - c. Micro-switches
 2. Clarifier Mechanism
 - a. Installation

PART 4 - EXECUTION

4.1 EXAMINATION

- A. Verify that proposed clarifier basin is installed and ready to receive circular clarifier equipment. Existing clarifiers must be thoroughly cleaned and all equipment removed prior to installation.

4.2 INSTALLATION

- A. Install circular clarifier equipment according to manufacturer's instructions.
- B. Weir Plates: Mount weir plates against double bead of sealant.
- C. The Contractor shall complete the following:
 1. Plumb and grout the center pier
 2. Add grout beneath the manifold seal ring and adjust for horizontal plane
 3. Grout the floor in accordance with the Manufacturer's recommendations
 4. Add grout between the center pier and drive unit

4.3 FIELD QUALITY CONTROL

- A. Dry Startup: Run equipment without liquid in basins and inspect for:
 1. Alignment of sprockets, chain, flights, and wearing surfaces.
 2. Binding and excessive heat buildup in drive units.

- B. Initial Wet Startup: Run equipment with non-potable or plant effluent water prior to raw sewage start up.
- C. Final Wet Startup: Run equipment with wastewater in basins and verify proper operation.
- D. Manufacturer Services: Furnish services of manufacturer's representative experienced in installation of products furnished under this Section for not less than 3 days on-Site for installation, inspection, field testing, and instructing Owner's personnel in maintenance of equipment.
- E. Equipment Acceptance:
 - 1. Adjust, repair, modify, or replace components failing to perform as specified, and rerun tests.
 - 2. Make final adjustments to equipment under direction of manufacturer's representative.
- F. Furnish installation certificate from equipment manufacturer's representative attesting equipment has been properly installed and is ready for startup and testing.

4.4 ADJUSTING

- A. Check control module functions and adjust as necessary.

4.5 DEMONSTRATION

- A. Demonstrate equipment startup, shutdown, routine maintenance, and emergency repair procedures to Owner's personnel. Contractor and manufacturer shall provide on-site training for all new equipment.

END OF SECTION

2023 WWTP CLARIFIER REHABILITATION

- Clarifiers necessary components of wastewater treatment process
- Clarifier #4 – Failed
- Clarifier #3 – In need of rehabilitation



Contractor	Base Bid (Clarifier 4)	Add. Alt. Bid (Clarifier 3)	Total
McKinney & Moore of Texas	\$751,782.34	\$687,689.75	\$1,439,472.09
Horton Excavating	\$848,500.00	\$734,000.00	\$1,582,500.00
McInnis Brothers Construction	\$899,900.00	\$868,900.00	\$1,768,800.00
Duplicchain Contractors	\$914,400.00	\$892,400.00	\$1,806,800.00
Allco, LLC	\$975,362.13	\$900,837.13	\$1,876,199.26

PRESENTER: Scott Weems, Police Chief

ITEM/SUBJECT: Discussion regarding the Police Department's voluntary security camera program. (Police Chief)

SUMMARY/BACKGROUND: The NPD Neighborhood Eyes Program was designed to continue the PD's efforts in increasing our Community Policing Strategy by interacting with the citizens. This program is designed to create a database of residences and businesses that have security cameras. NPD is taking a proactive stance to locate exterior security cameras at residences or businesses before a crime or incident happens. One of the issues that we've encountered over the years are that some of the systems are set to delete the footage in a short period of time, causing the loss of valuable evidence. NPD has been actively locating video from different camera sources for years, but only in a reactive manner. This proactive approach will enhance the evidence recovery process exponentially by being aware of the locations ahead of time. The owner of the security camera will have the authority to grant permission to the Nacogdoches Police Department to gain access to security footage, should an incident occur that is possibly within their view. This program contributes to NPD's constant efforts to solve ongoing investigations and increasing the overall quality of life for our citizens.

FINANCIAL:
Not Applicable

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES
Not Applicable

CITY CONTACT: Scott Weems, Chief of Police
weemss@nactx.us
(936) 559-2619

ATTACHMENTS: 1. Neighborhood Eyes 2

Nacogdoches Police Department

Neighborhood Eyes Program

- The NPD Neighborhood Eyes Program was designed to continue the PD's efforts in increasing our Community Policing Strategy by interacting with the citizens.
- This program is designed to create a database of residences and businesses that have security cameras.

- NPD is taking a proactive stance to locate exterior security cameras at residences or businesses before a crime or incident happens.

- One of the issues that we've encountered over the years is some of the systems are set to delete the footage in a short period of time, causing the loss of valuable evidence.

- NPD has been actively locating video from different camera sources for years, but only in a reactive manner.
- This proactive approach enhance the evidence recovery process exponentially by being aware of the locations ahead of time.

<https://www.google.com/maps/d/edit?mid=1MVzMZcHxCceRgKyB54LPCNyFVGxFgg0u&usp=sharing>

- The owner of the security camera will have the authority to grant permission to the Nacogdoches Police Department to gain access to the security footage, should an incident occur that is possibly within their view.
- This program contributes to NPD's constant efforts to solve ongoing investigations and increasing the overall quality of life for our citizens.

PRESENTER: Keith Kiplinger, Interim City Manager

ITEM/SUBJECT: Consider approval of Resolution 1352-10-23 regarding nominations for the Central Appraisal District Board of Directors. (Interim City Manager)

SUMMARY/BACKGROUND:

Each taxing unit has a number of votes for members on the Central Appraisal District. Each taxing unit can also nominate one person for a place on the ballot. Below is a summarized timeline for voting on CAD Board of Directors from the Chief Appraiser. The City is currently represented by former City Council Member Jay Anderson. Council action tonight could include approving a resolution nominating one candidate for the CAD Board.

- Before October 1, The chief appraiser shall calculate the number of votes to which each taxing unit is entitled.
- Before October 15, Each taxing unit may nominate by resolution adopted by its governing body one candidate for each position to be filled.
- Before October 30, The chief appraiser shall prepare a ballot, listing the candidates whose names were timely submitted.
- Before December 15, The governing body shall determine its vote by resolution and submit it to the chief appraiser.
- Before December 31, The chief appraiser shall declare the five candidates who receive the largest vote totals elected and submit the results.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Keith Kiplinger, Interim City Manager
kiplingerk@nactx.us
(936) 559-2501

ATTACHMENTS:

1. 96-301 Appraisal District Director's Manual March 2022
2. Voting Entitlement 2023
3. Resolution: Central Appraisal District Nominations 2023

The seal of the Texas Comptroller of Public Accounts is a circular emblem. It features a five-pointed star in the center, surrounded by a wreath of olive and oak branches. The words "THE COMPTROLLER OF PUBLIC ACCOUNTS" are inscribed around the perimeter of the seal, and "TEXAS" is at the bottom.

Glenn Hegar
Texas Comptroller
of Public Accounts

Appraisal District Director's Manual

March 2022

Tax Code Section 5.05(a) authorizes the Comptroller's office to prepare and issue publications relating to the appraisal of property and the administration of taxes as a public service. By publishing this manual, the Comptroller's office is making available an information resource of a general nature regarding the appraisal of property and the administration of taxes. This publication does not address and is not intended to address all aspects of property appraisal, tax administration or property tax law. The information contained in this publication neither constitutes nor serves as a substitute for legal advice. Pursuant to Tax Code Section 5.041(f), the Comptroller's office may not advise a property owner, a property owner's agent or the appraisal district on a protest matter. Questions regarding property appraisal, tax administration, the meaning or interpretation of statutes, legal requirements and other similar matters should, as appropriate or necessary, be directed to an attorney or other appropriate counsel.

Table of Contents

Introduction 1

Governance 3

 Composition of Board of Directors 3

 Appointment, Eligibility and Terms 3

 Conflicts of Interest 7

 Ex Parte Communications 7

 Oath of Office 7

 Recalling a Director 7

Board Duties, Authority and Policies 9

 Primary Duties 9

 Statutory Authority 10

 Limited Appraisal Authority 10

 Meetings 10

 Disapproval of Board Actions 11

 Written Policies 11

 Required Policies 11

Appointing the Chief Appraiser 13

 Qualifications 13

 Duties and Authority 14

 Compensation 14

 Conflicts of Interest 14

 Ex Parte Communications 14

 Agricultural Appraisal Advisory Board 15

 Residential Property Owner Assistance 15

Appraisal Review Board (ARB) 17

 Eligibility 17

 Conflict of Interest 18

 Number and Term of Office 18

 Auxiliary and Temporary ARB Members 18

 Training 19

 Organization 20

 Personnel 20

 Ex Parte Communications with an ARB Member 20

 ARB Member Removal 21

CAD Financial Affairs 23

CAD Budget	23
Public Notice of Budget Hearing	23
Budget Adoption	24
Allocating Costs of CAD Operations	24
Different Fiscal Year and Method of Financing	25
Designation of District Depository	25
Purchasing and Contracting	26
Financial Audit	26
Other Financial Affairs	26
Taxpayer Assistance	27
Reasonable Access	27
Other General Access Issues	27
Complaint Process	27
Taxpayer Liaison Officer	28
Public Information Act	29
Open Meetings Act	31
CAD Operations	33
Ownership or Lease of Real Property	33
Technological Capabilities	33
Records System	34
Appraisal Records of All Property	34
Appraisal Cards	34
Maps	34
Local Government Records Management	35
CAD Personnel	37
Personnel Policy	37
Professional Development	37
Assessment and Collection Functions	39
Interlocal Contracts	39
Consolidation Election	39
Annual Collection Budget	40
Comptroller Review of CADs	41
Methods and Assistance Program (MAP)	41
School District Property Value Study (PVS)	41
Targeted MAP	42
Performance Audits	43
Appraisal District Ratio Study	44

Introduction

Appraisal districts are responsible for appraising property in the district for ad valorem tax purposes for each taxing unit that imposes ad valorem taxes on property in the district.¹ An appraisal district is established in each county and has the same boundaries as the county's boundaries.² An appraisal district is a political subdivision of the state that is governed by a board of directors.³

Common abbreviations and terms used in this manual are:

ARB – appraisal review board

CAD – county appraisal district

TAC – tax assessor-collector

TDLR – Texas Department of Licensing and Regulation

Voting taxing units – taxing units that are entitled to vote on the appointment of members to the board of directors.

¹ Tex. Tax Code §6.01(b)

² Tex. Tax Code §§6.01(a) and 6.02(a)

³ Tex. Tax Code §§6.01(c) and 6.03(a)

Governance

Composition of Board of Directors

The board of directors is composed of five members.⁴ The number of directors can be increased up to 13 by action of the board of directors.⁵ However, in most cases, the board of directors may not make this change if a voting taxing unit adopts a resolution opposing the change.⁶

Taxing units participating in the CAD may increase the number of directors up to 13 members if three-fourths of voting taxing units adopt resolutions.⁷ A change is not valid if it reduces the voting entitlement of one or more taxing units (unless the taxing unit adopts one of two specified resolutions) or if it expands the types of taxing units that are entitled to vote on the appointment of directors.⁸

The county TAC is a nonvoting director, if not appointed as a voting director.⁹ If a commissioner's court of the county enters into a contract for assessment and collections under Tax Code Section 6.24(b) or if the CAD board of directors enters into a contract for appraisal under Tax Code Section 6.05(b), then the county TAC is ineligible to serve on the board of directors.¹⁰

Board members may not receive compensation for service on the board but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.¹¹ This reimbursement is as provided by the budget adopted by the board of directors.¹²

⁴ Tex. Tax Code §6.03(a)

⁵ Tex. Tax Code §6.031(a)

⁶ Tex. Tax Code §6.031(a)

⁷ Tex. Tax Code §6.031(b)

⁸ Tex. Tax Code §6.031(b)

⁹ Tex. Tax Code §6.03(a)

¹⁰ Tex. Tax Code §6.03(a)

¹¹ Tex. Tax Code §6.04(c)

¹² Tex. Tax Code §6.04(c)



Appointment, Eligibility and Terms

Appointment: Taxing units—counties, cities/towns, school districts, junior colleges and certain conservation and reclamation districts—select directors in the fall of odd-numbered years.¹³ Conservation and reclamation districts may participate in this process if at least one conservation and reclamation district in the CAD delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year.¹⁴ On request, the chief appraiser must certify all eligible conservation and reclamation districts that are imposing taxes and that participate in the CAD by June 15.¹⁵

The board of directors is selected by appointment; it is not an election governed by the Texas Election Code.¹⁶ The method or procedure for appointing members can be changed by the board of directors or by three-fourths of the voting taxing units acting through resolutions.¹⁷

The voting entitlement of a taxing unit is determined by a calculation that takes into account a taxing unit's share of the total dollar amount of property taxes imposed in the CAD.¹⁸ The chief appraiser makes this calculation for each taxing unit (other than conservation and reclamation districts) and delivers written notice before Oct. 1 of each odd-numbered year of the number of votes to which each taxing unit is

¹³ Tex. Tax Code §6.03

¹⁴ Tex. Tax Code §6.03(c)

¹⁵ Tex. Tax Code §6.03(c)

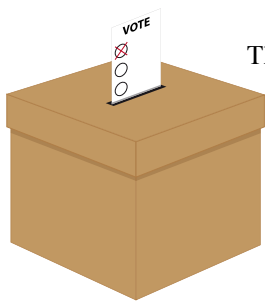
¹⁶ Tex. Att'y Gen. Op. JM-166 (1984)

¹⁷ Tex. Tax Code §6.031(a) and (b)

¹⁸ Tex. Tax Code §6.03(d)

entitled.¹⁹ Each taxing unit (other than a conservation and reclamation district) that is entitled to vote may submit to the chief appraiser one nominee for each position to be filled before Oct. 15.²⁰

The chief appraiser also must calculate the number of votes that an eligible conservation and reclamation district is entitled to and must deliver before July 1 of each odd-numbered year, a written notice to the district of its voting entitlement and right to nominate one candidate for director.²¹ All eligible conservation and reclamation districts must submit the name of the district's nominee to the chief appraiser before July 15 of each odd-numbered year.²² Before Aug. 1, the chief appraiser must prepare a nominating ballot listing all the nominees of conservation and reclamation districts and deliver a ballot to the presiding officer of the board of directors of each district.²³ The board of directors of each district must submit its vote for the nominee of conservation and reclamation districts before Aug. 15.²⁴ The winning nominee of the conservation and reclamation districts in the CAD becomes a nominee for CAD director.²⁵



The chief appraiser must prepare a ballot before Oct. 30 with candidates whose names were timely submitted, including the nominee of conservation and reclamation districts, if applicable.²⁶ Each taxing unit entitled to vote must determine its vote by resolution and submit it to the chief appraiser before

Dec. 15.²⁷ The five candidates who receive the largest cumulative vote totals become the board of directors.²⁸ The chief appraiser announces the new directors before Dec. 31.²⁹ Ties must be resolved by the chief appraiser by any method of chance.³⁰

In counties with a population of 120,000 or more, a taxing unit entitled to cast at least five percent of the total votes is required to determine its vote by resolution adopted at the first or second meeting held after the chief appraiser delivers the ballot. The taxing unit must submit its vote not later than the third day following the date the resolution is adopted.³¹

Both the board of directors and taxing units may propose to change the method or procedure for appointing directors.³² If the board of directors makes the proposal, a voting taxing unit may veto the proposal by adopting a resolution opposing the change before Sept. 1.³³ If a participating taxing unit proposes a change, the change is adopted if three-fourths of the voting taxing units adopt resolutions providing for the change.³⁴ A resolution to change the method or procedure for appointing directors must be filed with the chief appraiser after June 30 and before Oct. 1 of a year in which members are appointed, or the resolution is ineffective.³⁵

Throughout the selection process, the Tax Code specifies dates for action by the chief appraiser and the taxing units. The dates provided in Tax Code Section 6.03(f) and (g) are directory and not mandatory.³⁶ However, the advice of legal counsel should be obtained in such situations.

Eligibility: To be eligible to serve on a board of directors, an individual must be a resident of the CAD and must have resided in the CAD for at least two years immediately preceding the date of taking office.³⁷ This residency requirement does not apply to a county TAC serving as a nonvoting director.³⁸

An employee of a taxing unit that participates in the CAD is not eligible to serve on the board of directors, unless that individual also is a member of the governing body of the taxing unit or an elected official of a taxing unit.³⁹ Membership on the governing body of a taxing unit does not make an otherwise eligible individual ineligible to serve on the board of directors.⁴⁰

¹⁹ Tex. Tax Code §6.03(e)

²⁰ Tex. Tax Code §6.03(g)

²¹ Tex. Tax Code §6.03(f) and (h)

²² Tex. Tax Code §6.03(h)

²³ Tex. Tax Code §6.03(h)

²⁴ Tex. Tax Code §6.03(h)

²⁵ Tex. Tax Code §6.03(h)

²⁶ Tex. Tax Code §6.03(j)

²⁷ Tex. Tax Code §6.03(k)

²⁸ Tex. Tax Code §6.03(k)

²⁹ Tex. Tax Code §6.03(k)

³⁰ Tex. Tax Code §6.03(k)

³¹ Tex. Tax Code §6.03(k-1)

³² Tex. Tax Code §6.031(a) and (b)

³³ Tex. Tax Code §6.031(a)

³⁴ Tex. Tax Code §6.031(b)

³⁵ Tex. Tax Code §6.031(c)

³⁶ Tex. Att'y Gen. Op. JM-166 (1984)

³⁷ Tex. Tax Code §6.03(a)

³⁸ Tex. Tax Code §6.03(a)

³⁹ Tex. Tax Code §6.03(a)

⁴⁰ Tex. Tax Code §6.03(a)

Degrees of Consanguinity and Affinity

1 st DEGREE	2 nd DEGREE	3 rd DEGREE
By Consanguinity • Parents • Children By Affinity • Spouses of relatives listed under first degree consanguinity • Spouse • Spouse's parents • Spouse's children • Stepparents • Stepchildren	By Consanguinity • Grandparents • Grandchildren • Brothers & sisters By Affinity • Spouses of relatives listed by second degree consanguinity • Spouse's grandparents • Spouse's grandchildren • Spouse's brothers & sisters	By Consanguinity • Great grandparents • Great grandchildren • Nieces & nephews • Aunts & uncles By Affinity • No prohibitions

Owing delinquent property taxes disqualifies a person from serving on the CAD board of directors.⁴¹ The person is ineligible if he or she owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known of the delinquency.⁴² This disqualification does not apply if the person is paying the delinquent taxes and any penalties and interest under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.⁴³

A person is ineligible to serve on an appraisal district's board of directors if the individual served as a member of the board of directors for all or part of five terms, unless they were a county assessor-collector at the time of service or the appraisal district is established in a county with a population of less than 120,000.⁴⁴

A person who has appraised property for compensation for use in proceedings, represented property owners for compensation in proceedings in the CAD or was a CAD employee at any time within the preceding three years is ineligible to serve on the board of directors.⁴⁵

A person is ineligible to serve on the board of directors if the individual is related within the second degree of consanguinity (blood) or affinity (marriage) to the following:

- an appraiser who appraises property for use in a proceeding under the Tax Code; or
- a person who represents property owners for compensation in proceedings under the Tax Code in the CAD.⁴⁶

A director who continues to hold office knowing he or she is related in this manner to the above named persons commits a Class B misdemeanor offense.⁴⁷

An individual is not eligible to be appointed to or to serve on the board of directors if an individual has a substantial interest in a business entity that is party to a contract or the individual is a party to a contract with the CAD.⁴⁸ This prohibition also applies to contracts with a taxing unit that participates in the CAD if the contract relates to the performance of an activity governed by the Tax Code.⁴⁹ A CAD may not enter into a contract with a board member or with a business entity in which a board member has a substantial interest.⁵⁰ A taxing unit may not enter into a contract relating to the performance of an activity governed by the Tax Code with a board member in which

⁴¹ Tex. Tax Code §6.035(a)(2)

⁴² Tex. Tax Code §6.035(a)(2)

⁴³ Tex. Tax Code §6.035(a)(2)

⁴⁴ Tex. Tax Code §6.035(a-1)

⁴⁵ Tex. Tax Code §6.035(a-1)

⁴⁶ Tex. Tax Code §6.035(a)(1)

⁴⁷ Tex. Tax Code §6.035(b)

⁴⁸ Tex. Tax Code §6.036(a)

⁴⁹ Tex. Tax Code §6.036(a)

⁵⁰ Tex. Tax Code §6.036(b)

the taxing unit participates or with a business entity in which a board member has a substantial interest.⁵¹

An individual has substantial interest in a business entity if:

- the combined ownership of the director and the director's spouse is at least 10 percent of the voting stock or shares of the business entity; or
- the director or director's spouse is a partner, limited partner or officer of the business entity.⁵²



Term of Office and Vacancy: CAD directors serve two-year terms.⁵³ Each term begins on Jan. 1 of an even-numbered year.⁵⁴ The two-year term of office does not apply to the county TAC who serves as a nonvoting director.⁵⁵

Voting taxing units may adopt staggered one and two-year terms.⁵⁶ To adopt staggered terms, taxing units must take two actions.⁵⁷ First, at least three-fourths of the voting taxing units are required to adopt resolutions for staggered terms.⁵⁸ Second, the voting taxing units must have changed the method for appointing members to end cumulative voting (casting all or part of the votes to which the taxing unit is entitled). These two actions may be proposed concurrently.⁵⁹

A resolution proposing staggered terms must be filed with the chief appraiser after June 30 and before Oct. 1.⁶⁰ If the chief appraiser determines that enough taxing units filed valid resolutions, he or she must notify all taxing units of the change before Oct. 10.⁶¹ Staggered terms take effect on Jan. 1 of the next even-numbered year.⁶² To start staggering terms, all members are appointed for that year without regard to staggered terms.⁶³ At the earliest practical date after Jan. 1, the board

determines by lot which of its members will serve one- and two-year terms.⁶⁴

Boards with an even number of members divide the one- and two-year terms in half. Boards with an odd number of members must have one more member with a two-year term than members with one-year terms.⁶⁵ For example, a six-member board would choose three members to serve one-year terms. A five-member board would choose two.

For each director's term that expires on Jan. 1, the CAD must annually appoint directors for a term that begins on that Jan. 1.⁶⁶

Staggered terms may be rescinded by resolution of a majority of voting taxing units.⁶⁷ The resolution must be adopted and filed with the chief appraiser after June 30 and before Oct. 1 of odd-numbered years.⁶⁸ After a valid rescission, the terms of all current members expire on the next Jan. 1, even if a member will have only served one year of a two-year term.⁶⁹ The entire board will be appointed for two-year terms on that date.⁷⁰ Staggered terms are automatically rescinded if the CAD makes a change in the method of appointing board members that results in a method of using cumulative voting.⁷¹



If a vacancy occurs on the board, each voting taxing unit nominates by resolution a candidate to fill the vacancy.⁷² Within 45 days after receiving notice from the board of directors that a vacancy exists, a taxing unit must submit the nomination to the chief appraiser.⁷³ The chief appraiser delivers a list of the nominees to the directors within the next five days.⁷⁴ Directors select by majority vote one of the nominees to fill the vacancy.⁷⁵ If a vacancy occurs for a board with staggered terms, the vacancy is filled by appointment of the

⁵¹ Tex. Tax Code §6.036(c)

⁵² Tex. Tax Code §6.036(d)

⁵³ Tex. Tax Code §6.03(b)

⁵⁴ Tex. Tax Code §6.03(b)

⁵⁵ Tex. Tax Code §6.03(b)

⁵⁶ Tex. Tax Code §6.034(a)

⁵⁷ Tex. Tax Code §6.034(a)

⁵⁸ Tex. Tax Code §6.034(a)

⁵⁹ Tex. Tax Code §6.034(a)

⁶⁰ Tex. Tax Code §6.034(b)

⁶¹ Tex. Tax Code §6.034(c)

⁶² Tex. Tax Code §6.034(d)

⁶³ Tex. Tax Code §6.034(d)

⁶⁴ Tex. Tax Code §6.034(d)

⁶⁵ Tex. Tax Code §6.034(d)

⁶⁶ Tex. Tax Code §6.034(e)

⁶⁷ Tex. Tax Code §6.034(g)

⁶⁸ Tex. Tax Code §6.034(g)

⁶⁹ Tex. Tax Code §6.034(g)

⁷⁰ Tex. Tax Code §6.034(g)

⁷¹ Tex. Tax Code §6.034(h)

⁷² Tex. Tax Code §6.03(l)

⁷³ Tex. Tax Code §6.03(l)

⁷⁴ Tex. Tax Code §6.03(l)

⁷⁵ Tex. Tax Code §6.03(l)

voting taxing unit that nominated the person whose departure caused the vacancy.⁷⁶

Conflicts of Interest

Board members are subject to conflict of interest provisions in law, including Tax Code Section 6.036 which excludes certain individuals from serving on the board of directors. Local Government Code Chapter 171 applies to all local officials, including boards of directors of CADs. Local Government Code Chapter 176 applies to officers of political subdivisions of the state.⁷⁷

For more information, see the Texas Ethics Commission's conflict of interest forms at ethics.state.tx.us/forms/conflict.

Ex Parte Communications

A board member commits a Class C misdemeanor offense if the member directly or indirectly communicates with the chief appraiser on any matter relating to the appraisal of property by the CAD.⁷⁸ However, this type of communication is allowed in:

- an open meeting of the CAD board of directors or another public forum; or
- a closed meeting of the board of directors held to consult with its attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and its attorney.⁷⁹

These ex parte communication provisions do not apply to a routine communication between the chief appraiser and the county TAC relating to the administration of an appraisal roll, including a communication made in connection with the certification, correction or collection of an account.⁸⁰ This exception applies regardless of whether the county TAC was appointed to the board of directors or serves as a nonvoting director.⁸¹

These ex parte communication provisions do not prohibit a CAD board member from transmitting in writing to a chief

appraiser, without comment, a complaint by a property owner or taxing unit about the appraisal of a specific property.⁸²

A board member, officer or employee of a taxing unit commits a Class A misdemeanor offense if they directly or indirectly communicate with the chief appraiser or another employee of the CAD for the purpose of influencing an appraised property value, unless they own or lease the property themselves.⁸³

Oath of Office

The Texas Constitution requires all elected and appointed officers to sign an anti-bribery statement and take an oath of office before beginning the duties of the office.⁸⁴



The constitutionally prescribed anti-bribery statement is located on the Secretary of State's web-

site as Form 2201 at sos.state.tx.us/statdoc/forms/2201.pdf. A director signs this statement before the oath of office is administered.⁸⁵ Directors should retain the statement in the official records of the appraisal district.⁸⁶

The official oath of office is found on the Secretary of State's website as Form 2204 at sos.state.tx.us/statdoc/forms/2204.pdf.

Recalling a Director

A taxing unit may ask for the recall of any director the taxing unit voted for in the appointment process.⁸⁷ A recall starts when a taxing unit files a resolution with the chief appraiser stating that the taxing unit is calling for the recall of a named member.⁸⁸ Within 10 days after a taxing unit files a recall resolution, the chief appraiser must give written notice of the filing of the resolution to the presiding officer of each voting taxing unit.⁸⁹

⁷⁶ Tex. Tax Code §6.034(i)

⁷⁷ Tex. Local Government Code §§171.001(1) and 176.001(3) and (4)

⁷⁸ Tex. Tax Code §6.15(a) and (d)

⁷⁹ Tex. Tax Code §6.15(a)

⁸⁰ Tex. Tax Code §6.15(c)

⁸¹ Tex. Tax Code §6.15(c)

⁸² Tex. Tax Code §6.15(c)

⁸³ Tex. Tax Code §6.155

⁸⁴ Tex. Const. XVI, §1(a) and (b)

⁸⁵ Tex. Const. XVI, §1

⁸⁶ Tex. Const. XVI, §1(c)

⁸⁷ Tex. Tax Code §6.033(a)

⁸⁸ Tex. Tax Code §6.033(a)

⁸⁹ Tex. Tax Code §6.033(a)

Only the taxing units that voted for the member may vote.⁹⁰ A recall-voting taxing unit has the same number of votes in the recall that it cast in appointing the board member.⁹¹ A taxing unit votes by submitting a resolution to the chief appraiser on or before the 30th day after the recall resolution is filed.⁹²

Not later than the 10th day after the last day for voting in favor of the recall, the chief appraiser must count the casted votes.⁹³ A director is recalled if the number of votes cast in favor of recall equals or exceeds a majority of the votes cast appointing the board member.⁹⁴ The chief appraiser must immediately notify in writing the presiding officer of the board of directors and the governing body of each recall-voting taxing unit of the results.⁹⁵ If the chair is the subject of the recall, the board secretary shall also be notified.⁹⁶

After a recall, the director's vacancy is filled by the recall-voting taxing units appointing a new board member.⁹⁷ Each recall-voting taxing unit may nominate by resolution one candidate and is entitled to the same number of votes it originally cast to appoint the recalled member.⁹⁸

On or before the 15th day after the last day nominations must be submitted, the chief appraiser must prepare a ballot and deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote to fill the vacancy.⁹⁹ A taxing unit determines its vote by resolution and submits it to the chief appraiser.¹⁰⁰ The chief appraiser counts the votes on or before the 15th day after the last day on which a taxing unit may vote, declares the winner who received the largest vote total and notifies the chair of the board of directors, each taxing unit and the candidates.¹⁰¹ The chief appraiser must resolve a tie vote by any method of chance.¹⁰²

If the board of directors is appointed by another method or procedure adopted under Tax Code Section 6.031, the taxing units that voted for or participated in the appointment of the director may recall him or her and appoint a new director by any method adopted by resolution of a majority of recall-voting taxing units.¹⁰³ If the appointment was by election, the method of recall and appointing a new director to the vacancy is not valid unless it provides that each taxing unit is entitled to the same number of votes it cast for the member being recalled.¹⁰⁴

⁹⁰ Tex. Tax Code §6.033(b)

⁹¹ Tex. Tax Code §6.033(b)

⁹² Tex. Tax Code §6.033(b)

⁹³ Tex. Tax Code §6.033(c)

⁹⁴ Tex. Tax Code §6.033(c)

⁹⁵ Tex. Tax Code §6.033(c)

⁹⁶ Tex. Tax Code §6.033(c)

⁹⁷ Tex. Tax Code §6.033(d)

⁹⁸ Tex. Tax Code §6.033(d)

⁹⁹ Tex. Tax Code §6.033(d)

¹⁰⁰ Tex. Tax Code §6.033(d)

¹⁰¹ Tex. Tax Code §6.033(d)

¹⁰² Tex. Tax Code §6.033(d)

¹⁰³ Tex. Tax Code §6.033(e)

¹⁰⁴ Tex. Tax Code §6.033(e)

Board Duties, Authority and Policies

A board of directors has required duties and authority under the Tax Code. Other additional duties and authority are provided for in other law. Consult an attorney regarding all legal duties and authority.

Primary Duties

The following is a nonexclusive list of the primary responsibilities of the board of directors under the Tax Code:

Establish the appraisal district office;¹⁰⁵

Hire a chief appraiser;¹⁰⁶

Adopt the CAD's annual operating budget before Sept. 15 after fulfilling notice requirements and holding a public hearing;¹⁰⁷

Adopt a new budget within 30 days after a budget is disapproved by voting taxing units;¹⁰⁸

Determine whether to remove ARB members appointed by the board after learning of a potential ground for removal;¹⁰⁹

Notify taxing units of any vacancy on the board and elect by majority vote of members one of the submitted nominees;¹¹⁰

Elect from members a chair and secretary at the first meeting of the calendar year;¹¹¹

Have board meetings at least once each calendar quarter;¹¹²

Develop and implement policies regarding reasonable access to the board;¹¹³

Prepare information describing the board's functions and complaint procedures; the information must be made available to the public and the appropriate taxing units;¹¹⁴

Notify parties to a complaint filed with the board of the status of the complaint unless otherwise provided;¹¹⁵

Appoint a taxpayer liaison officer in counties having a population of over 120,000;¹¹⁶

Biennially develop a written plan for the periodic reappraisal of all property in the CAD's boundaries, hold a public hearing with the required notice, approve a plan by Sept. 15 of each even-numbered year and distribute copies to participating taxing units and to the Comptroller's office as required;¹¹⁷

Make an agreement with newly formed taxing unit's governing body on an estimated budget allocation for the new taxing unit;¹¹⁸

Have prepared an annual financial audit conducted by an independent certified public accountant and deliver a copy of the audit to each voting taxing unit and make available for inspection at the CAD office;¹¹⁹

Designate the CAD depository at least once every two years;¹²⁰

Receive taxing units' resolutions disapproving board actions;¹²¹

Adhere to requirements regarding purchasing and contracting under Local Government Code Chapter 252;¹²²

Provide advice and consent to the chief appraiser concerning the appointment of an agricultural appraisal advisory board and determine the number of members on that advisory board;¹²³

Adhere to laws concerning the preservation, microfilming, destruction or other disposition of records; and¹²⁴

Adopt and implement a policy for the temporary replacement of an ARB member who violates ex parte communication requirements.¹²⁵

¹⁰⁵ Tex. Tax Code §6.05(a)

¹⁰⁶ Tex. Tax Code §6.05(c)

¹⁰⁷ Tex. Tax Code §6.06(b)

¹⁰⁸ Tex. Tax Code §6.06(b)

¹⁰⁹ Tex. Tax Code §6.41(f) as amended by Acts 2021, 87th Leg., R.S. Ch. 533, Sec. 5

¹¹⁰ Tex. Tax Code §6.03(l)

¹¹¹ Tex. Tax Code §6.04(a)

¹¹² Tex. Tax Code §6.04(b)

¹¹³ Tex. Tax Code §6.04(d) and (e)

¹¹⁴ Tex. Tax Code §6.04(f)

¹¹⁵ Tex. Tax Code §6.04(g)

¹¹⁶ Tex. Tax Code §6.052(a)

¹¹⁷ Tex. Tax Code §6.05(i)

¹¹⁸ Tex. Tax Code §6.06(h)

¹¹⁹ Tex. Tax Code §6.063(a) and (b)

¹²⁰ Tex. Tax Code §6.09

¹²¹ Tex. Tax Code §6.10

¹²² Tex. Tax Code §6.11

¹²³ Tex. Tax Code §6.12(a)

¹²⁴ Tex. Tax Code §6.13

¹²⁵ Tex. Tax Code §41.66(g)

Statutory Authority

Tax Code Chapter 6 contains much of the statutory authority for boards of directors. The following is a non-exclusive list of boards' authority:

- Provide for the operation of a consolidated CAD by interlocal contract between two or more adjoining CADs;¹²⁶
- Change the number of directors or method of selecting directors, or both, unless any of the voting taxing units oppose the change;¹²⁷
- Have board meetings at any time at the call of the chair or as provided by board rule;¹²⁸
- Contract with another CAD or with a taxing unit in the CAD to perform the duties of the appraisal district office;¹²⁹
- Prescribe, by resolution, specified actions of the chief appraiser relating to CAD finances or administration that are subject to board approval;¹³⁰
- Employ a general counsel to the CAD to serve at the will of the board;¹³¹
- Purchase or lease real property and construct improvements necessary to establish and operate an appraisal district office or branch office;¹³²
- Convey real property owned by the CAD;¹³³
- Amend the approved operating budget after giving notice to participating taxing units not later than the 30th day before the date the board acts on the proposed amendment;¹³⁴
- Authorize the chief appraiser to disburse CAD funds;¹³⁵
- Change the CAD's method of financing unless any participating taxing unit opposes the change;¹³⁶
- Contract with the governing body of a taxing unit or county to assess and collect taxes through the Interlocal Cooperation Act;¹³⁷
- Change the number of ARB members; and¹³⁸
- Appoint auxiliary ARB members and select the number of auxiliary members by resolution, except in certain counties.¹³⁹

¹²⁶ Tex. Tax Code §6.02

¹²⁷ Tex. Tax Code §6.031(a)

¹²⁸ Tex. Tax Code §6.04(b)

¹²⁹ Tex. Tax Code §6.05(b)

¹³⁰ Tex. Tax Code §6.05(h)

¹³¹ Tex. Tax Code §6.05(j)

¹³² Tex. Tax Code §6.051(a)

¹³³ Tex. Tax Code §6.051(c)

¹³⁴ Tex. Tax Code §6.06(c)

¹³⁵ Tex. Tax Code §6.06(f)

¹³⁶ Tex. Tax Code §6.061(a)

¹³⁷ Tex. Tax Code §6.24(a) and (b)

¹³⁸ Tex. Tax Code §6.41(b-1)

¹³⁹ Tex. Tax Code §6.414

The Tax Code also provides certain statutory authority to the board of directors outside of Chapter 6, including authorizing a board of directors to approve the chief appraiser to contract with private appraisal firms to perform appraisal services under Tax Code Section 25.01(b). On written approval of the board of directors, a chief appraiser is entitled to appeal certain ARB orders to district court as provided by Tax Code Section 42.02.

Limited Appraisal Authority

The board's appraisal authority is limited. The board does not appraise property or review values on individual properties. The law assigns these tasks to the chief appraiser and the ARB, respectively. The board of directors does have the authority to give written approval for a chief appraiser to appeal certain ARB orders in court.¹⁴⁰

The board has authority over appraisal policy through the following duties and authority:

- duty to develop biennially a written plan for periodic reappraisal;¹⁴¹
- duty to adopt an operating budget to reflect the board's decisions on handling appraisals;¹⁴²
- authority to contract with another CAD or with a taxing unit in the CAD to perform the duties of the appraisal district's office; and¹⁴³
- authority to approve the chief appraiser to contract with private appraisal firms to perform appraisal services.¹⁴⁴

Meetings

At the board of directors' first meeting each calendar year, the board must elect from its members a chair and a secretary.¹⁴⁵ A nonvoting TAC may serve as chair or secretary.¹⁴⁶ A majority of the CAD board of directors constitutes a quorum.¹⁴⁷ A TAC who is a



¹⁴⁰ Tex. Tax Code §42.02(a) and (c)

¹⁴¹ Tex. Tax Code §6.05(i)

¹⁴² Tex. Tax Code §6.06(b)

¹⁴³ Tex. Tax Code §6.05(b)

¹⁴⁴ Tex. Tax Code §25.01(b)

¹⁴⁵ Tex. Tax Code §6.04(a)

¹⁴⁶ Tex. Att'y Gen. Op. JC-0580 (2002)

¹⁴⁷ Tex. Tax Code §6.04

nonvoting member is counted in determining the presence of a quorum.¹⁴⁸

The board may meet at any time at the call of the chair or as provided by board rule.¹⁴⁹ However, the board must meet at least once each calendar quarter.¹⁵⁰

The board must provide reasonable time at meetings for public comment on CAD and ARB policies and procedures and allow a reasonable amount of time for a taxpayer liaison officer's report if applicable.¹⁵¹

Disapproval of Board Actions

At times, the board of directors may take an action with which the majority of voting taxing units may disagree. Under Tax Code Section 6.10, a majority of voting taxing units may veto any action by the board of directors.¹⁵² This disapproval power under Tax Code Section 6.10 does not apply to the adoption of the budget by the board.¹⁵³

To veto a board action other than the budget, the governing bodies of a majority of voting taxing units must adopt resolutions disapproving the action.¹⁵⁴ The voting taxing units must file the resolutions with the board's secretary within 15 days after the action is taken.¹⁵⁵ The board action is revoked effective the day after the day on which the required number of resolutions is filed.¹⁵⁶

For voting taxing units to disapprove the CAD budget, a majority of the taxing units must file a resolution with the board's secretary within 30 days after the budget is adopted.¹⁵⁷

Written Policies

Through its policies, the board determines the CAD's goals and operates as the decision-making body of the CAD. While the Tax Code requires boards of directors to develop written

policies on certain issues, a written policy covering all operational aspects of CAD operations should be considered.

Written procedures and policies are good management tools. A policy manual allows the board to make important decisions carefully and in advance, rather than in response to crisis situations. They permit the CAD's operations to continue uninterrupted if key employees leave. A policy manual also helps educate the public and others about CAD operations.

Examples of policies of boards of directors can be found at comptroller.texas.gov/taxes/property-tax/board-policies/index.php.

Required Policies



State law requires the board to have written policies on specific issues. The board must:

- develop and implement policies that provide the public with reasonable opportunity to appear before the board to speak on any issue under the board's jurisdiction;¹⁵⁸
- prepare and maintain a written plan that describes how a non-English speaking person or a person who has a physical, mental or developmental disability may be provided reasonable access to the board; and¹⁵⁹
- prepare information of public interest describing the board's functions and procedures to file complaints and how complaints are resolved by the board.¹⁶⁰

The board must biennially develop a written reappraisal plan for the periodic reappraisal of all property in the CAD's boundaries by Sept. 15 of each even-numbered year.¹⁶¹ The plan is required to comply with Tax Code Section 25.18.¹⁶² Certain activities are required to be conducted in the reappraisal of all real and personal property located in the CAD at least once every three years.¹⁶³ In summary, those activities are the following:

- identifying properties by physical inspection or other reliable means of identification (such as deeds or other legal

¹⁴⁸ Tex. Att'y Gen. Op. JC-0580 (2002)

¹⁴⁹ Tex. Tax Code §6.04(b)

¹⁵⁰ Tex. Tax Code §6.04(b)

¹⁵¹ Tex. Tax Code §6.04(d)

¹⁵² Tex. Tax Code §6.10

¹⁵³ Tex. Tax Code §6.10

¹⁵⁴ Tex. Tax Code §6.10

¹⁵⁵ Tex. Tax Code §6.10

¹⁵⁶ Tex. Tax Code §6.10

¹⁵⁷ Tex. Tax Code §6.06(b)

¹⁵⁸ Tex. Tax Code §6.04(d)

¹⁵⁹ Tex. Tax Code §6.04(e)

¹⁶⁰ Tex. Tax Code §6.04(f)

¹⁶¹ Tex. Tax Code §6.05(i)

¹⁶² Tex. Tax Code §6.05(i)

¹⁶³ Tex. Tax Code §25.18(b)

-
- documentation, aerial or land-based photographs, surveys, maps and sketches);
- identifying and updating property characteristics;
 - defining market areas;
 - identifying property characteristics affecting value in market areas (such as location and market area of property, physical attributes of property, legal and economic attributes and legal restrictions);
 - developing an appraisal model that reflects the relationship among property characteristics affecting value in each market area and determines the contribution of individual property characteristics;
 - applying the conclusions from the model to the characteristics of individual properties; and
 - reviewing the appraisal results to determine value.¹⁶⁴

Tax Code Section 23.01(b) provides that if a CAD determines the appraised value of a property using mass appraisal standards, those standards must comply with the Uniform Standards of Professional Appraisal Practice.

The board of directors must hold a public hearing to consider the proposed plan and provide written notice to each participating taxing unit of the hearing not later than the 10th day before the hearing.¹⁶⁵ After holding the public hearing and approving a plan by Sept. 15 of each even-numbered year, the board of directors must distribute copies of the plan to the participating taxing units and to the Comptroller's office within 60 days of the approval date.¹⁶⁶

The board of directors may include language in the reappraisal plan to give the chief appraiser discretion to make limited changes, especially as they relate to the work plan or schedule of appraisal activities, without the need for additional board approval or plan amendment. This limited authority would allow the chief appraiser to make timeline adjustments to meet staffing needs or to address other management issues.

In order to ensure timely compliance with the reappraisal plan, the board of directors should consider conducting an annual review of plan implementation. Attention to completion of tasks according to the appraisal work plan or schedule should be given, along with completion of reappraisal activities for all identified market areas.

If the plan requires revision because of staff reductions, changes in market areas, unexpected circumstances, or any other reason deemed appropriate by the board of directors, it may be amended by official action, without the board of directors conducting another public hearing. Copies of the amended reappraisal plan should be distributed to the participating taxing units and the Comptroller's office.

The board of directors also must adopt and implement a policy for the temporary replacement of an ARB member who has communicated with another person in violation of ex parte communication provisions.¹⁶⁷ An ARB member may not communicate with another person concerning the evidence, argument, facts, merits or any other matters related to an owner's protest, except during the hearing on the protest.¹⁶⁸ An ARB member also may not communicate with another person concerning a property that is the subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties.¹⁶⁹

¹⁶⁴ Tex. Tax Code §25.18(b)

¹⁶⁵ Tex. Tax Code §6.05(i)

¹⁶⁶ Tex. Tax Code §6.05(i)

¹⁶⁷ Tex. Tax Code §41.66(g)

¹⁶⁸ Tex. Tax Code §41.66(f)

¹⁶⁹ Tex. Tax Code §41.66(f)

Appointing the Chief Appraiser

The chief appraiser is the chief administrator of the CAD.¹⁷⁰ The chief appraiser is generally appointed by and serves at the pleasure of the CAD board of directors;¹⁷¹ however, the Comptroller's office may appoint a chief appraiser in certain circumstances. If a taxing unit performs the duties of the CAD pursuant to a contract, the assessor for the taxing unit is the chief appraiser.¹⁷²

Qualifications

To be eligible to serve as a chief appraiser, a person must hold one of the following professional designations:

- Registered Professional Appraiser (RPA) from TDLR;
- MAI from the Appraisal Institute;
- Assessment Administration Specialist from the International Association of Assessing Officers (IAAO);
- Certified Assessment Evaluator from IAAO; or
- Residential Evaluation Specialist from IAAO.¹⁷³

A chief appraiser with a professional designation other than an RPA, must become certified with TDLR as an RPA within five years of appointment as chief appraiser.¹⁷⁴

A person may not serve as a chief appraiser unless the person has completed the chief appraiser training program prescribed by Occupations Code Section 1151.164.¹⁷⁵ This does not apply to a county TAC who serves as a chief appraiser.¹⁷⁶ It applies only to a chief appraiser appointed on or after July 1, 2006.¹⁷⁷ A person may serve in a temporary, provisional or

interim capacity as chief appraiser for up to one year without completing this training.¹⁷⁸

Owing delinquent property taxes disqualifies a person from serving as chief appraiser.¹⁷⁹ A person is ineligible for employment as a chief appraiser if he or she owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known of the delinquency.¹⁸⁰ This disqualification does not apply if the person is paying the delinquent taxes and any penalties and interest under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.¹⁸¹

A person is also disqualified from employment as the chief appraiser if the person is related within the second degree by consanguinity or affinity to a person who appraises property for compensation for use in proceedings under the Tax Code or to a person who represents property owners for compensation in such proceedings in the CAD.¹⁸² A chief appraiser who remains employed knowing he or she is related to an appraiser or tax representative as prohibited commits a Class B misdemeanor offense.¹⁸³

An individual may not be employed by an appraisal district if the individual is an officer or employee of a taxing unit that participates in the appraisal district or has served as a member of the ARB at any time during the preceding two years.¹⁸⁴

A chief appraiser who is not eligible to serve cannot perform any action required by law for chief appraisers, including the preparation, certification or submission of any part of the appraisal

¹⁷⁰ Tex. Tax Code §6.05(c)

¹⁷¹ Tex. Tax Code §6.05(c)

¹⁷² Tex. Tax Code §6.05(c)

¹⁷³ Tex. Tax Code §6.05(c)

¹⁷⁴ Tex. Tax Code §6.05(c)

¹⁷⁵ Tex. Tax Code §5.042(a)

¹⁷⁶ Tex. Tax Code §5.042(c)

¹⁷⁷ Acts 2005, 79th Leg., R.S. Ch. 1111, Sec. 3

¹⁷⁸ Tex. Tax Code §5.042(b)

¹⁷⁹ Tex. Tax Code §6.035(a)

¹⁸⁰ Tex. Tax Code §6.035(a)

¹⁸¹ Tex. Tax Code §6.035(a)

¹⁸² Tex. Tax Code §6.035(a)

¹⁸³ Tex. Tax Code §6.035(a)

¹⁸⁴ Tex. Tax Code §6.054

roll.¹⁸⁵ A chief appraiser must give written notice of eligibility to serve as chief appraiser to the Comptroller's office no later than Jan. 1 each year.¹⁸⁶ The Comptroller's office will appoint an eligible person to perform the duties of chief appraiser for a CAD whose chief appraiser is ineligible to serve.¹⁸⁷

Duties and Authority

The CAD board of directors by resolution may prescribe that specified actions of the chief appraiser relating to the finances or administration of the CAD are subject to board approval.¹⁸⁸ The chief appraiser may employ and compensate professional, clerical and other personnel as provided by the CAD budget, with the exception of a general counsel to the CAD.¹⁸⁹ The chief appraiser may delegate authority to his or her employees.¹⁹⁰ The chief appraiser's primary duty is to discover, list, review and appraise all taxable property in the CAD using generally accepted appraisal techniques.

Compensation

The chief appraiser is entitled to compensation as provided by the budget adopted by the board of directors.¹⁹¹ The chief appraiser's compensation may not be directly or indirectly linked to an increase in the total market, appraised or taxable value of property in the CAD.¹⁹²

Conflicts of Interest

The chief appraiser is an officer of the CAD for purposes of the nepotism law in Government Code Chapter 573.¹⁹³ A CAD may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity, as determined under Government Code Chapter 573.¹⁹⁴

An appraisal performed by a chief appraiser in a private capacity or by an individual related within the second degree by consanguinity or affinity (as determined under Government

Code Chapter 573) to the chief appraiser may not be used as evidence in a protest or challenge under Tax Code Chapter 41 or an appeal under Tax Code Chapter 42 concerning property that is taxable in the CAD in which the chief appraiser is employed.¹⁹⁵

A chief appraiser commits a Class B misdemeanor offense if the chief appraiser refers a person, whether gratuitously or for compensation, to another person for the purpose of obtaining a property appraisal, whether or not the appraisal is for ad valorem tax purposes.¹⁹⁶

Ex Parte Communications

A chief appraiser commits a Class C misdemeanor offense if the chief appraiser directly or indirectly communicates with a member of the board of directors on any matter relating to the appraisal of property by the CAD.¹⁹⁷ This type of communication is allowed in:

- an open meeting of the board of directors or another public forum; or
- a closed meeting of the board of directors held to consult with the board's attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and the board's attorney.

These ex parte communication provisions do not include a routine communication between the chief appraiser and the county TAC relating to the administration of an appraisal roll.¹⁹⁸ This applies regardless of whether the county TAC is a nonvoting member of board of directors or was appointed.¹⁹⁹

These ex parte communication provisions do not prohibit a CAD board member from transmitting in writing to a chief appraiser, without comment, a complaint by a property owner or taxing unit about the appraisal of a specific property.²⁰⁰

¹⁸⁵ Tex. Tax Code §6.05(c)

¹⁸⁶ Tex. Tax Code §6.05(c)

¹⁸⁷ Tex. Tax Code §6.0501(a)

¹⁸⁸ Tex. Tax Code §6.05(h)

¹⁸⁹ Tex. Tax Code §6.05(d)

¹⁹⁰ Tex. Tax Code §6.05(e)

¹⁹¹ Tex. Tax Code §6.05(d)

¹⁹² Tex. Tax Code §6.05(d)

¹⁹³ Tex. Tax Code §6.05(g)

¹⁹⁴ Tex. Tax Code §6.05(g)

¹⁹⁵ Tex. Tax Code §6.035(d)

¹⁹⁶ Tex. Tax Code §6.035(c)

¹⁹⁷ Tex. Tax Code §6.15(b) and (d)

¹⁹⁸ Tex. Tax Code §6.15(c)

¹⁹⁹ Tex. Tax Code §6.15(c)

²⁰⁰ Tex. Tax Code §6.15(c)

Agricultural Appraisal Advisory Board



With the advice and consent of the board of directors, the chief appraiser appoints an agricultural advisory board composed of three or more members as determined by the board.²⁰¹ Members must have been CAD residents for at least five years and be landowners of the CAD whose land qualifies for special appraisal of agricultural use, open space agricultural or timber land.²⁰²

Residential Property Owner Assistance

A chief appraiser may maintain a list of individuals who have designated themselves to provide free assistance to residential property owners.

Upon owner request a chief appraiser shall provide to the owner a copy of the list organized by county; make the list available on the appraisal district's internet website, if the appraisal district maintains a website; and provide the name, contact information, and job title of each individual who will provide free assistance.²⁰³

A person must designate himself or herself as an individual who will provide free assistance by completing a form prescribed by the chief appraiser and submitting to the chief appraiser.²⁰⁴

The chief appraiser has authority and duties including, but not limited to, the following:

²⁰¹ Tex. Tax Code §6.12(a)

²⁰² Tex. Tax Code §6.12(b)

²⁰³ Tex. Tax Code §6.16(c)

²⁰⁴ Tex. Tax Code §6.16(d)

The chief appraiser has authority and duties including, but not limited to, the following:

Appraisal	Appraise all taxable property at market value, except as otherwise provided by law	Chapter 23
	Determine eligibility for special appraisal and establish both a market and special appraised value on qualified property	Chapter 23
	Determine whether property qualified for agricultural or timber appraisal has undergone a change of use and send a notice of change of use to the owner	Chapter 23
	Determine exemption eligibility	Section 11.45
	Create procedures for equitable and uniform taxation of inventory	Section 23.12(b)
	Administration of rendition laws	Chapter 22
	Create appraisal records	Section 25.01(a) and Comptroller Rule 9.3004
	Contract, with the approval of the board of directors, with private appraisal firms, if appropriate	Section 25.01(b)
	Certify appraisal roll and other listings to each taxing unit participating in the appraisal district	Section 26.01
	Send notices of appraised value	Section 25.19
	Discover omitted property and adjust the appraisal roll	Section 25.21
	Maintain a list of real estate brokers, sales agents, real estate appraisers or property tax consultants who have designated themselves as an individual who will provide free assistance to an owner for residential property that is occupied by the owner as their principal residence.	Tex. Tax Code §6.16(b) and §6.16(c 1-3)
ARB	Submit complete appraisal records of all property to the ARB	Section 25.22
	Present supplemental records and other items for ARB consideration	Section 25.23
	Correct records and make reappraisals as ordered by the ARB	Section 41.08
Administration	Prepare the appraisal district budget	Section 6.06(a)
	Give notice of public hearing on the appraisal district budget	Section 6.062
	Appoint agricultural advisory board, with the advice and consent of the board of directors	Section 6.12(a)
	Certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the appraisal district on the chief appraiser's receipt of a request by a district to nominate and vote on the board of directors	Section 6.03(c)
	Calculate the number of votes each taxing unit has in appointing the board of directors and provide notice as required	Section 6.03(e) and (f)
	Create the ballot with the candidates for the board of directors, counting the votes, declaring the winners and resolving any ties	Section 6.03(h), (i), (j), (k) and (l)
	Act as the appraisal district's public information officer	Gov't Code Section 552.201
	Issue permits for going out of business sales and send notices of such sales to other entities	Business & Commerce Code Sections 17.835 and 17.84
	Serve as the chief administrator of the appraisal district with responsibility to employ and compensate professional, clerical and other personnel as provided by the budget except for a general counsel to the appraisal district	Section 6.05(c) and (d)
	Notify voting taxing units of any proposed property transactions	Section 6.051(b)
	Proportionally credit excess amounts to the following fiscal year if payments by taxing units to the appraisal district budget exceed the amount actually spent or obligated to be spent during the fiscal year. If a taxing unit has paid its allocated amount but is not allocated part of the appraisal district budget for the following fiscal year, the chief appraiser must refund the proportionate share of the excess funds not later than the 150th day after the end of the fiscal year that payments were made.	Section 6.06(j)
	Determine whether a sufficient number of eligible taxing units have valid resolutions when a change in the appraisal district financing method has been proposed and notify each taxing unit of each change that is adopted	Section 6.061(d)
	Publicize certain Tax Code provisions to residents, including, but not limited to, the availability of agreement forms for electronic communication; the availability of exemption applications; rendering requirements; special appraisal of agricultural land, open space, timberland and restricted-use timberland; the deferred collection of taxes on residence homestead of the elderly, disabled or those qualified for the disabled veteran exemption; deferred collection of taxes on appreciating residence homestead; and the right to protest	Sections 1.085, 11.44, 22.21, 23.43, 23.54, 23.75, 23.9804, 33.06, 33.065 and 41.41
	Produce requested materials in the form and manner prescribed by the Comptroller's office	Section 5.16(b)
Other Duties	Duties required by contract	
	Legal responsibilities or duties assigned by the board of directors	

*Tax Code citations, unless otherwise noted.

Appraisal Review Board (ARB)



The local administrative district judge in each county appoints ARB members.²⁰⁵ The board of directors may remove an ARB member appointed by the board under certain circumstances.²⁰⁶

The ARB is a board of citizens that hears taxpayer protests and taxing unit challenges, corrects clerical errors in the appraisal records and appraisal rolls, acts on motions to correct the appraisal roll, determines whether exemptions and special valuations were improperly granted and takes any other action or makes any other determination as authorized or required under the Tax Code.²⁰⁷

There is an ARB for each CAD although the board of directors may provide for the operation of a consolidated ARB by interlocal contract. Members of a consolidated ARB are appointed jointly by the local administrative district judges in the counties that are parties to the contract.²⁰⁸ Although an appraisal district provides staff to the ARB for clerical assistance, the ARB maintains an independence from the board of directors and appraisal district staff, including the chief appraiser.²⁰⁹

CADs are allowed to obtain criminal history records of applicant ARB members from the Texas Department of Public Safety and provide that information to the local administrative district judge or ARB members appointed by that judge.²¹⁰

Eligibility

To be eligible to serve on the ARB, an individual must be a CAD resident and must have resided in the CAD for at least two years.²¹¹ In counties with a population of more than 120,000, a person is ineligible to serve on the ARB if the person has done the following:

- served formerly as an appraisal district board member, officer or employee;
- served as a member of a governing body or an officer of a taxing unit until the fourth anniversary of the date the person ceases to be a member or officer;
- appeared before the ARB for compensation during the two-year period preceding the date of appointment; or
- served for all or part of three previous terms as a board member or auxiliary board member of the appraisal review board.²¹²

A person may not serve on an ARB if he or she owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known of the delinquency.²¹³ This restriction does not apply if the person is paying the delinquent taxes and any penalty and interest under an installment payment agreement or has deferred or abated a suit to collect delinquent taxes.²¹⁴

²⁰⁵ Tex. Tax Code §6.41(d) and (d-1)

²⁰⁶ Tex. Tax Code §6.41(f) as amended by Acts 2021, 87th Leg., R.S., Ch. 533, Sec. 5

²⁰⁷ Tex. Tax Code §41.01(a)

²⁰⁸ Tex. Tax Code §6.41(a), (g) and (h)

²⁰⁹ Tex. Tax Code §§5.041(e-1)(5), 6.41 and 6.43

²¹⁰ Tex. Gov't Code §411.1296

²¹¹ Tex. Tax Code §6.41(c)

²¹² Tex. Tax Code §6.412(d)

²¹³ Tex. Tax Code §6.412(a)(2)

²¹⁴ Tex. Tax Code §6.412(a)(2)

Conflict of Interest

An individual is not eligible to serve on an ARB if the individual is related within the second degree by consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or to an individual who represents property owners for compensation in proceedings under the Tax Code in the CAD for which the ARB is established.²¹⁵ An ARB member commits a Class B misdemeanor offense if the ARB member continues to hold office knowing of a violation.²¹⁶

A person is ineligible to serve on an ARB if the individual is related within the third degree of consanguinity or within the second degree of affinity to a member of the CAD board of directors or the ARB.²¹⁷ A person is also ineligible to serve on the ARB if the person is a CAD director, a CAD officer or employee, a Comptroller employee or a member of the governing body, officer or employee of a taxing unit.²¹⁸

Additional information regarding conflicts of interest for ARB members, including Tax Code Section 41.69, may be found in the *Appraisal Review Board Manual* published by the Comptroller's office.

A person is not eligible to be appointed or to serve on an ARB if the individual contracts with the CAD or a taxing unit that participates in the CAD.²¹⁹ A person who has a substantial interest in a business that has either type of contract is also barred.²²⁰ Substantial interest is defined as either of the following: combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business, or the individual or the individual's spouse is a partner, limited partner or officer in the business entity.²²¹

A CAD and a taxing unit participating in that CAD may not enter into a contract with a current member of the ARB established for that CAD or with a business entity in which an ARB member has a substantial interest.²²²



Number and Term of Office

The ARB consists of three members, but the board of directors by resolution may increase the size of the ARB to a number the board considers appropriate.²²³ The board of directors for a district in a county with a population of one million or more by resolution of a majority of members must increase the size of the ARB to a number considered appropriate to manage the ARB duties, including to perform the duties of a special panel.²²⁴

ARB members serve two-year terms beginning Jan. 1.²²⁵ The board of directors by resolution must provide for staggered terms so that the terms of approximately half the ARB members expire each year.²²⁶ In making the initial appointments, the local administrative district judge must designate those members who serve terms of one year.²²⁷

Auxiliary and Temporary ARB Members

The board of directors by resolution of a majority of the members may provide for auxiliary ARB members to hear taxpayer protests before the ARB and to assist the ARB in its duties.²²⁸ The local administrative district judge may appoint the number of auxiliary members considered appropriate.²²⁹ An auxiliary member is appointed in the same manner and for the same term as an ARB member under Tax Code Section 6.41 and is subject to the same eligibility requirements and restrictions under Tax Code Sections 6.41, 6.411, 6.412 and 6.413.²³⁰

An auxiliary member may attend ARB meetings but may not vote in an ARB determination or serve as ARB chair or secretary.²³¹ An auxiliary member is not included in determining what constitutes a quorum of the board or whether

²¹⁵ Tex. Tax Code §6.412(b)

²¹⁶ Tex. Tax Code §6.412(b)

²¹⁷ Tex. Tax Code §6.412(a)(3) (A) and (B)

²¹⁸ Tex. Tax Code §6.412(c)

²¹⁹ Tex. Tax Code §6.413(a)

²²⁰ Tex. Tax Code §6.413(a)

²²¹ Tex. Tax Code §6.413(d)

²²² Tex. Tax Code §6.413(b) and (c)

²²³ Tex. Tax Code §6.41(b)

²²⁴ Tex. Tax Code §6.41(b-2)

²²⁵ Tex. Tax Code §6.41(e)

²²⁶ Tex. Tax Code §6.41(e)

²²⁷ Tex. Tax Code §6.41(e)

²²⁸ Tex. Tax Code §6.414(a)

²²⁹ Tex. Tax Code §6.41(d-1), 6.414(a) and (b)

²³⁰ Tex. Tax Code §6.414(b)

²³¹ Tex. Tax Code §6.414(c)

a quorum is present at any ARB meeting.²³² An auxiliary member may hear taxpayer protests before the ARB.²³³ If an auxiliary member sits on a panel to conduct a protest hearing, the number of non-auxiliary ARB members required to constitute the panel is reduced by the number of auxiliary board members.²³⁴ An auxiliary member sitting on a panel is considered a regular board member for all purposes related to the conduct of the hearing.²³⁵ An auxiliary member is entitled to make a recommendation to the ARB regarding a protest heard by the member but is not entitled to vote on the determination.²³⁶

An auxiliary member is entitled to compensation as provided by the CAD budget, but is not entitled to a per diem or reimbursement of expenses.²³⁷

The CAD board of directors must adopt and implement a policy for the temporary replacement of an ARB member.²³⁸ A temporary ARB member replaces an ARB member who may not participate in a protest hearing because that ARB member communicated with another person(s) about a protest outside an ARB hearing in violation of Tax Code Section 41.66(f).²³⁹

Training

The Comptroller's office must approve curricula, provide materials and supervise the training of ARB members.²⁴⁰ ARB members are not allowed to participate in hearings until they complete the Comptroller's training course and a statement agreeing to comply with Tax Code requirements during hearings.²⁴¹ A new ARB member appointed after a course offering may continue to serve until the completion of a subsequent course offering.²⁴²

During the second year of an ARB member's term, the ARB member must complete the Comptroller's continuing education training course and complete a statement agreeing to comply

with Tax Code requirements during hearings.²⁴³ An ARB member who fails to timely complete the course is not eligible to participate in hearings, vote on a determinations of protest or be reappointed to an additional term.²⁴⁴

ARB members must complete the Comptroller's continuing education training course and complete a statement agreeing to comply with Tax Code requirements in each year they serve.²⁴⁵ The CAD board should provide for budgeting ARB training as part of the CAD's annual budget.²⁴⁶

The Comptroller's office may assess a fee, not to exceed \$50 per trainee, to recover a portion of the costs incurred for the training course.²⁴⁷

Except during a hearing or other ARB proceeding, a member of the CAD board of directors for which the ARB is established, along with other specified individuals, may not communicate with an ARB member about these training courses or any matter presented or discussed during the courses.²⁴⁸

The Comptroller's office may not advise a chief appraiser, CAD employee, property owner or his or her agent on a matter known to be the subject of a protest to the ARB. The Comptroller's office may communicate with ARB members regarding:

- technical questions relating to ARB duties and appraisal issues;
- the model ARB procedures; and
- the ARB survey provided to taxpayers.

The Comptroller's office may also communicate with the ARB chair concerning complaints filed against the ARB.²⁴⁹ The toll-free number maintained by Comptroller's office for ARB members is 800-252-7551.²⁵⁰

²³² Tex. Tax Code §6.414(c)

²³³ Tex. Tax Code §6.414(d)

²³⁴ Tex. Tax Code §6.414(d)

²³⁵ Tex. Tax Code §6.414(d)

²³⁶ Tex. Tax Code §6.414(e)

²³⁷ Tex. Tax Code §6.414(f)

²³⁸ Tex. Tax Code §41.66(g)

²³⁹ Tex. Tax Code §41.66(g)

²⁴⁰ Tex. Tax Code §5.041

²⁴¹ Tex. Tax Code §5.041(b) and (b-1)

²⁴² Tex. Tax Code §5.041(e)

²⁴³ Tex. Tax Code §5.041(e-2)

²⁴⁴ Tex. Tax Code §5.041(e-2)

²⁴⁵ Tex. Tax Code §5.041(e-2)

²⁴⁶ Tex. Tax Code §§5.041(e-3) and 6.42(c)

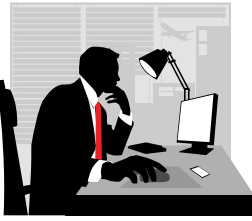
²⁴⁷ Tex. Tax Code §5.041(c) and (e-3)

²⁴⁸ Tex. Tax Code §5.041(g)

²⁴⁹ Tex. Tax Code §5.041(a) and (f)

²⁵⁰ Tex. Tax Code §5.041(a)(4)

Organization



The local administrative judge selects a chair and secretary from among the ARB members.²⁵¹ The judge is encouraged to select an ARB chair who has a background in law and property appraisal.²⁵² The ARB meets at any time at the call of the chair or as provided for by ARB rule.²⁵³ The ARB must meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records.²⁵⁴

The ARB must adopt its procedures for hearings.²⁵⁵ The ARB must hold a public hearing to consider the proposed procedures and adopt the procedures by resolution no later than May 15 each year.²⁵⁶ The ARB must incorporate the Comptroller's model hearing procedures into its adopted procedures and submit them to the Comptroller's office for review.²⁵⁷

ARB members are entitled to a per diem for each day the board meets as provided in the CAD budget.²⁵⁸ ARB members are also entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as provided in the CAD budget.²⁵⁹ Auxiliary ARB members are entitled to compensation as provided by the CAD budget, but not per diem or reimbursement of expenses.²⁶⁰

Personnel

A CAD may provide clerical assistance to the ARB, including assisting the ARB with the scheduling and arranging of hearings.²⁶¹

The ARB may employ legal counsel as provided by the CAD budget or use the services of the county attorney.²⁶² An attor-

ney may not serve as ARB legal counsel if within the last year the attorney or a member of the attorney's law firm represented an owner of property in the CAD, a participating taxing unit, or the CAD in certain matters.²⁶³ The prohibition on representing a participating taxing unit or CAD does not apply to a county attorney or an assistant to the county attorney.²⁶⁴ A CAD may specify in its budget whether the ARB may employ legal counsel or must use the services of the county attorney.²⁶⁵ A CAD may not require the ARB to employ a specific attorney.²⁶⁶ If the budget authorizes an ARB attorney, the budget must provide for reasonable compensation.²⁶⁷ ARB attorneys may not act as advocates in a hearing or proceeding conducted by the ARB; may provide advice to the ARB or ARB panel during a hearing or proceeding; and are required to make certain disclosures regarding relevant legal authority in the controlling jurisdiction known to the attorney and not disclosed by the parties and regarding a material fact that may assist the ARB or panel in making an informed decision regardless of whether the fact is adverse to the position of a party.²⁶⁸

An ARB may retain an appraiser certified by the Texas Appraiser Licensing and Certification Board to instruct ARB members on valuation methodology if the CAD provides for the instruction in the CAD budget.²⁶⁹

Ex Parte Communications with an ARB Member

An ARB member commits a Class A misdemeanor offense if the member communicates with the chief appraiser, CAD employee or a member of the CAD board of directors for which the ARB is established in violation of Tax Code Section 41.66(f).²⁷⁰

A chief appraiser or another CAD employee, a member of a board of directors, a property tax consultant or attorney representing a party to an ARB proceeding commits a Class A misdemeanor offense if the person communicates with a ARB member established for the CAD with the intent to

²⁵¹ Tex. Tax Code §6.42(a)

²⁵² Tex. Tax Code §6.42(a)

²⁵³ Tex. Tax Code §6.42(b)

²⁵⁴ Tex. Tax Code §6.42(b)

²⁵⁵ Tex. Tax Code §5.103(a)

²⁵⁶ Tex. Tax Code §41.01(c)

²⁵⁷ Tex. Tax Code §5.103(d) and (e)

²⁵⁸ Tex. Tax Code §6.42(c)

²⁵⁹ Tex. Tax Code §6.42(c)

²⁶⁰ Tex. Tax Code §6.414(f)

²⁶¹ Tex. Tax Code §6.43(f)

²⁶² Tex. Tax Code §6.43(a)

²⁶³ Tex. Tax Code §6.43(b)

²⁶⁴ Tex. Tax Code §6.43(c)

²⁶⁵ Tex. Tax Code §6.43(e)

²⁶⁶ Tex. Tax Code §6.43(e)

²⁶⁷ Tex. Tax Code §6.43(e)

²⁶⁸ Tex. Tax Code §6.43(d)

²⁶⁹ Tex. Tax Code §5.041(h)

²⁷⁰ Tex. Tax Code §6.411(a) and (d)

influence a decision by an ARB member in the member's capacity as an ARB member.²⁷¹

These ex parte communication provisions do not apply to communications between an ARB and its legal counsel.²⁷² The provisions also do not apply to communications between an ARB member and the chief appraiser, a CAD employee, a member of the board of directors, a property tax consultant or an attorney representing a party to a proceeding before the ARB:

1. during a protest hearing or other ARB proceeding;
2. that constitute social conversation;
3. that are specifically limited to and involve administrative, clerical or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices and subpoenas and the operation, appointment, composition or attendance at training of the ARB; or
4. that are necessary and appropriate to enable the CAD board of directors to determine whether to appoint, reappoint or remove a person as an ARB member, chair or secretary.²⁷³

A chief appraiser, CAD employee, member of the board of directors, property tax consultant or agent of a property owner commits a Class A misdemeanor offense if the person communicates with the local administrative district judge regarding the appointment of ARB members.

This provision does not apply to communications with the local administrative district judge by:

- an ARB member regarding the member's reappointment to the ARB;
- a taxpayer liaison officer in the course of performing the officer's clerical duties;
- a chief appraiser, CAD employee, ARB member or member of the board of directors regarding applications and appointment information, including criminal histories, and removal of an ARB member; or
- a taxpayer liaison officer regarding communications with a consultant, property owner or agent regarding removal of an ARB member.²⁷⁴

²⁷¹ Tex. Tax Code §6.411(b)

²⁷² Tex. Tax Code §6.411(c)

²⁷³ Tex. Tax Code §6.411(c-1)

²⁷⁴ Tex. Tax Code §6.41(i)

ARB Member Removal

A member may be removed from the ARB by a majority vote of the board of directors or by the local administrative district court judge or the judge's designee that appointed the member.²⁷⁵ Grounds for removal include a violation of:

- Tax Code Section 6.412 (restrictions on eligibility of ARB member);
- Tax Code Section 6.413 (interest in certain contracts prohibited);
- Tax Code Section 41.66(f) (communication outside a hearing or proceeding); or
- Tax Code Section 41.69 (conflict of interest in taxpayer protest).²⁷⁶

An ARB member may also be removed for good cause relating to failure to attend ARB meetings or for evidence of repeated bias or misconduct.²⁷⁷

After learning of a potential ground for removal, the board of directors, local administrative district judge or the judge's designee that appointed the member has 90 days to remove the ARB member or find by official action that the ARB member should not be removed.²⁷⁸

A property owner or chief appraiser may file a complaint with the taxpayer liaison officer for the CAD alleging that the ARB has adopted or is implementing hearing procedures that are not in compliance with the Comptroller's model hearing procedures or is not complying with procedural requirements of Tax Code Chapter 41. The taxpayer liaison officer must investigate the complaint and report the findings to the CAD board of directors. If the board of directors determine the allegations are true, it must direct the ARB chairman to take remedial action. The board may remove the ARB member from the position of chairman if it determines the chairman has failed to take the actions necessary to bring the ARB into compliance.²⁷⁹

²⁷⁵ Tex. Tax Code §6.41(f)

²⁷⁶ Tex. Tax Code §6.41(f)

²⁷⁷ Tex. Tax Code §6.41(f)

²⁷⁸ Tex. Tax Code §6.41(f) as amended by Acts 2021, 87th Leg., R.S., Ch. 533, Sec. 5

²⁷⁹ Tex. Tax Code §41.66(q)

CAD Financial Affairs

Participating taxing units pay for CAD operations.²⁸⁰ The board of directors' financial responsibilities include adopting an annual operating budget; selecting a district depository; purchasing and contracting; transferring, constructing and renovating real property; and providing for an independent audit.

CAD Budget

The board of directors is responsible for adopting the budget for the CAD.²⁸¹

Before June 15 each year, the chief appraiser must prepare a proposed budget for CAD operations for the following tax year and submit it to each participating taxing unit and to the board of directors.²⁸² The budget must list:

- each proposed position, including each position's:
 - (a) proposed salary;
 - (b) all proposed benefits;
- each proposed capital expenditure; and
- an estimate of the amount of the budget that will be allocated to each taxing unit.²⁸³

Other items commonly included in the budget are:

- contract payments for services;
- reimbursement for reasonable and necessary CAD board expenses;
- per diem and actual expense reimbursement for ARB members;
- compensation for general counsel to the board of directors or ARB legal counsel, or both;

- reimbursement of CAD office staff for reasonable and necessary expenses;
- payment of tuition and fees incurred for courses or educational programs;
- funds for ARB proceedings and operations; and
- other items necessary for CAD operations.

A CAD is required to reimburse a CAD employee for all actual and necessary expenses, tuition and other fees and costs of materials incurred in attending, with approval of the chief appraiser, a course or training program sponsored or approved by TDLR.²⁸⁴

If a CAD performs collection or assessment services, the Interlocal Cooperation Act requires an interlocal payment be in an amount that fairly compensates the performing party for the services or functions performed under the contract.²⁸⁵ A 2003 Attorney General's opinion concludes that a CAD budget may only allocate the costs of operating the CAD for its appraisal purposes and the costs of tax assessment or collection are not allocated to all taxing units regardless of whether a taxing unit has contracted with a CAD for assessment or collection services.²⁸⁶

Public Notice of Budget Hearing



The board of directors must hold a public hearing to consider the budget.²⁸⁷ Not later than the 10th day before the hearing, the board of director's secretary must deliver a written notice of the date, time and place of the hearing to each participating taxing unit in the CAD.²⁸⁸

²⁸⁰ Tex. Tax Code §6.062(c)

²⁸¹ Tex. Tax Code §6.06(b)

²⁸² Tex. Tax Code §6.06(a)

²⁸³ Tex. Tax Code §6.06(a)

²⁸⁴ Tex. Tax Code §5.04(b)

²⁸⁵ Tex. Gov't Code §791.011(e)

²⁸⁶ Tex. Att'y Gen. Op. GA-0030 (2003)

²⁸⁷ Tex. Tax Code §6.06(b)

²⁸⁸ Tex. Tax Code §6.06(b)

Within the same timeframe, the chief appraiser is required to publish a notice of the public hearing in a newspaper having general circulation in the county.²⁸⁹ The newspaper notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper and may not be published in the part of the paper in which legal notices and classified advertisements appear.²⁹⁰ This notice must have the time, date, and place of the public hearing; specified summary of the proposed budget; notice that the CAD is supported solely from local taxing units; and a prescribed notice that the budget will automatically take effect unless disapproved by certain taxing units and a copy of the budget is available for public inspection at these taxing units.²⁹¹ In addition to the statutorily required items in the notice, Comptroller Rule 9.3048 requires the notice to provide the number of employees compensated in the budget in terms of full-time equivalent employees and that the notice contains the name, address and telephone number of the CAD.

Budget Adoption

The board of directors must approve a budget before Sept. 15.²⁹²

If a majority of the voting taxing units adopt and file resolutions disapproving a budget within 30 days after its adoption, the budget does not take effect.²⁹³ The board must adopt a new budget within 30 days of disapproval.²⁹⁴

The board may amend the approved budget at any time.²⁹⁵ The secretary of the board must deliver a written copy of a proposed amendment to each participating taxing unit not later than the 30th day before the date the board acts on it.²⁹⁶

Allocating Costs of CAD Operations

Each participating taxing unit pays a share of the CAD budget.²⁹⁷ The share is based on the proportion of property taxes imposed by the taxing unit to the sum of property taxes imposed by each participating taxing unit in the CAD.²⁹⁸ The

resulting fraction is multiplied by the total dollar amount of the budget.

$$\frac{\text{Taxing Unit's Tax Levy}}{\text{Total Tax Levy of All Taxing Units}} = \text{Taxing Unit's Fractional Share}$$

If a taxing unit participates in two or more CADs, only the taxes imposed in a CAD are used to calculate the taxing unit's cost allocations in that CAD.²⁹⁹ Tax Code Section 6.06(d) limits the share of the cost of the budget for a taxing unit that has a large tax levy but a smaller number of parcels. This limit applies to a taxing unit that has less than 5 percent of the total number of real property parcels in the CAD while imposing over 25 percent of the total amount of the property taxes in the CAD for the year. In this case, a taxing unit's allocation may not exceed three times the taxing unit's percentage of the total number of parcels appraised by the CAD.³⁰⁰ For example, a taxing unit has 4 percent of the CAD's parcels but imposes 30 percent of the taxes. The budget share may not exceed 3 times 4 percent, or 12 percent. If there was no limitation, the budget share would be 30 percent.

For a newly formed taxing unit or a taxing unit that did not impose taxes in the preceding year, the taxing unit is allocated a portion of the budget and the amount of taxes the taxing unit imposes in the current year is used to calculate its allocation.³⁰¹ The board of directors and the taxing unit may agree to an estimate of the amount of taxes that will be imposed for the current year.³⁰² After the amount of taxes to be imposed is known, payments are adjusted to reflect the imposed amount.³⁰³

Each taxing unit must pay its allocation in four equal payments at the end of each calendar quarter unless a taxing unit's governing body and the chief appraiser agree on a different method of payment.³⁰⁴ The first payment must be made before Jan. 1 of the year in which the budget takes effect.³⁰⁵ If a payment is not paid on the due date, it incurs a 5 percent

²⁸⁹ Tex. Tax Code §6.062(a)

²⁹⁰ Tex. Tax Code §6.062(a)

²⁹¹ Tex. Tax Code §6.062(b) and (c)

²⁹² Tex. Tax Code §6.06(b)

²⁹³ Tex. Tax Code §6.06(b)

²⁹⁴ Tex. Tax Code §6.06(b)

²⁹⁵ Tex. Tax Code §6.06(c)

²⁹⁶ Tex. Tax Code §6.06(c)

²⁹⁷ Tex. Tax Code §6.06(d)

²⁹⁸ Tex. Tax Code §6.06(d)

²⁹⁹ Tex. Tax Code §6.06(d)

³⁰⁰ Tex. Tax Code §6.06(d)

³⁰¹ Tex. Tax Code §6.06(h)

³⁰² Tex. Tax Code §6.06(h)

³⁰³ Tex. Tax Code §6.06(h)

³⁰⁴ Tex. Tax Code §6.06(e)

³⁰⁵ Tex. Tax Code §6.06(e)

penalty and an annual interest rate of 10 percent.³⁰⁶ For good cause shown, the board of directors may waive the penalty and interest on a delinquent payment.³⁰⁷

Different Fiscal Year and Method of Financing

A CAD's fiscal year is the calendar year.³⁰⁸ A different fiscal year may be designated by three-fourths of voting taxing adopting resolutions.³⁰⁹ If the fiscal year is changed, the deadlines for the chief appraiser proposing and the board of directors adopting the budget and the deadline for the first allocation payment are specified deadlines before the first day of the changed fiscal year.³¹⁰ The allocation of the budget is based on the amount of property taxes imposed by each participating taxing unit in the most recent tax year preceding the changed fiscal year.³¹¹

The board of directors or the taxing units participating in the CAD may prescribe a different method of allocating the costs of operating the CAD.³¹²

To change the method of financing, the board of directors must adopt a resolution and deliver it to each taxing unit participating in the CAD after June 15 and before Aug. 15.³¹³ The financing does not change if the governing body of any participating taxing unit adopts a resolution opposing the different method, and files it with the board of directors before Sept. 1.³¹⁴ If a board proposal is rejected, the board must provide written notification to each participating taxing unit before Sept. 15.³¹⁵

The participating taxing units in a CAD may adopt a different allocation method if three-fourths of the voting taxing units adopt resolutions providing for the other method.³¹⁶ This adoption is not valid if it requires any taxing unit to pay a greater

proportion of the CAD's costs than the taxing unit would pay otherwise without the consent of that taxing unit.³¹⁷

A resolution changing the allocation method is ineffective if an official copy is not filed with the chief appraiser after April 30 and before May 15.³¹⁸ A change in allocation remains in effect until changed or rescinded by resolution of a majority of the governing bodies of voting taxing units.³¹⁹

Designation of District Depository

The board of directors must designate a depository for payments to be deposited.³²⁰ A CAD depository must be a banking corporation incorporated under Texas law or the United States or a Texas savings and loan association whose deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC).³²¹ To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation or the FSLIC, the funds must be secured in the manner provided by law for the security of funds of counties.³²²

The board of directors must designate as the district depository the financial institution or institutions that offer the most favorable terms and conditions for the handling of the CAD's funds.³²³ The board must solicit bids to be designated as depository for the CAD.³²⁴ After a depository is designated, the depository must serve for a term of two years and until its successor is designated and has qualified.³²⁵ The board and the depository may agree to extend a depository contract for one additional two-year period.³²⁶

Consult legal counsel regarding the applicability of Local Government Code Chapter 116 concerning county depositories.

District's funds may be disbursed only by a written check, draft or order signed by the chair and secretary of the board.³²⁷

³⁰⁶ Tex. Tax Code §6.06(e)

³⁰⁷ Tex. Tax Code §6.06(k)

³⁰⁸ Tex. Tax Code §6.06(i)

³⁰⁹ Tex. Tax Code §6.06(i)

³¹⁰ Tex. Tax Code §6.06(i)

³¹¹ Tex. Tax Code §6.06(i)

³¹² Tex. Tax Code §6.061(a) and (b)

³¹³ Tex. Tax Code §6.061(a)

³¹⁴ Tex. Tax Code §6.061(a)

³¹⁵ Tex. Tax Code §6.061(a)

³¹⁶ Tex. Tax Code §6.061(b)

³¹⁷ Tex. Tax Code §6.061(b)

³¹⁸ Tex. Tax Code §6.061(c)

³¹⁹ Tex. Tax Code §6.061(e)

³²⁰ Tex. Tax Code §6.06(f)

³²¹ Tex. Tax Code §6.09(a)

³²² Tex. Tax Code §6.09(d)

³²³ Tex. Tax Code §6.09(b)

³²⁴ Tex. Tax Code §6.09(c)

³²⁵ Tex. Tax Code §6.09(c)

³²⁶ Tex. Tax Code §6.09(c)

³²⁷ Tex. Tax Code §6.06(f)

The board by resolution may authorize the chief appraiser to disburse funds.³²⁸



Purchasing and Contracting

A CAD is subject to the same requirements and has the same purchasing and contracting authority as a municipality under Local Government Code Chapter 252.³²⁹ Local Government Code Section 252.061 provides for an injunction if a contract is made without complying with

Local Government Code Chapter 252 and any resident of the CAD may seek an injunction under that section.³³⁰

Local Government Code Sections 252.062 and 252.063 provide for criminal penalties for municipal officers and employees violating competitive bidding requirements and the removal of those individuals. These provisions apply to a CAD officer or employee in the same manner those sections apply to a municipal officer or employee.³³¹

The Public Property Finance Act (Local Government Code Chapter 271) and the Interlocal Cooperation Act (Government Code Chapter 791) should also be reviewed. Consult with an attorney about bidding procedures, purchasing and contracts.

Financial Audit

At least once each year, the board of directors must have an audit prepared by an independent certified public accountant or a firm of independent certified public accountants.³³² A copy of the report must be delivered to each voting taxing unit.³³³ A reasonable number of copies of the report must be available for inspection at the CAD office and the report is a public record.³³⁴

Other Financial Affairs

The board of directors and the chief appraiser also handle other financial details. Issues you may want to discuss with your attorney include the application of the Public Funds Investment Act in Government Code Chapter 2256 to local governments, including political subdivisions; the application of Government Code Chapter 2253 to governmental entities in regards to public work contracts; sales tax; reporting to the Internal Revenue Service; purchase of insurance; retirement program participation, etc.

³²⁸ Tex. Tax Code §6.06(f)

³²⁹ Tex. Tax Code §6.11(a)

³³⁰ Tex. Tax Code §6.11(b)

³³¹ Tex. Tax Code §6.11(b)

³³² Tex. Tax Code §6.063(a)

³³³ Tex. Tax Code §6.063(b)

³³⁴ Tex. Tax Code §6.063(b)

Taxpayer Assistance

The International Association of Assessing Officer's (IAAO) publication *Standard on Public Relations* provides that “public relations program should be an integral part of every assessment office’s work. A public relations program describes what the office does as well as how, why and for whom its services are provided. An effective public relations program results in more accurate and thorough coverage from the media and a better-informed constituency.”³³⁵ Some of the topics in these standards include developing a written public relations program (including having a public relations officer) and a procedural manual, public records, printed information and correspondence, value notices, special-purpose messages, forms and questionnaires, annual reports, media contacts, speaking engagements, contact with other public officials, appeals process, public education and the Internet.³³⁶

Reasonable Access

One of the board’s required taxpayer assistance duties is to develop and implement policies that provide the public with reasonable opportunity to appear before the board to speak on any issue under the board’s jurisdiction.³³⁷ Reasonable time must be provided at each board of directors meeting for public comment on CAD and ARB policies and procedures and a report from the taxpayer liaison officer if required.³³⁸

The board must prepare and maintain a written plan that describes how a non-English speaker or an individual with a physical, mental or developmental disability may be provided reasonable access to the board.³³⁹

³³⁵ IAAO, *Standard on Public Relations*, (July 2011), p. 5. www.iaao.org/media/standards/Standard_on_Public_Relations.pdf (Last visited Dec. 2, 2021)

³³⁶ This is only a selection of some of the topics covered in the standards. For the full text of the standards please see the IAAO’s *Standard on Public Relations* at www.iaao.org/media/standards/Standard_on_Public_Relations.pdf

³³⁷ Tex. Tax Code §6.04(d)

³³⁸ Tex. Tax Code §6.04(d)

³³⁹ Tex. Tax Code §6.04(e)

Other General Access Issues

Issues the board should or may address, depending on factors such as whether legal requirements exist, include:

- Evaluation of buildings for accessibility to those who individuals who are physically impaired as required by state or federal law;
- Parking accommodations for persons with disabilities;
- Allowance for attendant animals in offices;
- Providing information in different types of media;
- Providing a sign-language interpreter;
- Providing translator services; and
- Providing information in different languages. Certain Spanish resources can be found on the Comptroller’s website at comptroller.texas.gov/taxes/property-tax/.

Complaint Process

The board of directors must prepare a description of the board’s functions and the board’s procedures for filing and resolving complaints.³⁴⁰ The board must make this information available to the public and the appropriate taxing jurisdictions.³⁴¹ If a written complaint is filed with the board and the board has authority to resolve it, the board must provide notice of the complaint status to the parties to the complaint unless this notice would jeopardize an undercover investigation.³⁴² The notice must be provided at least quarterly and until final disposition of the complaint.³⁴³ In certain counties, the taxpayer liaison officer must report at each board of directors meeting on the status of all comments and suggestions received and all complaints filed with the board of directors.³⁴⁴

³⁴⁰ Tex. Tax Code §6.04(f)

³⁴¹ Tex. Tax Code §6.04(f)

³⁴² Tex. Tax Code §6.04(g)

³⁴³ Tex. Tax Code §6.04(g)

³⁴⁴ Tex. Tax Code §6.052(c)

Taxpayer Liaison Officer

In counties with a population of 120,000 or more, the board of directors must appoint a taxpayer liaison officer.³⁴⁵ The taxpayer liaison officer serves at the pleasure of the board of directors.³⁴⁶

The taxpayer liaison officer is responsible for:

- administering public access functions;
- providing information and materials to the public;
- resolving disputes that do not involve matters that may be protested under Tax Code Section 41.41;
- receiving, compiling and forwarding complaints, comments and suggestions concerning ARB matters to the Comptroller's office not later than Dec. 31 each year;
- reporting to the board of directors at each meeting the status of all comments, complaints, and suggestions; and
- delivering ARB applications received and providing clerical assistance to the local administrative district judge as part of the ARB selection process.³⁴⁷

The chief appraiser or any other person who performs legal or appraisal services for the CAD for compensation is not eligible to be the taxpayer liaison officer.³⁴⁸ The taxpayer liaison officer is entitled to compensation as provided by the budget adopted by the board of directors.³⁴⁹

The taxpayer liaison officer must administer the public access functions required by Tax Code Sections 6.04(d), (e) and (f) which include allowing the public to speak before the board of directors; preparing and maintaining a written plan on reasonable access to the board for those who do not speak English or who have physical, mental or developmental disabilities; and preparing information describing the functions of the board and the complaint process.³⁵⁰

The taxpayer liaison officer provides information and materials designed to assist property owners in understanding the appraisal process, protest procedures, procedures for filing comments, suggestions or complaints and related matters.³⁵¹ At each meeting of the board of directors, the taxpayer liaison officer is required to report on the status of all comments, complaints and suggestions filed with the officer relating to ARB hearing procedures, matters related to the fairness and efficiency of the ARB and complaints filed with the board of directors that the board has the authority to resolve.³⁵²

The taxpayer liaison officer is required to provide complaints, comments and suggestions related to ARB hearing procedures and other matters related to the fairness and efficiency of the ARB to the Comptroller's office by Dec. 31 each year.³⁵³

³⁴⁵ Tex. Tax Code §6.052(a)

³⁴⁶ Tex. Tax Code §6.052(a)

³⁴⁷ Tex. Tax Code §6.052(a) and (c)

³⁴⁸ Tex. Tax Code §6.052(e)

³⁴⁹ Tex. Tax Code §6.052(d)

³⁵⁰ Tex. Tax Code §§6.04(d), (e) and (f) and 6.052(a)

³⁵¹ Tex. Tax Code §6.052(b)

³⁵² Tex. Tax Code §§6.04(g) and 6.52(c)

³⁵³ Tex. Tax Code §6.052(b)

Public Information Act

Public information is information that is written, produced, collected, assembled or maintained by or for a governmental entity in connection with the transaction of official business, including electronic communications related to official business, that are created, transmitted, received or maintained on any device.³⁵⁴ Public information is available to the public at a minimum during the normal business hours of the governmental body.³⁵⁵ Certain information is excepted from public information requirements including information considered to be confidential by law, either constitutional or statutory, or by judicial decision.³⁵⁶

One example of confidential information specifically related to CADs is information relating to real property sales prices, descriptions, characteristics and other related information received from a private entity by the Comptroller's office or the chief appraiser of a CAD under Tax Code Chapter 6.³⁵⁷ This information is confidential, may only be requested by certain people in specified circumstances, remains confidential by persons who obtain it and may not be disclosed except as provided.³⁵⁸

After receiving a request for public information, the public information officer must promptly produce public information for inspection, duplication, or both.³⁵⁹ The public information officer must provide the public information for inspection or duplication in the offices of the governmental body or send copies if the person requesting the information requests copies and pays the postage and any other applicable charges.³⁶⁰ If the information is unavailable because it is in active use or storage, the officer for public information must certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.³⁶¹

If a governmental body closes its physical office but requires staff to work, the governmental body is required to make a good faith effort to continue responding to requests for public information to the extent staff have access to the information.³⁶²

The charge for providing a copy of public information must be an amount that reasonably includes all related costs to reproducing the information.³⁶³ If a request is for 50 pages or less, the charge may not include materials, labor or overhead costs.³⁶⁴ Charges for these requests must be limited to a charge for each page unless the pages to be photocopied are located in two or more separate buildings that are not physically connected with each other or located in a remote storage facility.³⁶⁵

The Office of the Attorney General must adopt rules that determine what governmental bodies charge for providing copies of public information.³⁶⁶ Each governmental body must use these rules to determine charges for providing copies of public information and to determine the charge, deposit or bond required for making public information that exists in a paper record available for inspection, except to the extent as provided otherwise by law.³⁶⁷ Attorney General rules regarding charges for public information and other related information can be found at texasattorneygeneral.gov/open-government/governmental-bodies/charges-public-information.

If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the request, the officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.³⁶⁸

³⁵⁴ Tex. Gov't Code §552.002(a)

³⁵⁵ Tex. Gov't Code §552.021

³⁵⁶ Tex. Gov't Code §552.101

³⁵⁷ Tex. Gov't Code §552.149(a)

³⁵⁸ Tex. Gov't Code §552.149

³⁵⁹ Tex. Gov't Code §552.221(a)

³⁶⁰ Tex. Gov't Code §552.221(b)

³⁶¹ Tex. Gov't Code §552.221(c)

³⁶² Tex. Gov't Code §552.2211(a)

³⁶³ Tex. Gov't Code §552.261(a)

³⁶⁴ Tex. Gov't Code §552.261(a)

³⁶⁵ Tex. Gov't Code §552.261(a)

³⁶⁶ Tex. Gov't Code §552.262(a)

³⁶⁷ Tex. Gov't Code §552.262(a)

³⁶⁸ Tex. Gov't Code §552.221(d)

If a governmental body wishes to withhold information from public disclosure, it must ask for an Attorney General's decision within 10 business days after the day of receiving the open records request.³⁶⁹ A decision is not required if there has been a previous determination that addresses the exact information.³⁷⁰ Within a reasonable time but not later than the 10th business day after the date of receiving the written request, a governmental body that asks for a decision must provide the requestor with a written statement that the governmental body wishes to withhold the requested information and has asked for an Attorney General's decision and a copy of the governmental body's written communication to the Attorney General as required.³⁷¹

An officer for public information must prominently display an Attorney General prescribed sign that contains basic information about the rights of a requestor, the responsibilities of a governmental body and the procedures for inspecting or obtaining a copy of public information.³⁷² The sign must be displayed at one or more places in the governmental body's administrative offices where it is plainly visible to members of the public and employees of the governmental body whose duties include receiving or responding to requests.³⁷³

Public officials must complete a one- to two-hour training course on the responsibilities of the governmental body with which the official serves and its officers and employees under the Public Information Act.³⁷⁴ The training must be completed not later than the 90th day after the date the public official takes the oath of office or otherwise assumes the duties as a public official.³⁷⁵ A public official may designate a public information coordinator to satisfy the training requirements for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under the Public Information Act.³⁷⁶

A requestor or the Attorney General's office may file suit to compel a governmental body to make information available for public inspection.³⁷⁷ A person who claims to be a victim



of a violation the Public Information Act can file a complaint with the district or county attorney of the county in which the governmental body is located.³⁷⁸ Before the 31st day after the date a complaint is filed, the district or county attorney must determine whether the violation alleged in the complaint was committed, whether to bring an action against the governmental body and notify the complainant of those determinations.³⁷⁹ A claimant is entitled to file a complaint with the attorney general's office on or after the 90th day after filing it with the district or county attorney.³⁸⁰ An official may only file an action if the governmental body does not cure the violation after three days of an official providing written notification to the governmental body that the alleged violation of the Act was committed.³⁸¹

The Public Information Act has three types of violations of the Act that carry criminal penalties. The failure to give access to public information is a misdemeanor with a fine of up to \$1,000, six months in jail or both; this is also considered official misconduct and a public official can be removed from office.³⁸² These same penalties apply to the distribution of information that is confidential under the Act.³⁸³ The third violation is if a person willfully destroys, mutilates, removes without permission or alters public information.³⁸⁴ This misdemeanor offense is punishable by a fine of not less than \$25 or more than \$4,000, county jail time from three days to not more than three months or both.³⁸⁵

Questions regarding the applicability or interpretation of the Public Information Act should be directed to legal counsel.

For more information on the Public Information Act, call the Office of the Attorney General's Open Government Hotline toll-free at 877-673-6839 or see the Office of the Attorney General's *Public Information Handbook* at texasattorneygeneral.gov/publicinfo_hb.pdf.

³⁶⁹ Tex. Gov't Code §552.301(a) and (b)

³⁷⁰ Tex. Gov't Code §552.301(a)

³⁷¹ Tex. Gov't Code §552.301(d)

³⁷² Tex. Gov't Code §552.205(a)

³⁷³ Tex. Gov't Code §552.205(a)

³⁷⁴ Tex. Gov't Code §552.012(b)

³⁷⁵ Tex. Gov't Code §552.012(b)

³⁷⁶ Tex. Gov't Code §552.012(c)

³⁷⁷ Tex. Gov't Code §552.321

³⁷⁸ Tex. Gov't Code §552.3215(e)

³⁷⁹ Tex. Gov't Code §552.3215(g)

³⁸⁰ Tex. Gov't Code §552.3215(i)

³⁸¹ Tex. Gov't Code §552.3215(j)

³⁸² Tex. Gov't Code §552.353

³⁸³ Tex. Gov't Code §552.352

³⁸⁴ Tex. Gov't Code §552.351

³⁸⁵ Tex. Gov't Code §552.351

Open Meetings Act

The Open Meetings Act requires every regular, special or called meeting of a governmental body to be open to the public, except as provided.³⁸⁶ The Open Meetings Act applies any time a quorum of a governmental body meets as provided under Government Code Section 551.001(4).³⁸⁷ Members may attend social occasions, workshops, ceremonial events, press conferences and candidate forums, appearances or debates without violating the law, provided formal action is not taken and any discussion of public business is incidental.³⁸⁸

If a governmental body takes an action in violation of the Open Meetings Act, then that action is voidable.³⁸⁹ Violation of the Open Meetings Act is a misdemeanor offense.³⁹⁰ A member commits a misdemeanor offense if the member or group of members knowingly conspires to circumvent the Open Meetings Act by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of the Open Meetings Act.³⁹¹

A governmental body must give written notice of the date, hour, place and subject of each meeting.³⁹² The Open Meetings Act requires the posting of notices within certain time periods.³⁹³ It provides for posting meeting notices or adding agenda items for an already posted meeting when there is an emergency or when there is an urgent public necessity.³⁹⁴ The Open Meetings Act should be consulted regarding the place, content and the deadlines of postings.

For each meeting, a governmental body must prepare and keep minutes or make a recording.³⁹⁵ The minutes must state the subject of each deliberation and indicate each vote, order, decision or other action taken.³⁹⁶ These minutes and recordings of an open meeting are public records and must be available for public inspection and copying on request.³⁹⁷

In an open meeting, a person in attendance may make an audio or visual recording of all or any part of the governmental body meeting.³⁹⁸ A governmental body may adopt reasonable rules to maintain order at a meeting, but the rules may not prevent or unreasonably impair a person from exercising the right to record the meeting.³⁹⁹ These rules may relate to the location of recording equipment and the manner in which the recording is conducted.⁴⁰⁰

The Open Meetings Act provides exceptions to the requirement that meetings of a governmental body be open to the public and sets forth procedures relating to closed meetings.⁴⁰¹ If there is a closed meeting, a governmental body must first convene in an open meeting with a quorum and follow certain procedures.⁴⁰² A governmental body may not vote, make a decision or take a final action in a closed meeting.⁴⁰³ For each closed meeting, a governmental body must keep either a certified agenda or make a recording of the meeting, except for private consultations with the governmental body's attorney.⁴⁰⁴ The certified agenda or recording of a closed meeting must be preserved for at least two years after the date of the meeting

³⁸⁶ Tex. Gov't Code §551.002

³⁸⁷ Tex. Gov't Code §551.001(4)

³⁸⁸ Tex. Gov't Code §551.001(4)

³⁸⁹ Tex. Gov't Code §551.141

³⁹⁰ Tex. Gov't Code Chapter 551

³⁹¹ Tex. Gov't Code §551.143(a)

³⁹² Tex. Gov't Code §551.041

³⁹³ Tex. Gov't Code Chapter 551, Subchapter C

³⁹⁴ Tex. Gov't Code §551.045

³⁹⁵ Tex. Gov't Code §551.021(a)

³⁹⁶ Tex. Gov't Code §551.021(b)

³⁹⁷ Tex. Gov't Code §551.022

³⁹⁸ Tex. Gov't Code §551.023

³⁹⁹ Tex. Gov't Code §551.023

⁴⁰⁰ Tex. Gov't Code §551.023

⁴⁰¹ Tex. Gov't Code Chapter 551, Subchapters D and E

⁴⁰² Tex. Gov't Code §551.101

⁴⁰³ Tex. Gov't Code §551.102

⁴⁰⁴ Tex. Gov't Code §551.103

or during any period in which litigation is pending regarding that meeting.⁴⁰⁵ A district court may order that a certified agenda or recording of a closed meeting be available for public inspection.⁴⁰⁶

In part, some of the exceptions in the Open Meetings Act include certain meetings with the governmental body's attorney and meetings regarding personnel matters or real property deliberations. A governmental body may hold a closed meeting to seek the advice of its attorney about pending or contemplated litigation, a settlement offer or on a matter which requires the attorney to meet in a closed session to comply with the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.⁴⁰⁷ Otherwise, a governmental body may not conduct a private consultation with its attorney.⁴⁰⁸ A closed meeting may be held to deliberate the purchase, exchange, lease or value of real property if an open meeting deliberation would have a detrimental effect on negotiations for the governmental body.⁴⁰⁹ The Open Meetings Act does not require an open meeting to deliberate on certain personnel matters of a public officer or employee, including the deliberation of the appointment, employment, evaluation, reassignment, duties, discipline or dismissal; or to hear a complaint or charge against an officer or employee.⁴¹⁰

Each elected or appointed public official of a governmental body subject to the Open Meetings Act must complete a training course.⁴¹¹ The official is required to complete a training course not later than the 90th day after taking the oath of office or otherwise assumes the duties as a public official.⁴¹² The Office of the Attorney General must ensure that the training is available.⁴¹³ For more information regarding training by the Office of the Attorney General please see texasattorneygeneral.gov/og/open-government-training.

A governmental body must maintain and make available for public inspection the record of its members' completion of the training.⁴¹⁴ The failure of one or more members of a governmental body to complete the required training does not affect the validity of an action taken by the governmental body.⁴¹⁵

Boards of directors should seek legal advice regarding the applicability of the Open Meetings Act to board meetings. For more information on the Open Meetings Act, call the Office of the Attorney General's Open Government Hotline toll-free at 877-673-6839 or see the Office of the Attorney General's *Open Meetings Act Handbook* at texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf.

⁴⁰⁵ Tex. Gov't Code §551.104(a)

⁴⁰⁶ Tex. Gov't Code §551.104(b) and (c)

⁴⁰⁷ Tex. Gov't Code §551.071

⁴⁰⁸ Tex. Gov't Code §551.071

⁴⁰⁹ Tex. Gov't Code §551.072

⁴¹⁰ Tex. Gov't Code §551.074(a)

⁴¹¹ Tex. Gov't Code §551.005(a)

⁴¹² Tex. Gov't Code §551.005(a)

⁴¹³ Tex. Gov't Code §551.005(b)

⁴¹⁴ Tex. Gov't Code §551.005(c)

⁴¹⁵ Tex. Gov't Code §551.005(f)

CAD Operations

Each CAD *must* establish an office located in the county for which the appraisal district is established and a CAD may establish branch offices outside the county.⁴¹⁶ The board of directors may contract with another CAD or with a taxing unit in the district to perform the duties of the appraisal district office for the CAD.⁴¹⁷

Ownership or Lease of Real Property

The board of directors may purchase or lease real property and may construct improvements as necessary to establish and operate the CAD office or a branch office.⁴¹⁸



For a CAD to acquire or convey real property or construct or renovate a building or other improvement, three-fourths of the voting taxing units must approve.⁴¹⁹ The board of directors by resolution may propose a property transaction or other action that requires approval of the taxing units.⁴²⁰ The chief appraiser must notify each taxing unit entitled to vote on the proposal by delivering a copy of the board's resolution, together with information showing the costs of other available alternatives to the proposal.⁴²¹ On or before the 30th day after the date a taxing unit receives notice of a proposal, the governing body of the taxing unit by resolution may approve or disapprove the proposal.⁴²² If a governing body fails to act by that time or fails to file its resolution with the chief appraiser on or before the 10th day after that 30th day, the proposal is treated as if it were disapproved.⁴²³

⁴¹⁶ Tex. Tax Code §6.05(a)

⁴¹⁷ Tex. Tax Code §6.05(b)

⁴¹⁸ Tex. Tax Code §6.051(a)

⁴¹⁹ Tex. Tax Code §6.051(b)

⁴²⁰ Tex. Tax Code §6.051(b)

⁴²¹ Tex. Tax Code §6.051(b)

⁴²² Tex. Tax Code §6.051(b)

⁴²³ Tex. Tax Code §6.051(b)

If a conveyance of real property owned by the CAD is approved, the board of directors may convey the real property and the proceeds are credited to each participating taxing unit in proportion to the taxing unit's allocation of the budget in the year in which the transaction occurs.⁴²⁴

Technological Capabilities

The Tax Code requires CADs to electronically furnish certain material or communicate electronically in specific circumstances; CADs need to have the technological capabilities to fulfill these requirements.

When a property owner is required by the Tax Code to use a form, the office or agency with which the form is filed must make printed and electronic versions of the forms readily and timely available and must furnish a property owner a form without charge.⁴²⁵

A chief appraiser may enter into agreements with any property owner or a person designated by the property owner for the electronic delivery of any notice, rendition, application form, completed application, or requested information.⁴²⁶

Property owners whose property is included in 25 or more accounts in a CAD with a population of more than 200,000 can request to enter into an agreement to receive notices of appraised value in electronic format.⁴²⁷ The chief appraiser is required to enter into an agreement for that purpose if requested by this type of property owner and must deliver the notice in accordance with the electronic medium, format, content, and method prescribed by the Comptroller's office.⁴²⁸

⁴²⁴ Tex. Tax Code §6.051(c)

⁴²⁵ Tex. Tax Code §1.09

⁴²⁶ Tex. Tax Code §1.085(a) and (b)

⁴²⁷ Tex. Tax Code §1.085(g)

⁴²⁸ Tex. Tax Code §1.085(g)

In counties with more than 200,000 population and in counties that have implemented systems that allow electronic communications, the chief appraiser is required to notify property owners of the availability of electronic communications along with the necessary agreement forms.⁴²⁹

CADs that are in a county with a population of 500,000 or more must implement a system that allows the designation of a property tax agent to be signed and filed electronically.⁴³⁰

CADs must implement a system that allows a residence homestead owner to electronically:

1. file a notice of protest with the ARB regarding the determination of appraised value or unequal appraisal;
2. receive and review comparable sales data and other evidence that the chief appraiser intends to use at the protest hearing before the board;
3. receive, as applicable, a notice from the CAD that a settlement offer will not be made or receive a settlement offer from the CAD to correct the appraisal records by changing the market value and, if applicable, the appraised value of the property to the value as redetermined by the CAD; or
4. accept or reject a CAD settlement offer.⁴³¹

This requirement applies to counties that maintain internet websites and is mandatory for counties with populations of 500,000 or more.⁴³²

CADs should work with the Comptroller's office to ensure internet compatibility.

Records System

Tax Code Section 5.07 and Comptroller Rule 9.3003 require offices appraising property to develop and maintain tax records system. Any of the required information may be maintained electronically rather than in physical documents. Such a system must include the following:

- appraisal cards;
- maps;
- rendition forms;
- report of decreased value forms;

⁴²⁹ Tex. Tax Code §1.085(h)

⁴³⁰ Tex. Tax Code §1.111(b)

⁴³¹ Tex. Tax Code §41.415(b)

⁴³² Tex. Tax Code §41.415(a)

- appraisal records of all property;
- tax roll of any taxing unit for whom the appraisal district assesses or collects;
- delinquent tax roll of any taxing unit for whom the office collects;
- alphabetical index;
- partial exemption lists;
- absolute exemption lists; and
- lists of properties receiving appraisal as open-space land; agricultural use; timber use; recreational, park and scenic land; and public access airports.

Appraisal Records of All Property

Provisions in Tax Code Chapter 25 and Comptroller Rule 9.3004 requires all CAD offices to develop and maintain appraisal records of all property. These records must be two lists: one for real property and one list for personal property and must contain specified information as applicable. Any required information may be maintained electronically rather than in physical documents.

Appraisal Cards

Comptroller Rule 9.3001 requires that all CAD offices that appraise property must develop and maintain a system of appraisal cards for all parcels of real estate which each office is required to appraise. A separate appraisal card must be developed and maintained for each parcel of residential or commercial real estate with specified items of information related to the land and to the improvements on the parcel. Many of these items of information, plus additional specified information, must be on the appraisal card for each parcel of rural or acreage real estate. The appraisal cards may be maintained electronically rather than in physical documents.

Maps

In meeting the chief appraiser's principal responsibility to locate, record and appraise all property in the CAD, a complete set of maps is indispensable. Maps enable appraisers to locate each real property parcel, identify its size and shape and determine its relationship to factors that affect its value. Maps also serve to display market and statistical data, appraisal comparisons and land appraisals.

Comptroller Rule 9.3002 requires all appraisal districts and tax offices appraising property to establish and maintain a system of tax maps covering the entire area of the taxing units

for whom each office appraises property. The tax map system must be annually updated to incorporate any new subdivisions or property transfers as indicated by the filing of subdivision plats or deeds with the county clerk's office of the county or counties in which the taxing units for whom each office appraises property are located. Any of the information may be maintained electronically rather than physical documents.

Local Government Records Management

CADs are subject to the preservation, microfilming, destruction and other records disposition provisions of Local Government Code Chapter 203.⁴³³ For additional information about records management and retention, see the Texas State Library and Archives Commission at www.tsl.texas.gov.

⁴³³ Tex. Tax Code §6.13

CAD Personnel

The CAD board of directors may employ a general counsel for the CAD to serve at the will of the board.⁴³⁴ The general counsel must provide counsel directly to the board and perform other duties and responsibilities as determined by the board.⁴³⁵ The general counsel is entitled to compensation as provided by the budget adopted by the board.⁴³⁶

Through adopting the budget, the board of directors may direct the size and qualifications of staff, as well as set the goals and objectives of the CAD through its personnel. The chief appraiser may employ and compensate professional, clerical and other personnel as provided by the budget, with the exception of a general counsel to the CAD.⁴³⁷

A chief appraiser may not employ persons who are related to directors within the second degree by affinity or within the third degree by consanguinity as determined under Government Code Chapter 573.⁴³⁸ A person commits an offense if the person intentionally or knowingly violates this prohibition; the offense is a misdemeanor punishable by a fine of at least \$100 and up to \$1,000.⁴³⁹

Personnel Policy

IAAO's *Property Appraisal and Assessment Administration* provides general guidance on personnel management, including selection of employees, employee development, compensation, internal communication, motivation and leadership and system issues in management.⁴⁴⁰

Personnel manuals can inform employees about the CAD's goals and objectives, policies, procedures and guidelines to follow in the course of their duties. Manuals should be reviewed and updated on a regular basis. Examples of CAD personnel manuals are at comptroller.texas.gov/taxes/property-tax/personnel-policies/index.php.

Consult legal counsel for advice in preparing personnel policy manuals or handbooks.

Professional Development

According to IAAO's *Standard on Professional Development*, "in-service training and continuing education of assessment personnel are essential parts of an effective program . . .".⁴⁴¹

Certain CAD employees register with and attain certification from TDLR. Registrants must pass one or more examinations to be certified and must participate to the extent required by TDLR in continuing education programs to maintain registration.⁴⁴² An individual may not serve as a chief appraiser unless the individual has completed chief appraiser training pursuant to Occupations Code Section 1151.164 and Tax Code Section 5.042.⁴⁴³ This prohibition does not apply to a county TAC who serves as chief appraiser under Tax Code Section 6.05(c).⁴⁴⁴ It applies only to a chief appraiser appointed on or after July 1, 2006.⁴⁴⁵ Also, a person may serve in a temporary, provisional or interim capacity as chief appraiser for up to one year without completing the required training.⁴⁴⁶

⁴³⁴ Tex. Tax Code §6.05(j)

⁴³⁵ Tex. Tax Code §6.05(j)

⁴³⁶ Tex. Tax Code §6.05(j)

⁴³⁷ Tex. Tax Code §6.05(d)

⁴³⁸ Tex. Tax Code §6.05(f)

⁴³⁹ Tex. Tax Code §6.05(f)

⁴⁴⁰ IAAO, *Property Appraisal and Assessment Administration*, (1990), pp. 429 to 439

⁴⁴¹ IAAO, *Standard on Professional Development*, (January 2013), p. 5. www.iaao.org/media/standards/Professional_dev_2013.pdf (Last visited Dec. 2, 2021)

⁴⁴² Tex. Occupations Code §§1151.161 and 1151.1581

⁴⁴³ Tex. Tax Code §5.042(a)

⁴⁴⁴ Tex. Tax Code §5.042(c)

⁴⁴⁵ Acts 2005, 79th Leg., R.S. Ch. 1111, Sec. 3

⁴⁴⁶ Tex. Tax Code §5.042(b)

Chief appraisers are required to complete at least half of their required continuing education hours in programs devoted to one or more of the topics listed in Occupations Code Section 1151.164(b) and at least two of the hours in ethics specific to maintaining the independence of an appraisal office from political pressure.⁴⁴⁷

A CAD should budget funds to cover necessary training and education expenses. A CAD is required to reimburse a CAD employee for all actual and necessary expenses, tuition and other fees and costs of materials incurred in attending, with approval of the chief appraiser, a course or training program sponsored or approved by TDLR.⁴⁴⁸

⁴⁴⁷ Tex. Occupations Code §1151.1581

⁴⁴⁸ Tex. Tax Code §5.04(b)

Assessment and Collection Functions

A taxing unit and a commissioner's court may contract with another taxing unit to perform their assessment and collection functions.⁴⁴⁹ The Tax Code provides procedures for taxing units to follow to consolidate assessment, collection or assessment and collection functions with a CAD.⁴⁵⁰ The CAD may be responsible for these functions for one or more of the CAD's taxing units.

If a CAD does assess, collect or assess and collect, please see Tax Code Subtitle E regarding collections and delinquency.

Interlocal Contracts

The board of directors may enter a contract with a taxing unit or a commissioner's court to collect and assess taxes for that taxing unit or county (with county TAC approval).⁴⁵¹ These contracts are subject to the Interlocal Cooperation Act.⁴⁵² The contract may provide for the collecting entity to contract with an attorney to collect delinquent taxes.⁴⁵³



If a county contracts to have its taxes assessed and collected by another entity, the contract must require the assessment and collection of all the taxes the county is required to assess and collect except for special inventory taxes assessed and collected under specified provisions.⁴⁵⁴ The Attorney General has held that Tax Code Section 6.24 is construed as authorizing a

contract to obtain assistance for the county TAC, as opposed to supplanting the TAC.⁴⁵⁵

Consolidation Election

Pursuant to Tax Code Section 6.26, qualified voters may petition to consolidate the assessment and collection of property taxes. The Attorney General has held that Tax Code Section 6.26 is unconstitutional insofar as it contravenes the Texas Constitution, VIII, Section 14 and that the Legislature may not authorize the electorate to divest the county TAC of the assessment and collection duties, other than appraisal functions.⁴⁵⁶

Qualified voters residing in a CAD may petition to require an election to determine whether to require the CAD, county TAC or a specified taxing unit within the CAD to assess, collect or assess and collect property taxes on property appraised by the CAD for all taxing units.⁴⁵⁷

If a taxing unit assesses, collects or assesses and collects its own property taxes, the qualified voters of that taxing unit may submit a petition to the governing body of the taxing unit to require an election to determine whether to require the CAD, the county TAC or another taxing unit to assess, collect or assess and collect the taxing unit's property taxes.⁴⁵⁸

For a petition to be valid, it must make certain statements and be signed by a specified amount or percentage of certain qualified voters.⁴⁵⁹

The petition may require the CAD, the county TAC or a specified taxing unit within the CAD to perform the consolidated functions.⁴⁶⁰ Neither a CAD nor a taxing unit may be required by an election to assess, collect or assess and collect taxes on property outside the CAD's boundaries.⁴⁶¹

⁴⁴⁹ Tex. Tax Code §6.24(a) and (b)

⁴⁵⁰ Tex. Tax Code §6.26

⁴⁵¹ Tex. Tax Code §6.24(a) and (b)

⁴⁵² Tex. Tax Code §6.24(a) and (b)

⁴⁵³ Tex. Tax Code §6.24(d)

⁴⁵⁴ Tex. Tax Code §6.24(b) and (c)

⁴⁵⁵ Tex. Att'y Gen. Op. JM-833 (1987)

⁴⁵⁶ Tex. Att'y Gen. Op. JM-833 (1987)

⁴⁵⁷ Tex. Tax Code §6.26(a)

⁴⁵⁸ Tex. Tax Code §6.26(b)

⁴⁵⁹ Tex. Tax Code §6.26(c)

⁴⁶⁰ Tex. Tax Code §6.26(a)

⁴⁶¹ Tex. Tax Code §6.26(j)

If the commissioner's court or the taxing unit's governing body finds that a petition is valid, it must order an election in the CAD or taxing unit on the next uniform election date prescribed by the Election Code that is more than 60 days after the last day on which it could have acted on the petition.⁴⁶²

If a majority of the qualified voters who voted in the election favor the proposition, the CAD, county TAC or specified taxing unit named on the ballot must perform the functions specified by the ballot beginning with the next time property taxes are assessed or collected, as applicable, that is more than 90 days after the date of the election. When the performance of a function begins before that time period, a function may be consolidated if the governing bodies agree, including the CAD board of directors if the CAD is involved.⁴⁶³

A consolidation may not be terminated within two years after the consolidation date.⁴⁶⁴

A taxing unit must pay the actual cost of the consolidated functions to the office or entity that performs the functions pursuant to an election.⁴⁶⁵ Actual costs have been defined by the Attorney General as those costs that the collecting taxing unit or CAD incurs over and above those it would incur if it were not collecting for another taxing unit.⁴⁶⁶

A taxing unit may require a bond when a CAD collects for the taxing unit.⁴⁶⁷ The taxing unit must pay the premium for the bond from its general fund or as provided by intergovernmental contract.⁴⁶⁸

Annual Collection Budget

If a CAD is assessing and collecting, the district should outline the costs in a separate budget.⁴⁶⁹ If the CAD performs assessment and collection functions under contract, the budget should be based on the contract. If the CAD collects under an election, the budget should be based on actual costs among the taxing units served.⁴⁷⁰ The CAD must allocate costs only to those taxing units for which it performs assessment and collection functions.⁴⁷¹

Special items in the annual collection budget could include required bonds, services of a delinquent tax attorney and court fees (if the CAD is handling delinquent collections).

⁴⁶² Tex. Tax Code §6.26(e)

⁴⁶³ Tex. Tax Code §6.26(f)

⁴⁶⁴ Tex. Tax Code §6.26(i)

⁴⁶⁵ Tex. Tax Code §6.26(g)

⁴⁶⁶ Tex. Att'y Gen. Op. JM-996 (1988)

⁴⁶⁷ Tex. Tax Code §6.29(b)

⁴⁶⁸ Tex. Tax Code §6.29(c)

⁴⁶⁹ Tex. Att'y Gen. Op. GA-0030 (2003)

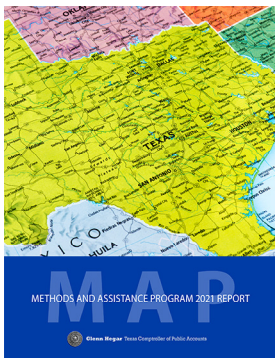
⁴⁷⁰ Tex. Att'y Gen. Op. JM-996 (1988)

⁴⁷¹ Tex. Att'y Gen. Op. GA-0030 (2003)

Comptroller Review of CADs

The Comptroller's office provides technical assistance to local taxing units and taxpayers on property tax issues, but it cannot intervene in local tax matters. The Comptroller's office is required to adopt rules establishing minimum standards for CAD administration and operations and is also required to conduct reviews of CAD operations.⁴⁷²

Methods and Assistance Program (MAP)



At least once every two years, PTAD must review each CAD's governance, taxpayer assistance and the operating and appraisal standards, procedures and methodology to determine compliance with generally accepted standards, procedures and methodology.⁴⁷³ After consultation with the Property Tax Administration Advisory Board, the Comptroller's office

by rule may establish procedures and standards for conducting and scoring the review.⁴⁷⁴

In conducting the review, the Comptroller's office is entitled to access to all CAD records and reports, to copy or print these materials and to the assistance of the CAD's officers and employees.⁴⁷⁵

At the conclusion of the review, the Comptroller's office must, in writing, notify the CAD of its performance in the review.⁴⁷⁶ If there is a finding of non-compliance with generally accepted standards, procedures and methodology, or certain

Comptroller-issued manuals, the Comptroller's office must deliver a report that details the findings and recommendations for improvement to the following:

1. the CAD's chief appraiser and board of directors; and
2. the superintendent and board of trustees of each school district participating in the CAD.⁴⁷⁷

If a CAD fails to comply with the report's recommendations and the Comptroller's office finds that the CAD board of directors failed to take remedial action reasonably designed to ensure substantial compliance with each report recommendation before the first anniversary of the date the report was issued, the Comptroller's office must notify TDLR.⁴⁷⁸ TDLR must take action necessary to ensure that the recommendations in the report are implemented as soon as practicable.⁴⁷⁹ If TDLR takes action, then before Feb. 1 of the year following the year in which action is taken, TDLR must, with the assistance of the Comptroller's office, determine whether the recommendations in the most recent report have been substantially implemented.⁴⁸⁰ TDLR must notify the CAD's chief appraiser and the board of directors in writing of the determination.⁴⁸¹

Comptroller Rule 9.301 provides procedures and standards for the reviews and additional MAP information is available at comptroller.texas.gov/taxes/property-tax/map/index.php.

School District Property Value Study (PVS)

Government Code Section 403.302 requires the Comptroller's office to conduct a study to determine the total taxable

⁴⁷² Tex. Tax Code §§5.03, 5.10, 5.102, 5.12 and Tex. Gov't Code §403.302

⁴⁷³ Tex. Tax Code §6.16(a 1-3)

⁴⁷⁴ Tex. Tax Code §5.102(a)

⁴⁷⁵ Tex. Tax Code §5.102(b)

⁴⁷⁶ Tex. Tax Code §5.102(c)

⁴⁷⁷ Tex. Tax Code §5.102(c)

⁴⁷⁸ Tex. Tax Code §5.102(d)

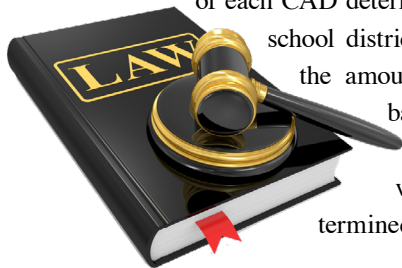
⁴⁷⁹ Tex. Tax Code §5.102(d)

⁴⁸⁰ Tex. Tax Code §5.102(e)

⁴⁸¹ Tex. Tax Code §5.102(e)

value of all property in each school district at least once every two years. This study is referred to as the School District Property Value Study (PVS).

The purpose of the School District PVS is to help ensure equitable distribution of state funding for public education. Texas funds public education through state and local funds. Local funding comes from property taxes.⁴⁸² The chief appraiser of each CAD determines local property values and school districts set tax rates that determine the amount of local tax revenue. Texas bases state funding, in part, on the total taxable property value within each school district, as determined by the School District PVS.



By law, taxable value equals the market value of all taxable property in a district, minus certain exemptions and deductions such as state-mandated homestead and disabled veterans' exemptions as well as value limitations.⁴⁸³ Deductions are made for reinvestment zones, freeport exemptions, productivity appraisal of qualified agricultural lands, the school tax ceiling for homeowners age 65 and older or disabled and other state-mandated exemptions.⁴⁸⁴

To estimate a school district's taxable value, the Government Code requires the Comptroller's office to do the following:

- use generally accepted sampling, standard valuation, statistical compilation and analysis techniques;
- ensure that different levels of appraisal on sold and unsold property do not adversely affect the accuracy of the study and that different levels of appraisal resulting from protests to the ARB on the grounds of market or appraised value or unequal appraisal (Tax Code Sections 41.41(a)(1) or (2)) are appropriately adjusted in the study; and
- test the validity of taxable values and presume that appraisal roll values represent taxable value when local value is determined to be valid.⁴⁸⁵

The Comptroller's office tests the taxable values the CAD assigns to each property category by constructing a statistical margin of error around the estimate of value for selected

property categories in each school district.⁴⁸⁶ The Comptroller's office considers values valid, or acceptable, when they are within the margin of error.⁴⁸⁷ The Comptroller's office considers values outside this margin of error invalid.⁴⁸⁸

If the locally appraised value in a school district (local value) is valid, the Comptroller's office certifies the local value to the Commissioner of Education.⁴⁸⁹ If the local value is invalid, the Comptroller's office certifies the state value, unless the school district's value is higher than the acceptable range or the school district is eligible for a grace period (a period during which state law allows local value to be used even though the school district's property values are not at market value).⁴⁹⁰

If, in the final certification of the School District PVS, a school district's local value as determined by the CAD is invalid, the Comptroller's office is required to send a notification to the board of directors. The board of directors is required to hold a public meeting to discuss the notification.⁴⁹¹

The Education Code provides how the commissioner of education uses the findings of the School District PVS to determine state aid in school funding.

Additional information regarding the School District PVS is available at: comptroller.texas.gov/taxes/property-tax/index.php.

Targeted MAP

If the Comptroller's office determines a school district's local values to be invalid for three consecutive years, the Government Code requires the Comptroller's office to perform an additional review of the appraisal district. The additional review is targeted and requires the Comptroller's office to provide recommendations to the CAD regarding appraisal standards, procedures, and methodologies.

If a CAD fails to comply with the report's recommendations and the Comptroller's office finds that the CAD board of directors failed to take remedial action reasonably designed to ensure substantial compliance with each recommendation before the first anniversary of the date the recommendations were

⁴⁸² Tex. Gov't Code §403.301

⁴⁸³ Tex. Gov't Code §403.302(d)

⁴⁸⁴ Tex. Gov't Code §403.302(d)

⁴⁸⁵ Tex. Gov't Code §403.302(b) and (c)

⁴⁸⁶ Tex. Gov't Code §403.302(c)

⁴⁸⁷ Tex. Gov't Code §403.302(c)

⁴⁸⁸ Tex. Gov't Code §403.302(c)

⁴⁸⁹ Tex. Gov't Code §403.302(c)

⁴⁹⁰ Tex. Gov't Code §§403.302(c) and 403.3011(2)

⁴⁹¹ Tex. Gov't Code §403.302(k)

made, the Comptroller's office must notify TDLR. TDLR must take action necessary to ensure that the recommendations in the report are implemented as soon as practicable. Before Feb. 1 of the year following the year in which TDLR takes action, TDLR must, with the assistance of the Comptroller's office, determine whether the recommendations have been substantially implemented. If it is determined that the recommendations have not been substantially implemented, the board of directors is required to consider whether the failure to implement the recommendations was under the chief appraiser's control and whether the chief appraiser is able to adequately perform his or her duties.⁴⁹²

Performance Audits

The Comptroller's office must perform performance audits of CADs that fail to meet specified standards for two consecutive studies conducted by the Comptroller's office under Tax Code Section 5.10.⁴⁹³ Existence of any one of the following conditions for two consecutive years triggers an audit:

1. the overall median level of appraisal for all properties in the CAD is less than 0.75 as determined in the Comptroller's study;
2. the coefficient of dispersion around the median of the overall property sample is greater than 0.30; or
3. the difference between median levels of appraisal for any two property classes is greater than 0.45.⁴⁹⁴

Under certain circumstances, the Comptroller's office must also complete an audit if a majority of participating taxing units or a majority of voting taxing units submit a written request to the Comptroller's office for a performance audit or an audit of only one or more particular matters.⁴⁹⁵

Additionally, owners of at least 10 percent of accounts or parcels of property in a single class can petition for a performance audit (but only if the class makes up at least 5 percent of the total property value in the district).⁴⁹⁶ Further, on written request, property owners may request an audit if the owners represent not less than 10 percent of the appraised value of all the property in the CAD

belonging to a single class of property if that property class makes up at least 5 percent of the CAD's total property value.⁴⁹⁷

Taxing units and property owners may not request an audit if, for the last two PVS under Tax Code Section 5.10:

1. the overall median of appraisal for all of the CAD's property is more than 0.90 and less than 1.10;
2. the coefficient of dispersion for the overall property sample in the study is less than 0.15; and
3. the difference between the highest and lowest median appraisal levels for the various property classes is less than 0.20.⁴⁹⁸

A request for a CAD performance audit may not be made:

1. during the two years immediately following the publication of the second of two consecutive studies according to which the Comptroller's office is required to conduct an audit of the CAD;
2. during the year immediately following the date the results of an audit of the CAD conducted by the Comptroller's office are reported to the chief appraiser of the CAD; or
3. during a year in which the Comptroller's office is conducting a MAP review of the CAD under Tax Code Section 5.102.⁴⁹⁹

CADs must bear the cost of audits triggered by study results or triggered by a taxing unit request for an audit.⁵⁰⁰ The cost of a taxpayer-requested audit is borne by the requesting taxpayers.⁵⁰¹ However, the CAD must reimburse the cost of a taxpayer-requested audit if the audit's results show that the median level of appraisal for a class of property exceeds 1.10 or the median level of appraisal for one class of property varies by at least 10 percent from the overall median level of property in the CAD.⁵⁰²

The Comptroller's office must report the results of the audit in writing to the governing body of each participating taxing unit, the chief appraiser and to the presiding officer of the CAD board of directors.⁵⁰³ If it is a taxpayer-requested

⁴⁹² Tex. Gov't Code §403.302(k-1)

⁴⁹³ Tex. Tax Code §5.12(a)

⁴⁹⁴ Tex. Tax Code §5.12(a)

⁴⁹⁵ Tex. Tax Code §5.12(b)

⁴⁹⁶ Tex. Tax Code §5.12(c)

⁴⁹⁷ Tex. Tax Code §5.12(c)

⁴⁹⁸ Tex. Tax Code §5.12(d)

⁴⁹⁹ Tex. Tax Code §5.12(e)

⁵⁰⁰ Tex. Tax Code §5.13(g)

⁵⁰¹ Tex. Tax Code §5.13(g)

⁵⁰² Tex. Tax Code §5.13(g)

⁵⁰³ Tex. Tax Code §5.13(f)

audit, the Comptroller's office must also provide a report to a representative of the property owners who requested the audit.⁵⁰⁴

Appraisal District Ratio Study

Tax Code Section 5.10 requires the Comptroller's office to conduct a ratio study to measure the performance of each appraisal district in Texas at least once every two years and to publish the results. The purpose of the Appraisal District Ratio Study is to measure the uniformity and median level of appraisals performed by an appraisal district within each major category of property. To conduct the Appraisal District Ratio Study, the Comptroller's office applies appropriate standard statistical analysis techniques to data collected through the school district property value study required by Government Code Section 403.302. The level of appraisal shows whether the CAD has appraised properties at 100 percent of the legally required level—normally the market value. The uniformity of appraisal indicates how much the percentage of market value varies from property to property.

⁵⁰⁴ Tex. Tax Code §5.13(f)

For more information, visit our website:
comptroller.texas.gov/taxes/property-tax

In compliance with the Americans with Disabilities Act,
this document may be requested in alternative formats
by calling toll free 800-252-5555.



Sign up to receive email updates on the Comptroller topics
of your choice at comptroller.texas.gov/subscribe/.

Texas Comptroller of Public Accounts
Publication #96-301
March 2022

VOTING ENTITLEMENT FOR 2024-25 BOARD OF DIRECTORS

Taxing Unit	2022 Levy	% of Total Levies	Times 1,000 Rounded	Times 5 Directors
Nacogdoches County	\$ 21,284,123	25.491%	255	1275
City of Cushing	\$ 72,724	0.087%	1	5
City of Garrison	\$ 120,933	0.145%	1	5
City of Nacogdoches	\$ 11,318,226	13.555%	136	680
Central Heights ISD	\$ 1,994,170	2.388%	24	120
Chireno ISD	\$ 3,119,689	3.736%	37	185
Cushing ISD	\$ 2,271,906	2.721%	27	135
Douglass ISD	\$ 2,154,509	2.580%	26	130
Garrison ISD	\$ 2,090,229	2.503%	25	125
Martinsville ISD	\$ 2,222,871	2.662%	27	135
Nacogdoches ISD	\$ 32,643,157	39.095%	391	1955
Woden ISD	\$ 4,205,242	5.036%	50	250

Voting Entitlement derived by using 2022 tax levies

RESOLUTION NO. 1352-10-23

RESOLUTION NOMINATING A REPRESENTATIVE FROM THE CITY OF NACOGDOCHES TO NACOGDOCHES CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

WHEREAS, the City of Nacogdoches is allowed to nominate up to five (5) potential candidates to the Central Appraisal District Board of Directors to represent its interests; and

WHEREAS, the Nacogdoches City Council meeting in regular session on October 10, 2023, is in agreement that _____ should be nominated to represent the City of Nacogdoches on the Board; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that City Council does hereby nominate _____ to represent the City of Nacogdoches on the Central Appraisal District Board of Directors.

PASSED AND APPROVED this the 10th day of October, 2023.

Randy Johnson, Mayor

ATTEST:

Rhonda Lewis, Deputy City Secretary

Approved as to form:

Jerry Baker, City Attorney

PRESENTER: Larissa Philpot-Brown, Economic Development Director

ITEM/SUBJECT: Consider approval of Resolution No. 1353-10-23 creating a Chapter 380 Economic Development Program and authorizing an agreement by and between the City of Nacogdoches and Z Prepay Communication Services, LLC regarding the development of a multi-family apartment complex. (Economic Development Director)

SUMMARY/BACKGROUND: Z Prepay Communication Service, LLC represented by Ali Mahkani has proposed to construct an 80 unit townhome subdivision at 3007 Pearl Street (on the southwest corner of Pearl and West Austin Streets).

The developer has indicated the cost of constructing the development to be at least \$16 million. He has requested a five-year tax rebate. The proposed agreement is included in the Council packet. This agreement contains the same standard terms and conditions as other 380 agreements in recent years.

The most recently approved tax abatement for a multi-family project was for Lumberjack Legends/Lofts on Pearl Street in 2010. That agreement contained the tax abatement schedule below. Staff has suggested the same schedule be utilized for this agreement.

Year 1	100%
Year 2	75%
Year 3	25%
Year 4	25%
Year 5	25%

FINANCIAL:

Over the five-year agreement period, the city could receive an estimated \$480,000 in gross tax and permit fee revenue. Per the proposed abatement schedule, the developer could receive an estimated \$210,000 in tax rebates. These are estimates only.

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

Neighborhood Revitalization and Attainable Housing, Economic Development

CITY CONTACT: Larissa Philpot-Brown, Economic Development Director - NEDCO
President/CEO
lphilpot@nedco.org
(936) 559-1255

- ATTACHMENTS:**
1. Resolution 1353-10-23 - Zara Apartments 380
 2. Zara Apartments 380 Agreement_FINAL
 3. Exhibit A - Site Plan

**CITY OF NACOGDOCHES, TEXAS
RESOLUTION NO. 1353-10-23**

A RESOLUTION CREATING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND APPROVING AND AUTHORIZING AGREEMENT BY AND BETWEEN THE CITY OF NACOGDOCHES AND Z PREPAY COMMUNICATION SERVICES, LLC REGARDING CONSTRUCTION OF A MULTI-FAMILY APARTMENT COMPLEX TO BE LOCATED AT THE SOUTHWEST CORNER OF PEARL STREET AND EAST AUSTIN STREET.

WHEREAS, the City of Nacogdoches, Texas, (the “City”), possesses the legal and statutory authority under Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, and stimulating and enhancing business and commercial activity within the City;

WHEREAS, Z Prepay Communication Services, LLC (the “Developer”) has agreed to construct or cause to be constructed improvements to include a multi-family apartment complex of at least eighty (80) units to be located at the southwest corner of Pearl Street and East Austin Street; and

WHEREAS, the City has established an economic development program which authorizes the City to make such economic development loans and grants; and

WHEREAS, the City has concluded and hereby finds that the Zara Apartments Chapter 380 Economic Development Agreement clearly promotes economic development in the City, and, as such, meets the requirements under Chapter 380 of the Texas Local Government Code and Article III, Chapter 52-a of the Texas Constitution under which the City has the authority to use public funds for public purposes of promoting economic development and stimulating business and commercial activity within the City, and further, is in the best interests of the City and Developer.

NOW, THEREFORE, be it resolved by the City Council of the City of Nacogdoches, Texas that:

1. The findings and recitations contained in the preamble of this Resolution are found and declared to be true and correct and are hereby adopted as part of this Resolution.
2. There is hereby established the Zara Apartments Economic Development Program pursuant to Chapter 380 of the Texas Local Government Code.
3. The City Council hereby approves and authorizes the Zara Apartments Chapter 380 Economic Development Agreement in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference.

4. The City Manager is authorized to execute such document and related documents on behalf of the City, and the City Secretary is authorized to attest to all such signatures and the City Attorney is authorized to take all action necessary to enforce all legal obligations as may arise hereunder.

5. This resolution is effective immediately upon its passage.

PASSED AND APPROVED, this the 10th day of October, 2023, by a vote of _____ (ayes) to _____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, City Secretary

Jerry Baker, City Attorney

CITY OF NACOGDOCHES, TEXAS

AND

Z PREPAY COMMUNICATION SERVICE, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into by and between the **CITY OF NACOGDOCHES, TEXAS**, a Texas home-rule municipality (the "City"), and **Z PREPAY COMMUNICATION SERVICES, LLC**, a Texas limited liability company, its successors and assigns (the "Developer") (with the City and the Developer each being a "Party" and together the "Parties"), and is made effective as of the date of execution by each Party's authorized representative below (the "Effective Date").

RECITALS:

- A.** Developer has agreed to construct or cause to be constructed improvements to include a multi-family apartment complex of at least eighty (80) units (the "Project") to be located at the southwest corner of Pearl Street and West Austin Street in the City (the "Property").
- B.** The City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development and stimulating and enhancing business and commercial activity within the City.
- C.** The City has established an economic development program which authorizes the City to make such economic development loans and grants.
- D.** The City has determined that a grant of funds to Developer will serve the public purposes of promoting local economic development, providing necessary workforce housing, and stimulating and enhancing business and commercial activity within the City.
- E.** The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the Parties.
- F.** The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by helping to eliminate unemployment or underemployment in the State, and by the development or expansion of commerce within the State.
- G.** The City desires and agrees to enter into this Agreement with Developer in order to implement the economic development program described herein and shall follow all applicable rules and procedures prescribed by the City's Charter and the laws of the State in providing Developer the economic development incentives described herein.
- H.** Developer desires and agrees to enter into this Agreement with City in order to construct and operate the Project described herein and to create well-paying jobs and shall follow the laws of the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

SECTION 1. RECITALS INCORPORATED.

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants and consideration that bind the Parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date and shall continue until all obligations of the Parties are met unless terminated sooner under the provisions hereof (the "Term").

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Certificate of Occupancy.** The words "Certificate of Occupancy" mean the certificate of occupancy issued by the City to the Developer at the Project, which certificate the City shall not unreasonably withhold, condition or delay.
- (b) **Full-Time Equivalent Employment Positions.** The words "Full-Time Equivalent Employment Position" or "Full-Time Employment Equivalent Positions" mean and include a job requiring a minimum of Two Thousand Eighty (2,080) hours of work averaged over a twelve (12) month period, with such hours to include any vacation, sick leave, personal days, and similar time off benefits. Full and part-time worker positions may be aggregated to form a Full-Time Equivalent Position.
- (c) **Personalty.** The word "Personalty" means the tangible personal property, including inventory and supplies, located on the Property other than tangible personal property that was located on the Property prior to the period covered by this Agreement, and which is otherwise subject to a tax abatement consistent with section 312.204(a) of the Texas Tax Code, as amended.
- (d) **Program Grant or Program Grant Payment.** The words "Program Grant" or "Program Grant Payment" mean the economic development grants provided by the City to Developer in accordance with this Agreement.
- (e) **Qualified Expenditures.** The words "Qualified Expenditures" mean those expenditures consisting of and contributing to the hard and soft costs associated with the development and construction of the improvements for the Project including furniture, fixtures, equipment, and public infrastructure.
- (f) **Related Documents.** The words "Related Documents" mean and include without limitation any and all promissory notes, loan agreements, grant agreements, performance agreements, tax abatement agreements, and other instruments and documents, whether now or hereafter existing, entered by and between the City and Developer in connection with this Agreement.
- (g) **Sales and Use Tax.** The words "Sales and Use Tax" or "Sales and Use Taxes" mean the City's municipal sales and use tax, pursuant to Section 321.103(a) of the Texas Tax Code, as amended. The current Sales and Use Tax rate is one percent (1%).

(h) **State.** The word “State” means the State of Texas.

(i) **State Comptroller.** The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.

Developer covenants and agrees with the City that while this Agreement is in effect, Developer shall comply with the following terms and conditions:

(a) **Construction of the Project.**

- i. Developer shall construct or cause to be constructed the improvements as described on Table 1 below (the “Improvements”) and generally as seen on Exhibit A, and shall submit to the City invoices, receipts, or other similar documentation for the Qualified Expenditures in a form reasonably acceptable to the City by 5:00 pm, CST, August 30, 2025. The City reserves the right to audit the applicable records of the Developer regarding the Developer’s conformance with this subsection.

Table 1

Item	Approximate Qualified Expenditure
80 unit multifamily apartment complex	\$16,000,000

- ii. Developer represents that Developer has the present capacity to construct the Improvements. The Improvements shall be completed on or before July 31, 2025. Only those Improvements listed in Table 1 which are completed prior to July 31, 2025, subject in all respects to Force Majeure Events, will be considered by the City for reimbursement.
- iii. All Improvements shall be built to the minimum requirements of the International Building Code, as amended, as adopted by the City from time to time and all applicable City Ordinances.
- iv. During the term of this Agreement, Developer, at its own cost and expense, shall maintain in full force and effect the following insurance with sound and reputable insurers: (i) worker’s compensation insurance in accordance with the statutory requirements of the state where the Service is to be performed; (ii) automobile liability insurance on all motor vehicles licensed for highway use, both owned and non-owned; and (iii) commercial general liability insurance for bodily injury and property damage.
- (b) **Certificate of Occupancy.** Developer shall present a Certificate of Occupancy issued by the City, prior to requesting reimbursement for completed improvements. The necessary construction to obtain a Certificate of Occupancy shall be completed before July 31, 2025, subject in all respects to Force Majeure Events.
- (c) **City Sales Tax Matters.** As a portion of the consideration for this Agreement, and to the maximum extent permitted under applicable law, Developer covenants and agrees with City to structure all contracts to which Developer or related person or entity is a party relating to the construction of the improvements and facilities to be constructed on the Property pursuant to this Agreement that are not purchased for resale, to the extent such materials or other taxable items are reasonably available on a commercially competitive basis, in a manner that requires City sales and use taxes to be collected and remitted to the City with respect to the purchase of all major materials and other taxable items (limited to concrete, wood, and rebar) for such improvements and facilities. Without limiting the generality of the immediately preceding sentence, Developer shall cause each contract with a contractor to:
- i. be structured as a “separated contract” as such term is defined in 34 Texas Administrative Code 3.291(a)(13) with the result that:
- i. the agreed contract price under the contract is divided into (A) a separately stated agreed contract price for incorporated materials, and (B) a separately stated amount for all skill and labor that includes fabrication, installation, another other labor that is performed by the contractor; and

- ii. the contractor is required under 34 Texas Administrative Code 3.291(a)(13) to collect City sales and use taxes on the charge to Developer for materials and other taxable items based on the location of the Improvements and facilities to be constructed in the City; and
- ii. contain provisions requiring such contractor to issue, and to cause each subcontractor and each sub-subcontractor to issue, properly completed Texas Sales and Use Tax Resale Certificates and/or other certifications or documentation, as appropriate, to all subcontractors and sub-subcontractors, and to take such other actions as are necessary or advisable, in order to claim, obtain and/or evidence that the materials and other taxable items for the improvements and facilities to be constructed on the Property.

Notwithstanding any other provision hereof, the sole remedy of the City with regard to any failure of the Developer to comply with this section shall be to require the Developer to pay to the City the sales and use tax revenue lost by the City as a result of the Developer's failure to comply with this Section. Developer shall not be liable for sales and use tax revenue lost by any taxing authority other than the City for failure to comply with this section.

- (d) **Annual Compliance Verification.** Beginning on January 1, 2025, and each January 1st for the following four (4) years, for a total of five (5) occurrences until January 1, 2029, Developer shall deliver to the City an Annual Compliance verification signed by a duly authorized representative of Developer that shall certify the following:
 - (1) The taxable appraised value of the Property and Personalty located on the Property for the applicable prior tax year;
 - (2) The ad valorem taxes paid to the City for the Property and Personalty located on the Property for the applicable prior tax year; and
 - (3) The total gross payroll and number of employees of the Project.
- (e) **Payment of Ad Valorem Taxes.** Developer, at Developer's sole cost, covenants and agrees to pay by January 31st of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Property. Developer shall not protest said taxes during the Term.
- (f) **Performance.** Developer agrees to perform and comply with all applicable terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements by and between the Parties.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees that throughout the Term the City shall comply with the following terms and conditions:

(a) Program Grant Payments.

(1) Ad Valorem Rebate

- a. The City shall rebate to Developer the ad valorem taxes paid by the Developer to the City for the increase in ad valorem property taxes due to the Developer's improvements to the Property and Personalty located on the Property for a five (5) year period (the "Rebate"). For the purposes of calculating the Rebate, the ad valorem value of the Property and the Personalty located on the Property as of the Effective Date is eighty-six thousand six hundred fifty dollars (\$86,650) (the "Base Value"). The Rebate will be applied to any amount of ad valorem taxes on the Property or Personalty located on the Property paid by the Developer to the City that is over and above the taxable ad valorem value of the Base Value. The first year of the Rebate pursuant to this section 5(a)(1) of this Agreement shall be the first tax year that begins after the City issues a certificate of occupancy for the Project pursuant to Section 4(c) of this Agreement and the Project is fully assessed by the taxing authorities.

Table 4

Tax Year	Percentage of Ad Valorem Taxes Reimbursed
1	100%
2	75%
3	25%

4	25%
5	25%

b. Timing of Payments

The City shall make Program Grant Payments as described in Section 5(a)(1) above within 30 days of an approved Annual Compliance Report and receipt of Project's ad valorem tax payment from the Nacogdoches County Central Appraisal District, whichever is later.

- (b) **Performance.** The City agrees to perform and comply with all applicable terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements by and between the Parties.

SECTION 6. EVENTS OF DEFAULT.

- (a) Each of the following shall constitute an Event of Default under this Agreement by Developer:
- (1) **Construction of Qualified Expenditures.** Failure of Developer to provide copies of the invoices, receipts or other documentation to the City regarding said Qualified Expenditures made to the Property consistent with Section 4(a) of this Agreement within twenty (20) days after written notice of the default from the City to the Developer.
 - (2) **Certificate of Occupancy.** Failure of Developer to obtain, or cause to be obtained, a Certificate of Occupancy from the City for the Project consistent with Section 4(b) of this Agreement and such failure continues for ten (10) days after the written notice of the default from the City to Developer (provided the failure to obtain the Certificate of Occupancy is not due to wrongful or negligent delay or other action or inaction by the City).
 - (3) **Insolvency.** Developer's insolvency, appointment of receiver for any part of the Property or Personalty, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer.
 - (4) **Other Defaults.** Failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or in any of the Related Documents, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between the City and Developer, and such failure is not cured within ten (10) days after written notice of the default from the City to Developer.
- (b) Each of the following shall constitute an Event of Default under this Agreement by the City:
- (1) **Program Grant Payments.** Failure of the City to make the Program Grant Payments consistent with Section 5 of this Agreement within ten (10) days after written notice of the default from Developer to the City.
 - (2) **Other Defaults.** Failure of the City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of the City to comply with or to perform any other term, obligation, covenant, or condition contained in any other agreement by and between the City and Developer, and such failure is not cured within ten (10) days after written notice of the default from Developer to the City.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

If an Event of Default occurs, the non-defaulting Party shall give written notice to the other Party of the specific Event of Default, and the defaulting Party shall have thirty (30) days to cure said default (as to defaults reasonably curable within such period) or commences to cure alleged default within said thirty (30) days and diligently pursues the cure to its conclusion (as to defaults not reasonably curable within thirty (30) days). In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, all amounts of Program Grant Payments and financial assistance, including building permit and plan review fees, provided by the City to Developer to date pursuant to Section 5(a)(1) of this Agreement shall become immediately due and payable by Developer to the City. In the event the City defaults and is unable or unwilling to cure said default within the prescribed time period, the Developer may terminate

this agreement. Defaults by City shall not waive, terminate, or offset repayment obligations of Developer under Section 4(f) or indemnities under Section 8.

SECTION 8. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless the City, its council members, officers, agents, and employees (collectively, the “indemnitees”) from and against (i) any and all claims, demands, actions or causes of action that are asserted against any indemnitee if the claim, demand, action or cause of action is a result of or related to Developer’s performance under this agreement, Developer’s tortious interference with contract or business interference, or Developer’s wrongful or negligent use of the City’s financial assistance by Developer or its agents and employees; (ii) any claim, demand, action or cause of action which contests or challenges the legal authority of Developer to enter into this Agreement; and (iii) any and all liabilities, losses, costs, or expenses (including reasonable attorneys’ fees and disbursements) that any indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to the City with respect to any of the foregoing arising out of the gross negligence or willful misconduct of any indemnitee or the breach by the City of this Agreement. If any claim, demand, action or cause of action is asserted against any indemnitee, such indemnitee shall promptly notify Developer, and failure to so promptly notify Developer shall release Developer’s obligations under this Section if such failure prejudices Developer’s right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. As so long as no Default or Event of Default shall have occurred and be continuing, if requested by Developer in writing, an indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer’s concurrence thereto.

SECTION 9. MISCELLANEOUS PROVISIONS.

(a) **Entire Agreement; Amendments.** This Agreement, together with the Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State, and all obligations of the parties created hereunder are performable in Nacogdoches County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Nacogdoches County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the City, which consent will not be unreasonably withheld but which may be conditioned on adequate assurances that the assignee has the resources and expertise necessary to operate the Project for the remainder of the term and honoring the provisions of the Agreement. An assignment contemplated herein may be to wholly owned subsidiaries or commonly owned affiliates of the Developer. Assignment shall not release Developer from any obligation under this Agreement.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents as follows: that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same; and the Agreement is authorized by State law, including but not limited to, Chapter 380 of the Texas Local Government Code, is within the authority of the City, and constitutes a legal and binding obligation of the City. Developer warrants and represents that the individual executing this Agreement on Developer’s behalf has full authority to execute this Agreement and bind Developer to the same.

(e) **Caption Heading.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, unavailability of labor or materials, court injunction or other cause outside the control of the party who is to perform (each, a "Force Majeure Event"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay caused by the Force Majeure Event, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered by hand or by express courier such as Federal Express, UPS, DHL, or Lone Star Overnight, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to Developer: Z Prepay Communication Service, LLC
5721 ADAIR LN
PLANO, TX 75024-3094
214-869-7309

If to the City: City of Nacogdoches
Attn: City Manager
202 East Pillar Street
Nacogdoches, TX 75961
936-559-2501

With a copy to: City of Nacogdoches
Attn: City Attorney
202 East Pillar Street
Nacogdoches, TX 75961
936-559-2503

(i) **Revenue Sharing Agreement.** The City designated this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.

(j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(k) **Undocumented Workers.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement plus interest, at the rate of two and one-half percent (2.5%), not later than the 120th day after the date the City notifies Developer of the violation.

(l) **Mutual Assistance.** The Parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions, including, but not limited to, executing and delivering any additional documents and agreements reasonably necessary to implement this Agreement.

(m) **Attorneys Fees.** In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing Party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

(o) **THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITIES THAT IT MAY HAVE AS NOW EXIST OR MAY BE CREATED UNDER ANY APPLICABLE LAW OR JUDGEMENT.**

(p) Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against, either Party based on draftsmanship.

(q) Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither Party, nor either's past, present, or future elected officials, officers, directors, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction, or operation of any portion of the Property.

(u) No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

(y) Confidentiality. This Agreement is subject to the Texas Public Information Act and will be considered "public information" after consideration by the City at a posted meeting by either body. However, to the maximum extent allowed under applicable law, the City will use all measures to keep the information contained in and related to this Agreement confidential until such time as the Texas Public Information Act requires the City to disclose the applicable contents of this Agreement.

[SIGNATURES AND EXHIBITS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

FOR THE CITY OF NACOGDOCHES, TEXAS

By: _____
Randy Johnson, Mayor

Date: _____

ATTEST:

Jan Vinson, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney

FOR THE DEVELOPER: Z Prepay Communication Services, LLC

By: _____

Date: _____

By: _____

Date: _____



SITE PLAN

LEGEND

PROPOSED TWO STORY TOWNHOME

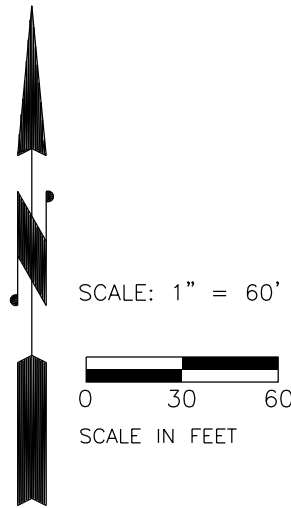
OFFICE

COVERED PARKING

LIGHT POLE

MONUMENT SIGN

NOTE: PARKING SIZE 9'X 19' / 24' DRIVE
TOTAL NO. OF PARKING 185



REVISIONS	
Date	Description
Project Name & Address:	
Proposed Zahra Square Townhomes	
3007 Pearl Street	
Nacogdoches, Texas 75691	
Sheet Title:	
SITE PLAN	
Date:	
JULY 31, 2023	
Scale:	Sheet No.:
1" = 60'	C4