

AGENDA

Regular City Council Meeting

7:00 PM - Tuesday, June 8, 2021

City Council Chambers, 201 E. Nash Street, Terrell, TX



Mayor Rick Carmona

Council Members

District 2 - Grady Simpson

District 3 - Mayrani Velazquez

District 4 - Stephanie Holmes-Thomas

District 5 - Tim Royse

City Manager Mike Sims

NOTICE IS HEREBY GIVEN that the Terrell City Council will conduct a Regular City Council Meeting at 7:00 p.m. on Tuesday, June 8, 2021, at Terrell City Hall located at 201 East Nash Street. The meeting is open to the public with limited seating in the Council Chambers. Recommendations of the CDC regarding social distancing will be practiced during the course of the public meeting to slow the spread of the Coronavirus (COVID-19).

If you choose not to attend in person and you wish to submit public comments, email support@cityofterrell.org and title the email "Public Comment". All public comments submitted by 12:00 pm on Tuesday, June 8, 2021 will be provided to the City Council members and read into the record for the Tuesday, June 8, 2021 City Council Meeting.

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1. CALL TO ORDER

2. INVOCATION

3. PLEDGE TO AMERICAN FLAG AND TEXAS FLAG.

4. MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS

5. ADOPTION OF MINUTES

5.1. Discuss and Consider Minutes from the Regular City Council Meeting on 5 - 13 May 18, 2021.

[Regular City Council - May 18 2021 - Minutes - Pdf](#)

6. HEAR REMARKS FROM VISITORS.

This time is set aside on the agenda to invite any person to address the Council on issues not subject to a public hearing. Routine administrative matters are best discussed with the appropriate City Staff before bringing them to the Council. Prior to the meeting, please complete a "Citizen Participation Form" and present it to the City Secretary. In accordance with the Texas Open Meetings Act, Section 551.042, the City Council cannot discuss, consider, or take action on matters not listed on the agenda. Speakers should limit their comments to 3 minutes and are asked to speak into the microphone provided, identifying themselves for the record. The total amount of time set aside for this place on the agenda is 15 minutes. Comments of a personal nature directed at the Council or Staff are inappropriate.

7. BOARDS AND COMMISSIONS

7.1. Discuss and Consider Appointment of Chairman and Vice Chairman of the Tax Increment Reinvestment Zone No. 1 Board and the Power Center Board. 14 - 16

[TIRZ No. 1 Board](#)

[Power Center Board](#)

8. DISCUSSION ITEMS

8.1. Discuss FY22 Budget Calendar and Summer Meeting Schedule. 17 - 21

[Budget Schedule 2021-2022](#)

[June-Aug 2021 Calendar](#)

8.2. Discuss Summer 2021 Street Projects Overview. 22 - 36

[PAVEMENT IMPROVEMENT - NEXT STEPS](#)

8.3. Discuss Capital Projects Overview.

9. BUSINESS ITEMS

9.1. Discuss and Consider Ordinance No. 2866 on First Reading, An 37 - 38
Ordinance Of The City Council Of The City Of Terrell, Kaufman County,
Texas, Amending Appendix 2, Zoning Ordinance Of The City Of Terrell
By Changing The Zoning Classification On Certain Real Property More
Particularly Described As Lot 1, Block 351, Terrell Revised, An Addition
To The City Of Terrell, And Also Known As 801 North Rockwall Street As
Shown On The Plat Attached Hereto As Exhibit "A" And Made A Part
Hereof For All Purposes From Retail (R) To Single-Family Residential
7.5 (SF-7.5); Providing For Severability And Providing An Effective Date.
[Ordinance No. 2866](#)

9.2. Discuss and Consider Ordinance No. 2867 on First Reading, An 39 - 40
Ordinance Of The City Council Of The City Of Terrell, Kaufman County,
Texas, Planned Development 21-02 (PD 21-02) Amending Planned
Development Pd 20-05 (PD 20-05), In The Manner Shown In The Revised
Northside Addition Subdivision Development Conceptual Drawings And
The Revised Northside Addition Development Standards Copies Of
Which Are Attached Hereto As Exhibits "A" And "B" And Made A Part
Hereof For All Purposes; Providing For The Repeal Of Conflicting
Ordinances; Providing For Severability And Providing An Effective Date.
[Ordinance No. 2867](#)

9.3. Discuss and Consider Pressure Paving Sole Source Contract. 41 - 182
[Construction Pressure Paving](#)

9.4. Discussion and consideration of all matters incident and related to 183 - 185
approving and authorizing publication of notice of intention to issue Series
2021A Certificates of Obligation, including the adoption of a resolution
pertaining thereto.
[Resolution No. 1044](#)

9.5. Discussion and consideration of all matters incident and related to 186 - 188
approving and authorizing publication of notice of intention to issue Series
2021B Certificates of Obligation, including the adoption of a resolution
pertaining thereto.
[Resolution No. 1045](#)

9.6. Discussion and consideration of all matters incident and related to 189 - 191
approving and authorizing publication of notice of intention to issue
Taxable Series 2021C Certificates of Obligation, including the adoption of
a resolution pertaining thereto.
[Resolution No. 1046](#)

9.7. Discuss and Consider Resolution No. 1047, A Resolution Supporting City 192 - 193 Of Terrell's Application To The Texas Department Of Transportation's 2021 Transportation Alternatives Set-Aside (TA) Call For Projects.

[Resolution No. 1047](#)

10. ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH SECTION 551 OF THE TEXAS GOVERNMENT CODE TO DISCUSS THE FOLLOWING:

Section 551.072 Deliberations Regarding Real Property.

Section 551.087 Deliberations Regarding Economic Development Negotiations.

11. RECONVENE INTO REGULAR SESSION AND CONSIDER ACTION, IF ANY, ITEMS DISCUSSED IN EXECUTIVE SESSION.

12. ADJOURN.

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the Governing Body of the City of Terrell is a true and correct copy of said NOTICE, which has been posted on the front OUTDOOR BULLETIN BOARD CABINET FOR AGENDAS of the Terrell City Hall, Terrell, Texas, a place convenient and readily accessible to the General Public and on the website at cityofterrell.org, and which has been continuously posted for a period of seventy-two (72) hours prior to the date and time said meeting was convened.

Posted Friday, June 4, 2021-5:00 p.m.

Dawn Steil, City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 972-551-6600 for further information. Braille is not available.

Council Reserves the Right to Adjourn into Executive Session to Seek Legal Counsel on a Matter Which the Canon of Legal Ethics Demands to Preserve the Attorney-Client Privilege Pursuant to Section 551.071(2) of the Texas Government Code.



MINUTES

Regular City Council Meeting

7:00 PM - Tuesday, May 18, 2021

City Council Chambers, 201 E. Nash Street, Terrell, TX

The City of Terrell City Council conducted a Regular City Council meeting on Tuesday, May 18, 2021 at 7:00 PM in the City Council Chambers, 201 E. Nash Street, Terrell, TX.

COUNCIL PRESENT: Mayor Rick Carmona
 District 2 Grady Simpson
 District 3 Mayrani Velazquez
 District 5 Tim Royse
 District 4 Stephanie Holmes-Thomas

COUNCIL ABSENT:

STAFF PRESENT: City Manager Mike Sims
 City Secretary Dawn Steil
 Assistant City Attorney Greg Shumpert

1 CALL TO ORDER

Mayor Rick Carmona called the meeting to order.

2 INVOCATION

Charles Whitaker gave the invocation.

3 PLEDGE TO AMERICAN FLAG AND TEXAS FLAG.

Mayor Rick Carmona led the pledge.

4 ELECTION BUSINESS

- a) Discuss and Consider Resolution No. 1031, A Resolution Of The City Council Of The City Of Terrell Canvassing The Election Returns And Declaring The Results Of An Election Held On May 1, 2021, In Terrell Texas, For The Purpose Of Electing Council Members For District No. 2 And District No. 4 Of The City Of Terrell, Texas, Such Councilmembers To Serve A Term Of Three (3) Years

Mayrani Velazquez moved to approve Resolution No. 1031, A Resolution Of The City Council Of The City Of Terrell Canvassing The Election Returns And Declaring The Results Of An Election Held On May 1, 2021, In Terrell Texas, For The Purpose Of Electing Council Members For District No. 2 And District No. 4 Of The City Of Terrell, Texas, Such Councilmembers To Serve A Term Of Three (3) Years, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Charles Whitaker, and Tim Royse

b) Administration of Oath of Office:
 Grady Simpson, District 2 Council Member
 Stephanie Holmes-Thomas District 4 Council Member
Judge James Williams administered the Oath of Office to Grady Simpson, Terrell City Council District 2, and Stephanie Holmes-Thomas, Terrell City Council District 4.

5 MAYOR AND COUNCIL COMMUNITY RECOGNITION AND EVENTS

Mayor Rick Carmona presented the National Motorcycle Safety Awareness Month Proclamation.
 Mayrani Velazquez recognized Terrell State Hospital for their Volunteer/Employee Awards Banquet.
 Bill Huthmacher, Chairman of the Airport Board, introduced the new No. 1 British Flying Training School Museum Executive Director, Patrick Hotard.

6 ADOPTION OF MINUTES

a) Discuss and Consider Approval of the Minutes from the Special City Council Meeting and Workshop on April 27, 2021, the Regular City Council Meeting on May 4, 2021, the Special City Council Meeting and Workshop on May 4, 2021, and the Special City Council Meeting and Workshop on May 11, 2021.

Tim Royse moved to approve the Minutes from the Special City Council Meeting and Workshop on April 27, 2021, the Regular City Council Meeting on May 4, 2021, the Special City Council Meeting and Workshop on May 4, 2021, and the Special City Council Meeting and Workshop on May 11, 2021, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

7 HEAR REMARKS FROM VISITORS.

No one came forward to speak.

8 PUBLIC HEARING

a) Conduct A Public Hearing To Receive Comments Regarding A Zone Change From Single-Family 7.5 (SF-7.5) To Planned Development Single-Family 7.5 (PD SF-7.5) To Allow A Planned Residential Development To Be Developed Under Certain Single-Family 6 (SF-6) Requirements On 8.972 Acres Of Terrell Revised, Block 632, Lot 1 PT, City Of Terrell, Kaufman County, Texas. The Property Is Located On The Southwest Corner Of North State Highway 34 And Rose St. The Property Is Currently Zoned Single-Family 7.5 (SF-7.5).
Municipal Development Director Charles Fenner made opening comments.
Mayor Rick Carmona opened the Public Hearing.
No one came forward to speak.
Mayor Rick Carmona closed the Public Hearing.

b) Discuss And Consider A Zone Change From Single-Family 7.5 (SF-7.5) To Planned Development Single-Family 7.5 (PD SF-7.5) To Allow A Planned Residential Development To Be Developed Under Certain Single-Family 6 (SF-6) Requirements On 8.972 Acres Of Terrell Revised, Block 632, Lot 1 PT, City Of Terrell, Kaufman County, Texas. The Property Is

Located On The Southwest Corner Of North State Highway 34 And Rose St. The Property Is Currently Zoned Single-Family 7.5 (SF-7.5).

Tim Royse moved to approve A Zone Change From Single-Family 7.5 (SF-7.5) To Planned Development Single-Family 7.5 (PD SF-7.5) To Allow A Planned Residential Development To Be Developed Under Certain Single-Family 6 (SF-6) Requirements On 8.972 Acres Of Terrell Revised, Block 632, Lot 1 PT, City Of Terrell, Kaufman County, Texas. The Property Is Located On The Southwest Corner Of North State Highway 34 And Rose St. The Property Is Currently Zoned Single-Family 7.5 (SF-7.5)., with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

c) Conduct A Public Hearing To Receive Comments Regarding A Change In Zoning From Retail (R) To Single-Family Residential 7.5 (SF-7.5). The Property Is Described As Lot 1, Block 351, Out Of The Terrell Revised, City Of Terrell, Kaufman County, Texas And Is Also Known As 801 N. Rockwall.

Municipal Development Director Charles Fenner made opening comments.

Mayor Rick Carmona opened the Public Hearing.

Edward Matthews, 801 North Rockwall, Terrell, Texas, came forward to speak in support of the zone change.

Mayor Rick Carmona closed the Public Hearing.

d) Discuss And Consider A Change In Zoning From Retail (R) To Single-Family Residential 7.5 (SF-7.5). The Property Is Described As Lot 1, Block 351, Out Of The Terrell Revised, City Of Terrell, Kaufman County, Texas And Is Also Known As 801 N. Rockwall.

Tim Royse moved to approve A Change In Zoning From Retail (R) To Single-Family Residential 7.5 (SF-7.5). The Property Is Described As Lot 1, Block 351, Out Of The Terrell Revised, City Of Terrell, Kaufman County, Texas And Is Also Known As 801 N. Rockwall., with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

9

BOARDS AND COMMISSIONS

a) Discuss Council Board Assignments.
Mayor Rick Carmona presented this item to Council for discussion.

b) Discuss Boards/Vacancies Review.
City Secretary Dawn Steil presented this item to Council for discussion.

c) Discuss June Meeting Schedule.
City Manager Mike Sims presented this item to Council for discussion.

d) Discuss and Consider Tax Increment Reinvestment Zone No. 1 and Power Center Board Member Appointments.

Mayrani Velazquez moved to appoint Andreia Reese and Charles Whitaker to the Tax Increment Reinvestment Zone No. 1 and Power Center Board., with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

e) Discuss and Consider Planning and Zoning Commissioner Reappointments.

Mayrani Velazquez moved to reappoint Danny Stephens to a third term, Jenny Heisel to a third term and Trini Jones to a third term on the Planning and Zoning Commission, with Stephanie Holmes-Thomas seconding the motion. Carried by the following votes:

Ayes: Mayrani Velazquez, Grady Simpson, Tim Royse, and Stephanie Holmes-Thomas

f) Discuss and Consider Zoning Board of Adjustments Reappointments.

Mayrani Velazquez moved to reappoint Dr. Kameka Miller to a second term, Jimmy Cooper to a third term and Karen Jones to a third term to the Zoning Board of Adjustments, with Tim Royse seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

10 DISCUSSION ITEMS

a) Discuss Annual City Council Training Requirements.

City Secretary Dawn Steil presented this item to Council for discussion.

11 ADJOURN INTO EXECUTIVE SESSION IN ACCORDANCE WITH SECTION 551 OF THE TEXAS GOVERNMENT CODE TO DISCUSS THE FOLLOWING:

Section 551.072 Deliberations Regarding Real Property - Drainage/Flood Easements.

Section 551.072 Deliberations Regarding Real Property - City Water and Utility Projects.

12 RECONVENE INTO REGULAR SESSION AND CONSIDER ACTION, IF ANY, ITEMS DISCUSSED IN EXECUTIVE SESSION.

a)

Tim Royse moved to approve Resolution No. 1032, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 01PE; Being Approximately 95,527 Square Feet Or 2.193 Acres Of Land Out Of The Aaron Bennett Survey, A-20, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1033, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 02PE; Being Approximately 424,194 Square Feet Or 9.378 Acres Of Land Out Of The Aaron Bennett Survey, A-20, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1034, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 03PE; Being Approximately 263,441 Square Feet Or 6.048 Acres Of Land Out Of The Jacob Walker Survey, A-600, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No 1035, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 04PE; Being Approximately 20,365 Square Feet Or 0.4675 Acres Of Land Out Of The Jacob Walker Survey, A-600, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps

Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1036, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 05PE; Being Approximately 246,513 Square Feet Or 5.659 Acres Of Land Out Of The Jacob Walker Survey, A-600, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1037, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 06PE; Being Approximately 118,520 Square Feet Or 4.328 Acres Of Land Out Of The Jacob Walker Survey, A-600, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1038, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 07PE; Being

Approximately 764,647 Square Feet Or 17.554 Acres Of Land Out Of The William Fulcher Survey, A-153, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1039, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 08PE; Being Approximately 472,918 Square Feet Or 10.857 Acres Of Land Out Of The William Fulcher Survey, A-153 Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1040, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 09PE; Being Approximately 34,960 Square Feet Or 0.8026 Acres Of Land Out Of The William Fulcher Survey, A-153 Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are

Not Successful, with Mayrani Velazquez seconding the motion. ~~Carried by~~ the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1041, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 010PE; Being Approximately 160,734 Square Feet Or 3.690 Acres Of Land Out Of The William Fulcher Survey, A-153 Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Tim Royse moved to approve Resolution No. 1042, A Resolution Of The City Council Of The City Of Terrell, Texas, Declaring The Necessity To Acquire A Permanent Floodplain Or Inundation Easement For The Operation And Maintenance Of The New Terrell City Lake And Being Described As Identified As Parcel 011PE; Being Approximately 316,929 Square Feet Or 7.276 Acres Of Land Out Of The Robert G. Cartwright Survey, A-76, Kaufman County, Texas, For The Purpose Of Overflowing And Submerging Said Property For The Operation And Maintenance Of The New Terrell City Lake; Determining The Public Necessity For Such Easement; Authorizing The Acquisition Of Property Rights Necessary For The New Terrell City Lake Project And Associated Construction Uses; Appointing An Appraiser And Negotiator As Necessary; Authorizing The City Manager Or His Designee To Establish Just Compensation For The Property Rights To Be Acquired And To Take All Steps Necessary To Acquire The Needed Property Rights In Compliance With All Applicable Laws And Resolutions; And Authorizing The City Attorney Or Designee To Institute Eminent Domain Proceedings To Acquire The Easement If Purchase Negotiations Are Not Successful, with Mayrani Velazquez seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

Mayrani Velazquez moved to approve Resolution No. 1043, A Resolution Of The City Council Of The City Of Terrell, Texas, Authorizing The City Manager Or His Designee To Negotiate And To Execute Waivers Of Valuation Offer Letters And Settlement Agreements With Mt/Ga Development Corporation Inc., TX Terrell American, LLC, Terrell America Fund Inc. And Terrell Economic Development Corporation In The Planned Lift Station/Force Main Project In The City Of Terrell For Acquisition Of Easements For A Sanitary Sewer Line In The Project Known As The Market Center Lift

Station Improvements Project; And Declaring An Effective Date, with Grady Simpson seconding the motion. Carried by the following votes:

Ayes: Grady Simpson, Mayrani Velazquez, Tim Royse, and Stephanie Holmes-Thomas

13 ADJOURN.

E. Rick Carmona, Mayor

Attest:

Dawn Steil, City Secretary

ITEM 7.1.

Name	Contact Information	Term Count	Appointed Re-Appointe	Term Expiratio	Attendance Record	
					Present	Absent
Tax Increment Reinvestment Zone No. 1 Board					1/1/2020	1/31/2021
Terry Barber Appointed by KC Comm. Court to fill unexp. term of Ken Schoen Appointed 1/23/2017	601 E. Nash Street Terrell, TX 75160 W: 972-563-5362 C: 214-734-0812 EM: tbarber@kaufmancounty.net	2	3/20/2019	Apr-21	3	1
Mike Hunt Appointed by KC Comm. Court to fill unexp. term of Jimmy Vrzalik Appointed 1/23/2017	Pct. 1 3001 S. Washington St. Kaufman, TX 75142 W: 972-932-0285 C: 214-797-6420 EM: mhunt@kaufmancounty.net	2	3/20/2019	Apr-21	4	0
Andreia Reese Original appt date 5-18-21 Replaced Don Thurman term exp 3-21-21	312 Laurel Trail Drive Terrell, Texas 75160 M: 214-674-7320 EM: andreiakr@yahoo.com	1	5/18/2021	May-23		
Juan Salazar Replacing Douglas Howie term expired Jan-20 Orig. Appt. Date - Dec. 18, 2019	1720 Oak Post Drive Terrell, TX 75160 W: C: 214-832-9441 EM: juans@1stchoicepandb.co	1	1/20/2020	Jan-22	3	1
Charles Whitaker Originally apptd 5-18-21 Replaced John Davidson	207 Stonegate Terrell, TX 75160 M: 214-796-5737 EM: chaswhit02@yahoo.com	1	5/18/2021	May-23		

ITEM 7.1.

2 years Board of Directors Ordinance 2355	Initial appointments required by resolution. See Resolution 595					
Needs Replacement	Requests Reappointment					

ITEM 7.1.

Name	Contact Information	Term Count	Appointed Re-Appointed	Term Expiratio	Attendance Present	
						Absent
					1/1/2020	1/31/2021
Power Center Board						
Terry Barber Appointed by KC Comm. Court to fill unexp. term of Ken Schoen Appointed 1/23/2017	601 E. Nash Street Terrell, TX 75160 W: 972-563-5362 C: 214-734-0812 EM: tbarber@kaufmancounty.net	2	3/20/2019	Apr-21	3	1
Mike Hunt Appointed by KC Comm. Court to fill unexp. term of Jimmy Vrzalik Appointed 1/23/2017	Pct. 1 3001 S. Washington St. Kaufman, TX 75142 W: 972-932-0285 C: 214-797-6420 EM: mhunt@kaufmancounty.net	2	3/20/2019	Apr-21	4	0
Andreia Reese Original appt date 5-18-21 Replaced Don Thurman term exp 3-21-21	312 Laurel Trail Drive Terrell, Texas 75160 M: 214-674-7320 EM: andreiakr@yahoo.com	1	5/18/2021	May-23		
Juan Salazar Replacing Douglas Howie term expired Jan-20 Orig. Appt. Date - Dec. 18, 2019	1720 Oak Post Drive Terrell, TX 75160 W: C: 214-832-9441 EM: juans@1stchoicepandb.com	1	1/20/2020	Jan-22	3	1
Charles Whitaker Originally apptd 5-18-21 Replaced John Davidson	207 Stonegate Terrell, TX 75160 M: 214-796-5737 EM: chaswhit02@yahoo.com	1	5/18/2021	May-23		
2 years Board of Directors Ordinance 2574	Initial appointments required by Ordinance. See Ordinance 2574					
Needs Replacement	Request Reappointment					

CITY OF TERRELL
BUDGET SCHEDULE
Fiscal Year 2021-2022

1. City Council Preliminary Budget Workshop	June 25, 2021
2. Receive Certified Values from KCAD	July 26, 2021
3. Draft Budget Sent to Council and Posted on Website	July 28, 2021
4. Council Retreat – FY 2021-2022 Budget	July 29 & 30, 2021
5. Council Discussion of Draft Budget	August 3, 2021
6. a. Council Discussion of Draft Budget b. Resolution for publication of public hearing for tax rate	August 10, 2021
7. a. Council Review of Final Budget b. Public Hearing for Tax Rate c. First Reading Tax Rate Ordinance d. Adoption of Tax Rate Ordinance.	August 24, 2021
8. a. Public Hearing for Budget b. <u>First Reading Budget Ordinance</u>	August 31, 2021
9. a. Adoption of Budget Ordinance on Second Reading. b. Public Hearing for Water & Wastewater Rates c. First Reading Water, Wastewater, and Stormwater Rates Ordinance	September 14, 2021
10. Adoption of Water, Wastewater, and Stormwater Rates Ordinance on Second Reading	September 21, 2021
11. New Fiscal Year	October 1, 2021

City of Terrell Charter

Section 5.06. Public Hearing on Budget.

The city council shall hold a public hearing on the proposed budget. Any taxpayer of the City of Terrell may attend and may participate in the hearing. The city council shall provide for public notice of the date, time, and location of the hearing on the budget in at least one (1) newspaper of general circulation in the county in which the municipality is located. Notice of the public hearing shall be published not earlier than the 30th day or later than the 10th day before the date of the hearing.

Section 5.07. Proceeding on Adoption of Budget.

At the conclusion of the public hearing, the governing body of the municipality shall take action on the proposed budget. On final approval of the budget by the governing body, and the municipality, the budget shall be filed with the municipal clerk. Should the council take no action after the conclusion of the public hearing, the budget, as submitted by the city manager, shall be deemed to be finally adopted by the Council on September 30.

1

DRAFT

May 2021						
S	M	T	W	T	F	S
					1	
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

JUNE 2021

July 2021						
S	M	T	W	T	F	S
					1	2
					3	
					4	5
					6	7
					8	9
					10	
					11	12
					13	14
					15	16
					18	19
					20	21
					22	23
					25	26
					27	28
					29	30
					31	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
30	31	1	2	3	4	5
6	7	8 Library Summer Act Fair 5-7 pm City Council Meeting 7 pm	9	10 Park Board Meeting 6:00 pm Terrell Service	11	12
13	14	15 Workshop 5:00 pm and City Council Mtg 7 pm	16	17	18	19
20 Father's Day	21	22 Special City Council Mtg and Workshop 5:30 pm	23	24 Planning & Zoning Board 5:30 pm	25 Budget Workshop 1:00 pm – 5:00 pm	26
27	28 ZBA Meeting 5:30 pm	29 Special City Council Mtg and Workshop 5:30 pm	30	1	2	3

June 2021						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

JULY 2021

August 2021						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
27	28	29	30	1	2	3
4 Independence Day	5 Independence Day Holiday	6	7	8 Park Board Meeting 6:00 pm Terrell Service	9	10
11	12	13	14 Airport Board Meeting 6:00 pm at Terrell Municipal Airport	15	16	17
18	19	20 Workshop 5:00 pm and City Council Mtg 7 pm	21	22 Planning & Zoning Board 5:30 pm	23	24
25	26 ZBA Meeting 5:30 pm	27 Special City Council Mtg and Workshop 5:30 pm	28	29 Budget Retreat 8:30 am – 5:00 pm	30 Budget Retreat 8:30 am – 5:00 pm	31

July 2021						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AUGUST 2021

September 2021						
S	M	T	W	T	F	S
				1	2	3
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 Workshop 5:00 pm and City Council Mtg 7 pm	4	5	6	7
8	9	10 Workshop 5:00 pm and City Council Mtg 7 pm	11	12 Park Board Meeting 6:00 pm Terrell Service	13	14
15	16	17	18	19	20	21
22	23 ZBA Meeting 5:30 pm	24 Workshop 5:00 pm and City Council Mtg 7 pm	25	26 Planning & Zoning Board 5:30 pm	27	28
29	30	31 Workshop 5:00 pm and City Council Mtg 7 pm	1	2	3	4

PAVEMENT IMPROVEMENT

NEXT STEP

Terrell's Road Network Results

Terrell's Score

Condition	RoadBotic's Score		PCI Rating Equivalent	Letter Grade Equivalent
Excellent	1-1.49	1	100-91	A
Good	1.5-2.49	2	90-71	B
Fair	2.5-3.49	3	70-51	C
Poor	3.5-4.49	4	50-31	D
Failed	4.5-5	5	30-0	F

- Terrell's system network scored **2.69** overall. This score is equivalent to a **66** PCI score and a letter grade score of **C**.
- Data was collected in June 2020.
- TxDOT, Kaufman County, and private roadways were not included in the analysis.

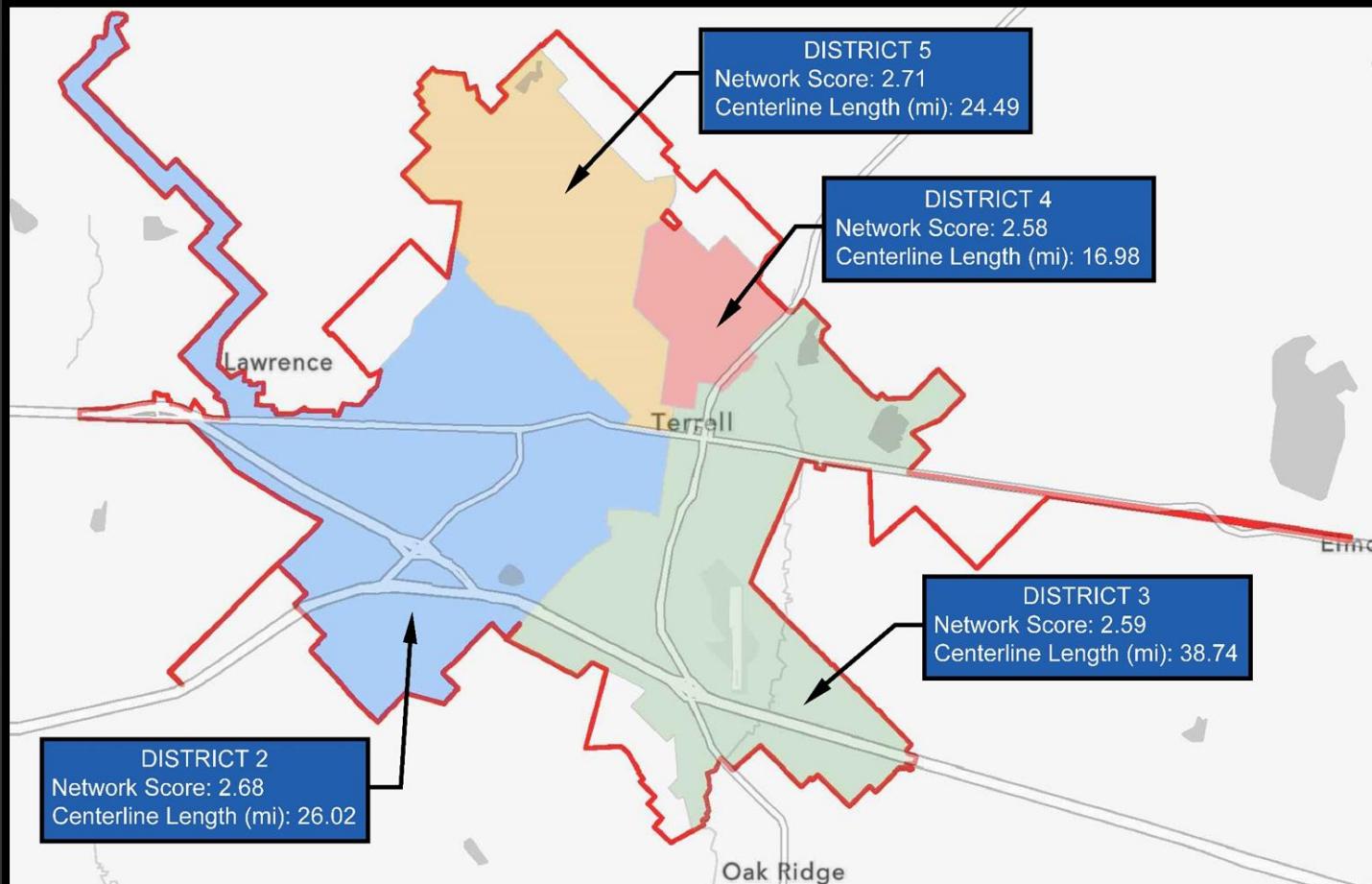
Terrell's Road Network Results

Terrell's Network Data Summary (1)

Terrell's Overall Street Network Data Summary

Overall RoadBotics' Network Score	2.69
Total Centerline Length (mi)	106.23
Total Length of Asphalt Streets (mi)	79.55
Total Length of Concrete Streets (mi)	26.68
Total Number of Potholes Locations (ea)	374

Terrell's Network Data Summary By District





STREETS SCHEDULE

- June 8 Approve Pressure Paving Contract \$600,000
- June 8 Brief Council on \$2M Overlay Project
- June Start Next Round of Blade & Grading Projects
- July Approve \$2M Overlay Program
- July Pressure Paving Complete/Annual Pavement Collapse Repairs Done
- Sept Asphalt Overlay Complete
- Oct Robotics City Wide Street Assessment
- Oct Initiate Engineering and implementation of Concrete Streets Program



BLADE AND GRADE

- Streets with open drainage on the Pressure Paving and HMA Overlay lists shall have Blade and Grade performed (Goal)
- Pavement edge blading to remove turf build-up/encroachment
- Clean and re-grade ditches to improve drainage along street
- Performed by City forces and contractors (labor and equipment)

CAMPBELL ST (FROM ATHENS TO CHAPPEL)



Before



After



Before



After



PAVEMENT COLLAPSE REPAIRS

- All streets on the Pressure Paving and HMA Overlay lists will have Pavement Collapse Repairs performed
- Spot repairs of failed areas (base repairs)
- Sawcut and remove failed pavement (surface and base)
- Replace wet/weak subgrade if necessary
- Replace removed material with new base material



PRESSURE PAVING PROJECT 2021 - \$600,000 (+/-)

- Twenty-nine (29) streets identified for project
- Streets identified using RoadBotics analysis, City staff input, and SPI recommendations
- “Pressure Paving” - a patented method for resurfacing streets
- Donelson Construction Company, LLC – sole-source contractor
- Intended for streets with sound base structure but significant amounts of surface cracks
- Two-step process: seal the surface, install riding course (micro-surface)
- Anticipate 30-45 days for construction completion

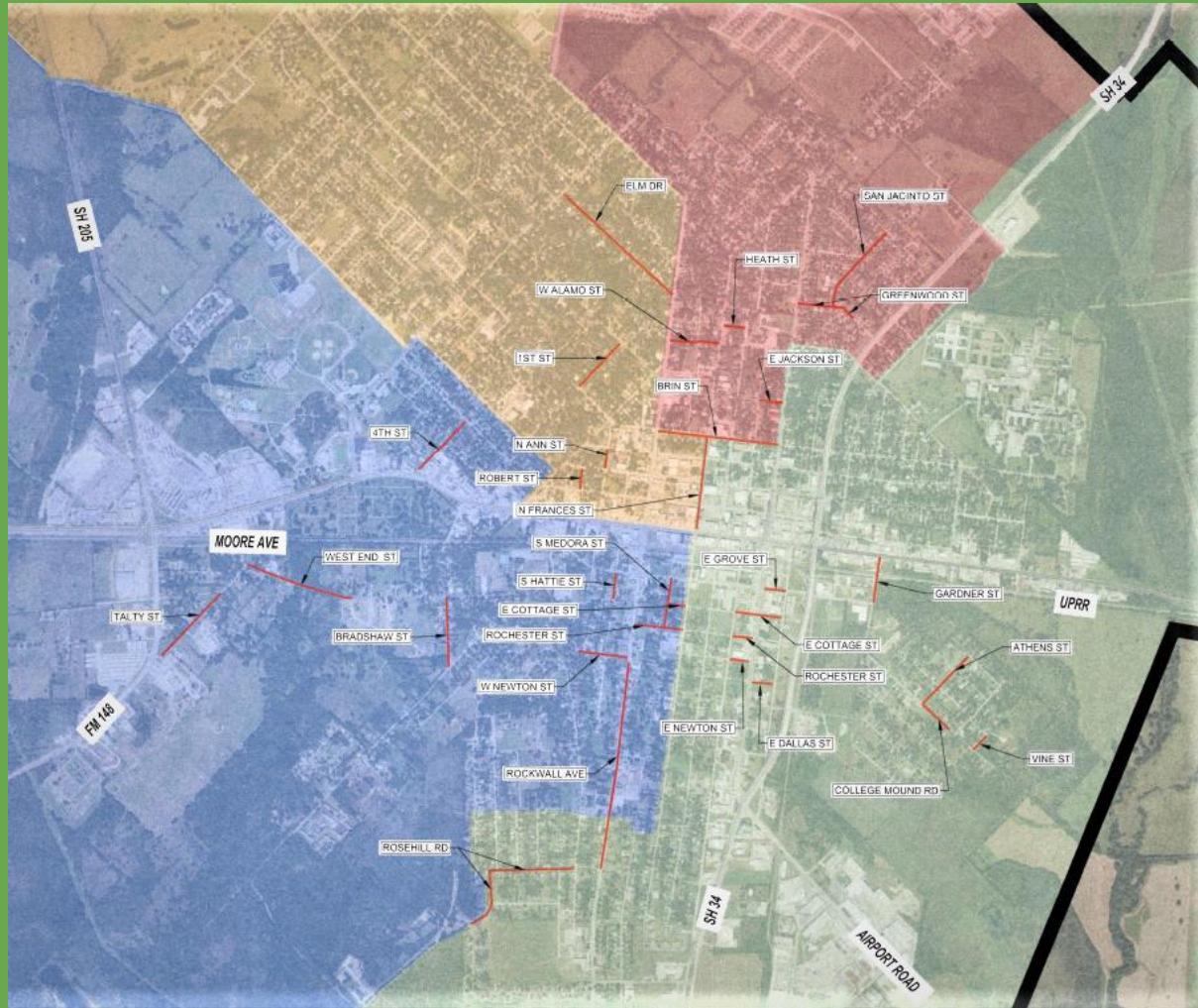
City of Terrell Pressure Paving Map

District 2-Blue

District 3-Green

District 4-Red

District 5-
Yellow



Pressure Paving Streets List

Total Amount of
Pressure Paving:
5.33 Miles

SUMMARY OF QUANTITIES: PRESSURE PAVING, CITY PROJECT No. 21-14

City of Terrell, TX

Street	Start	End	Length (FT)	Width (FT)	Area (SY)
Fourth	Lane	Warren	1,344	14	2,090
Medora	Grove	Rochester	858	15	1,430
Hattie	Grove	Cottage	426	19	900
Talty	FM 148	West End	1,318	20	2,928
Newton	Ann	Rockwall	651	18	1,302
West End	Mitchell	Talty	1,575	20	3,500
Athens	College Mound	Dixon	959	20	2,130
Brin	Virginia	Rockwall	1,923	27	5,770
College Mound	Harrell	Athens	574	19	1,211
Dallas	Delphine	Virginia	365	24	972
Grove	Delphine	Virginia	302	32	1,073
Newton	Adelaide	Virginia	359	17	678
Gardner	Moore	650 feet south	660	21	1,539
Vine	College Mound	Thomas	258	24	689
Jackson	Adelaide	Virginia	330	20	733
Greenwood	Virginia	Crockett	872	22	2,131
San Jacinto	Greenwood	McCoulkey	1,317	21	3,074
Alamo	Frances	Rockwall	753	22	1,840
First	Griffith	Johnson	733	25	2,037
Elm	Rockwall	Ninth	1,931	28	6,009
Ann	High	College	327	22	800
Rockwall	Newton	University	3,179	40	14,129
Rosehill	Lincoln	Park	2,200	18	4,399
Frances	Brin	High	659	27	1,976
Frances	High	Nash	300	29	967
Frances	Nash	Moore	303	24	807
Bradshaw	West End	Mineral Wells	1,056	18	2,111
Cottage	Delphine	Adelaide	876	20	1,946
Cottage	Frances	Medora	320	20	711
Heath	Frances	Catherine	342	22	836
Robert	Nash	High	297	20	661
Rochester	Rockwall	Frances	790	18	1,580
Rochester	Virginia	Adelaide	160	18	320
TOTAL					73,279

HOT-MIX ASPHALT OVERLAY PROJECT

2021 - \$2,000,000 (+/-)

- Conventional, widely used method for resurfacing streets
- Most cost efficient on streets with higher traffic counts
- Advertise for competitive bids and select lowest qualified bidder
- Preparatory work may be required
 - in addition to blading & grading and base repairs
 - edge-mill on curb & gutter streets
 - failed curb and gutter replacement if needed
 - level-up course of HMA where needed
- Portions of 14 streets identified as candidates for project
- Streets identified using RoadBotics analysis, City staff input, and SPI recommendations
- Pavement technical criteria is based on road conditions, traffic volume, proximity to schools etc.
- Anticipate 120 days for construction

Candidate Street Segments for HMA Overlay

Portions of the streets below (3.38 total estimated miles):

- Colquitt Rd.
- Rockwall Ave.
- Ninth St.
- Crenshaw St.
- College St.
- Hackberry St.
- Alamo St.
- Main St.
- Griffith Ave. (tie in only)
- Daniels St.
- Bethlehem St.
- State St.
- College Mound Rd.
- Kings Creek Dr.



ANNUAL STREETS CONDITION ASSESSMENT (RoadBotics) 2021

- City-wide condition assessment to begin following completion of HMA overlay and Pressure Paving (October, 2021)
- Data Collection requires 3-5 days
- RoadBotics assessment/analysis requires 30 days
- SPI breakdown RoadBotics analysis to format desired by City requires 30 days
- Final, delivered report to City by early 2022



RECOMMENDATIONS

- City Council approve sole source contract for Pressure Paving to Donelson Construction Company, LLC not to exceed \$600K
- Move forward with Blade and Grading with Pavement Collapse repairs necessary for Pressure Paving and Overlays
- Start of annual RoadBotics Citywide Streets Assessment after Pressure Paving and HMA Overlay construction is completed.

ORDINANCE NO. 2866

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AMENDING APPENDIX 2, ZONING ORDINANCE OF THE CITY OF TERRELL BY CHANGING THE ZONING CLASSIFICATION ON CERTAIN REAL PROPERTY MORE PARTICULARLY DESCRIBED AS LOT 1, BLOCK 351, TERRELL REVISED, AN ADDITION TO THE CITY OF TERRELL, AND ALSO KNOWN AS 801 NORTH ROCKWALL STREET AS SHOWN ON THE PLAT ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF FOR ALL PURPOSES FROM RETAIL (R) TO SINGLE-FAMILY RESIDENTIAL 7.5 (SF-7.5); PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS on the 22nd day of April, 2021, the Planning and Zoning Commission conducted a public hearing and approved the amendment of Appendix 2, Zoning Ordinance of the City of Terrell, by changing the zoning classification on certain real property more particularly described as Lot 1, Block 351, Terrell Revised, an addition to the City of Terrell, and also known as 801 North Rockwall Street from Retail (R) to Single-Family residential 7.5 (SF-7.5).

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS:

ARTICLE I.

THAT Appendix 2, Zoning Ordinance of the City of Terrell be amended to change the zoning classification on certain real property more particularly described as Lot 1, Block 351, Terrell Revised, an addition to the City of Terrell and also known as 801 North Rockwall Street as shown on plat attached hereto as Exhibit "A" and made a part hereof for all purposes from Retail (R) to Single-Family Residential 7.5 (SF-7.5).

ARTICLE II.

All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

ARTICLE III.

It is hereby declared to be the intention of the City Council of the City of Terrell, Texas that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections.

ARTICLE IV.

All other provisions of Appendix 2 not expressly modified by this Ordinance shall remain in full force and effect.

ARTICLE V.

This Ordinance shall take effect immediately after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED on this the _____ day of May, 2021.

PASSED AND ADOPTED on this the _____ day of May, 2021.

E. Rick Carmona, Mayor

ATTEST:

Dawn Steil, City Secretary

Approved as to Form:

Mary Gayle Ramsey, City Attorney

ORDINANCE NO. 2867

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, PLANNED DEVELOPMENT 21-02 (PD 21-02) AMENDING PLANNED DEVELOPMENT PD 20-05 (PD 20-05), IN THE MANNER SHOWN IN THE REVISED NORTHSIDE ADDITION SUBDIVISION DEVELOPMENT CONCEPTUAL DRAWINGS AND THE REVISED NORTHSIDE ADDITION DEVELOPMENT STANDARDS COPIES OF WHICH ARE ATTACHED HERETO AS EXHIBITS "A" AND "B" AND MADE A PART HEREOF FOR ALL PURPOSES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS on the 22nd day of April, 2021, the Planning and Zoning Commission conducted a public hearing and approved Planned Development PD 21-02 (PD 21-02) amendment to Planned Development PD 20-05 (PD 20-05), in the manner shown in the revised Northside Addition Subdivision Development Conceptual Drawings and the revised Northside Addition Development Standards copies of which are attached hereto as Exhibits "A" and "B" and made a part hereof for all purposes.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS;

ARTICLE I.

THAT Planned Development PD 21-02 (PD 21-02) is hereby in the manner shown in the revised Northside Addition Development Conceptual Drawings and the revised Northside Addition Development Standards copies of which are attached hereto as Exhibits "A" and "B" and made a part hereof for all purposes.

ARTICLE II.

All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

ARTICLE III.

It is hereby declared to be the intention of the City Council of the City of Terrell, Texas, that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections.

ARTICLE IV.

All other provisions of Appendix 2 not expressly modified by this Ordinance shall remain in full force and effect.

ARTICLE V.

This Ordinance will take effect immediately after its passage and the publication of the caption, as the law in such cases provides.

PASSED AND APPROVED this the ____ day of May, 2021.

PASSED AND ADOPTED this the ____ day of May, 2021.

E. Rick Carmona, Mayor

Attest:

Dawn Steil, City Secretary

Approved as to form:

Mary Gayle Ramsey, City Attorney

CITY OF TERRELL, TEXAS



CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS FOR PRESSURE PAVING STREETS 2021 CITY PROJECT NO. 21-14

PREPARED BY:

SPI SCHAUMBURG & POLK, INC.

FIRM REGISTRATION #: F-000520
200 SOUTH VIRGINIA STREET
TERRELL, TEXAS 75160
(972) 563-0205

SET NO.	SPI JOB NO. 400028
	DATE 05/2021

May 2021

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TABLE OF CONTENTS

CONTRACTOR'S PROPOSAL

Bonding Company Information
Price Proposal

CONTRACT AGREEMENT AND FORMS

Standard Form of Agreement
Form 1295 Certificate of Interested Parties
Performance Bond
Payment Bond
Maintenance Bond
Certificate of Insurance
Notice of Award
Notice to Proceed
Application for Payment Instructions
Application for Payment Example
Certificate of Substantial Completion

GENERAL CONTRACT CONDITIONS

General Conditions of the Construction Contract
Supplemental Conditions to the Agreement

CONSTRUCTION DOCUMENTS

Project Location Map
Summary of Quantities
Project Notes

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CONTRACTOR'S PROPOSAL

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BONDING COMPANY INFORMATION

The following person, firm, or corporation has agreed to execute the required payment and performance bonds in the event this contract is awarded to the bidder:

Name of Surety: _____

Mailing Address: _____

City, State, Zip: _____

Telephone Number: _____

Is surety authorized to operate in Texas? _____

Is surety aware of size of project? _____

Does surety have adequate authorization and resources to cover bonds for the amount of this contract? _____

Rating from Best's Key Rating Guide _____

Project: **Pressure Paving Streets 2021, City Project No 21-14**

Owner: **City of Terrell, Texas**

Name of Bidder

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Ph: (417) 743-2694
Fax: (417) 743-2945

1075 Wise Hill Road, Clever, MO 65631

ESTIMATE

May 18, 2021

Carnell Horn
City of Terrell
400 Industrial Blvd
Terrell, TX 75160

Donelson Construction Co., LLC is pleased to provide the following quote for the installation of our patented Modified Aggregate Quick Set (MAQS®) Surfacing and PressurePave™ Systems. The prices include all labor equipment, materials and traffic control.

The unit prices for the separate materials are as follows (per yd²):

PressurePave™ - \$1.30

MAQS®-Flex - \$6.00

MAQS®-2 Surfacing - \$6.00

Greenwood St	From:	N Virginia St	To:	Crockett St	Yd2:	2,131.00
PressurePave		\$2,770.30			Flex yd2:	381.00
MAQS-Flex		\$2,286.00				
MAQS-2		\$12,786.00				
Total		\$17,842.30				

Heath St	From:	N Frances St	To:	N Catherine St	Yd2:	836.00
PressurePave		\$1,086.80			Flex yd2:	-
MAQS-Flex		\$0.00				
MAQS-2		\$5,016.00				
Total		\$6,102.80				

Elm Dr	From:	Rockwall Ave	To:	9th St	Yd2:	6,009.00
PressurePave		\$7,811.70			Flex yd2:	327.00
MAQS-Flex		\$1,962.00				
MAQS-2		\$36,054.00				
Total		\$45,827.70				

ITEM 9.3.

N Frances St	From: Brin St	To: High St	Yd2:	1,976.00
PressurePave		\$2,568.80	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$11,856.00		
Total		\$14,424.80		
N Frances St	From: High St	To: Nash St	Yd2:	967.00
PressurePave		\$1,257.10	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$5,802.00		
Total		\$7,059.10		
N Frances St	From: Nash St	To: Moore Ave	Yd2:	807.00
PressurePave		\$1,049.10	Flex yd2:	23.00
MAQS-Flex		\$138.00		
MAQS-2		\$4,842.00		
Total		\$6,029.10		
W Alamo St	From: N Frances St	To: N Rockwall St	Yd2:	1,840.00
PressurePave		\$2,392.00	Flex yd2:	48.00
MAQS-Flex		\$288.00		
MAQS-2		\$11,040.00		
Total		\$13,720.00		
Robert St	From: W Nash St	To: W High St	Yd2:	661.00
PressurePave		\$859.30	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$3,966.00		
Total		\$4,825.30		
N Ann St	From: W High St	To: W College St	Yd2:	800.00
PressurePave		\$1,040.00	Flex yd2:	800.00
MAQS-Flex		\$4,800.00		
MAQS-2		\$4,800.00		
Total		\$10,640.00		
E Jackson St	From: N Adelaide St	To: N Virginia St	Yd2:	733.00
PressurePave		\$952.90	Flex yd2:	46.00
MAQS-Flex		\$276.00		
MAQS-2		\$4,398.00		
Total		\$5,626.90		

ITEM 9.3.

1st St	From: Griffith Ave	To: Johnson St	Yd2:	2,037.00
PressurePave		\$2,648.10	Flex yd2:	581.00
MAQS-Flex		\$3,486.00		
MAQS-2		\$12,222.00		
Total		\$18,356.10		
S Hattie St	From: W Grove St	To: W Cottage St	Yd2:	900.00
PressurePave		\$1,170.00	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$5,400.00		
Total		\$6,570.00		
W Newton St	From: S Ann St	To: S Rockwall Ave	Yd2:	1,302.00
PressurePave		\$1,692.60	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$7,812.00		
Total		\$9,504.60		
E Newton St	From: Adelaide St	To: Virginia St	Yd2:	678.00
PressurePave		\$881.40	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$4,068.00		
Total		\$4,949.40		
Bradshaw St	From: Mineral Wells St	To: West End St	Yd2:	2,111.00
PressurePave		\$2,744.30	Flex yd2:	119.00
MAQS-Flex		\$714.00		
MAQS-2		\$12,666.00		
Total		\$16,124.30		
Rose Hill Rd	From: Lincoln Ln	To: Park St	Yd2:	4,399.00
PressurePave		\$5,718.70	Flex yd2:	101.00
MAQS-Flex		\$606.00		
MAQS-2		\$26,394.00		
Total		\$32,718.70		
Medora St	From: Rochester St	To: Grove St	Yd2:	1,430.00
PressurePave		\$1,859.00	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$8,580.00		
Total		\$10,439.00		

ITEM 9.3.

E Grove St	From: S Delphine St	To: S Virginia St	Yd2:	1,073.00
PressurePave		\$1,394.90	Flex yd2:	4.00
MAQS-Flex		\$24.00		
MAQS-2		\$6,438.00		
Total		\$7,856.90		
Athens St	From: College Mound Rd	To: Dixon St	Yd2:	2,130.00
PressurePave		\$2,769.00	Flex yd2:	153.00
MAQS-Flex		\$918.00		
MAQS-2		\$12,780.00		
Total		\$16,467.00		
Vine St	From: College Mound Rd	To: Thomas St	Yd2:	689.00
PressurePave		\$895.70	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$4,134.00		
Total		\$5,029.70		
Brin St	From: Virginia St	To: Rockwall Ave	Yd2:	5,770.00
PressurePave		\$7,501.00	Flex yd2:	4.00
MAQS-Flex		\$24.00		
MAQS-2		\$34,620.00		
Total		\$42,145.00		
Cottage St	From: Medora St	To: Frances St	Yd2:	711.00
PressurePave		\$924.30	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$4,266.00		
Total		\$5,190.30		
Cottage St	From: Adelaide St	To: Delphine St	Yd2:	1,946.00
PressurePave		\$2,529.80	Flex yd2:	80.00
MAQS-Flex		\$480.00		
MAQS-2		\$11,676.00		
Total		\$14,685.80		
Rockwall Ave	From: University St	To: Newton St	Yd2:	14,129.00
PressurePave		\$18,367.70	Flex yd2:	120.00
MAQS-Flex		\$720.00		
MAQS-2		\$84,774.00		
Total		\$103,861.70		

ITEM 9.3.

Rochester St	From: Rockwall Ave	To: Frances St	Yd2:	1,580.00
PressurePave		\$2,054.00	Flex yd2:	188.00
MAQS-Flex		\$1,128.00		
MAQS-2		\$9,480.00		
Total		\$12,662.00		

Rochester St	From: Adelaide St	To: Virginia St	Yd2:	320.00
PressurePave		\$416.00	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$1,920.00		
Total		\$2,336.00		

West End Rd	From: Mitchell Cir	To: Talty Rd	Yd2:	3,500.00
PressurePave		\$4,550.00	Flex yd2:	498.00
MAQS-Flex		\$2,988.00		
MAQS-2		\$21,000.00		
Total		\$28,538.00		

Talty Rd	From: West End Rd	To: FM 148	Yd2:	2,928.00
PressurePave		\$3,806.40	Flex yd2:	227.00
MAQS-Flex		\$1,362.00		
MAQS-2		\$17,568.00		
Total		\$22,736.40		

College Mound	From: Athens St	To: Harrell St	Yd2:	1,211.00
PressurePave		\$1,574.30	Flex yd2:	-
MAQS-Flex		\$0.00		
MAQS-2		\$7,266.00		
Total		\$8,840.30		

Gardener St	From: Moore Ave	To: Grove St	Yd2:	1,539.00
PressurePave		\$2,000.70	Flex yd2:	200.00
MAQS-Flex		\$1,200.00		
MAQS-2		\$9,234.00		
Total		\$12,434.70		

San Jacito	From: Greenwood St	To: McClouskey St	Yd2:	3,074.00
PressurePave		\$3,996.20	Flex yd2:	67.00
MAQS-Flex		\$402.00		
MAQS-2		\$18,444.00		
Total		\$22,842.20		

ITEM 9.3.

4th St	From: Lane St	To: Warren St	Yd2:	2,090.00
PressurePave		\$2,717.00	Flex yd2:	8.00
MAQS-Flex		\$48.00		
MAQS-2		\$12,540.00		
Total		\$15,305.00		
Dallas St	From: Delphine St	To: Virginia St	Yd2:	972.00
PressurePave		\$1,263.60	Flex yd2:	156.00
MAQS-Flex		\$936.00		
MAQS-2		\$5,832.00		
Total		\$8,031.60		

GRAND TOTAL: \$559,722.70

CONTRACT AGREEMENT AND FORMS

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Terrell (“Owner”) and
Donelson Construction Company, LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

***Base Bid:** Work consists of microsurfacing 73,270 square yards of asphalt streets in Terrell, Texas.*

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Pressure Paving Streets 2021, City Project No. 21-14

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Schaumburg & Polk, Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 45 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 60

- B. days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$150.00** for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$150.00** for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work, at the prices stated in Contractor's Proposal, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 5 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 5 percent of Engineer's estimate of the value of Work to be

completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 1 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- E. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 6, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3 inclusive).
 - 4. Maintenance bond (pages 1 to 2 inclusive).
 - 5. General Conditions (pages 1 to 62, inclusive).
 - 6. Supplementary Conditions (pages 1 to 16, inclusive).
 - 7. Construction notes, drawings, and summary of quantities as listed in the table of contents of the Project Manual bearing the following general title: **Pressure Paving Streets 2021, City Project No. 21-14.**
 - 8. Addenda (0).
 - 9. Exhibits to this Agreement (enumerated as follows): None
 - 10. Contractor's Proposal (pages 1 to 6, inclusive).
 - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice of Award
 - b. Notice to Proceed
 - c. Work Change Directives.
 - d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of

Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

City of Terrell

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

201 East Nash

Terrell, TX 75160

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR:

Donelson Construction Company

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(Where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Agent for service of process:

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary
		</td		

5 Check only if there is NO Interested Party.

1

6 UNSWORN DECLARATION

My name is , and my date of birth is

My address _____, _____, _____, _____, _____, _____, _____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20 _____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

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PERFORMANCE BOND

CONTRACTOR (*name and address*):

SURETY (*name and address of principal place of business*):

OWNER (*name and address*):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
 Amount:
 Description (*name and location*):

BOND

Bond Number:
 Date (*not earlier than the Effective Date of the Agreement of the Construction Contract*):
 Amount:
 Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

 Contractor's Name and Corporate Seal

By: _____
 Signature

Print Name

Title

Attest: _____
 Signature

Title

SURETY

 Surety's Name and Corporate Seal

By: _____
 Signature (*attach power of attorney*)

Print Name

Title

Attest: _____
 Signature

Title

ITEM 9.3.

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a

qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

ITEM 9.3.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom 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.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by

the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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EXAMPLE

PAYMENT BOND

CONTRACTOR (*name and address*):

SURETY (*name and address of principal place of business*):

OWNER (*name and address*):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (*name and location*):

BOND

Bond Number:

Date (*not earlier than the Effective Date of the Agreement of the Construction Contract*):

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

 Contractor's Name and Corporate Seal

SURETY

 Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature (*attach power of attorney*)

Print Name

Print Name

Title

Title

Attest: _____

Signature

Attest: _____

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

ITEM 9.3.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone

ITEM 9.3.

or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom 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.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon

which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

- 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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EXAMPLE

MAINTENANCE BOND

STATE OF TEXAS §

COUNTY OF §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, State of _____, as principal, and _____, authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____, a municipal corporation (owner) in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said principal and surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the principal has entered into a certain written contract with _____, dated the _____ day of _____, 20____, to _____ which contract is hereby referred to and made a part thereof as fully and to the same extent as if copied at length herein.

WHEREAS, under the plans, specifications and contract, it is provided that the contractor will maintain and keep in good repair the work herein contracted to be done for a period of two (2) years from the date of written final acceptance of said work, at 100% of the value of the improvements at the time of completion of the project, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, defective workmanship or materials furnished in the construction of any part thereof, or any of the accessories thereto constructed by the Contractor. Be it understood that the purpose of this section is to cover all defective conditions arising by reason of this obligation, and the said contractor and surety herein shall be subject to the liquidation damages mentioned in said contract for each day's failure on its part to comply with the terms of said provisions of said contract.

NOW, THEREFORE, if the said contractor shall keep and perform it's said agreement to maintain said work and keep the same in repair at 100% of the value of the improvements at the time of completion of the project, for the said maintenance period of two (2) years, as provided, then these presents shall be null and void and have no further effect. If default shall be made by the said contractor in the performance of it's contract to so maintain and repair said work, then these presents shall have full force and effect and said Owner shall have and recover damages from the said contractor and it's principal and surety. It is further agreed that this obligation shall be continuing one against the principal and surety herein, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted. It is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period and the same shall not be changed, diminished or in any manner affected from any cause during said time.

MAINTENANCE BOND

PROVIDED, the aggregate liability of surety hereunder is limited to the penal sum of this bond.

IN WITNESS WHEREOF, the said principal and surety have signed and sealed this instrument this _____ day of _____, 20 _____.

Principal _____

Surety _____

By: _____

By: _____

Title _____

Title _____

Address _____

Address _____

The name and address of the resident agent of surety is:

NOTE: Date of Maintenance Bond must not be prior to date of contract.

CERTIFICATE OF INSURANCE

Date _____

Project No. _____

Owner _____

Type of _____

Address _____

Project _____

THIS IS TO CERTIFY THAT _____
(Name and address of insured)

is, at the date of this certification, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

TYPE OF INSURANCE

	Policy No.	Effective Date	Expiration Date	Limits of Liability
Public Liability				1 Person \$ _____ 1 Accident \$ _____
Contingent Liability				1 Person \$ _____ 1 Accident \$ _____
Property Damage				
Builder's Risk				
Automobile				
Worker's Compensation				

The foregoing Policies (do) (do not) cover all sub-contractors.

Locations Covered: _____

Descriptions of Operations Covered: _____

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or cancelled by the insurer in less than five days after the insured has received written notice of such change or cancellation.

When applicable, local laws or regulations require more than five days actual notice of change or cancellation to the assured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

(Name of Insurer)

By _____

Title _____

<INTENTIONALLY LEFT BLANK>

Notice of Award

Date: _____

Project: Pressure Paving Streets 2021, City Project No. 21-14

Owner: City of Terrell, Texas	Owner's Contract No.: 21-14
Contract: City Project No. 21-14	Engineer's Project No.: 400028

Contractor: Donelson Construction Company, LLC

Contractor's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

You are notified that your Proposal dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Pressure Paving Streets 2021, City Project No. 21-14.

The Contract Price of your Contract is _____
Dollars (\$ _____).

3 copies of the proposed Contract Documents (Project Manual) accompany this Notice of Award.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [3] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

CITY OF TERRELL, TX

Owner
By: _____

Authorized Signature

Title

Copy to Engineer

<INTENTIONALLY LEFT BLANK>

Notice to Proceed

Date: _____

Project: Pressure Paving Streets 2021, City Project No. 21-14

Owner: City of Terrell, Texas	Owner's Contract No.: 21-14
Contract: City Project No. 21-14	Engineer's Project No.: 400028

Contractor: Donelson Construction Company, LLC

Contractor's Address: *[send Certified Mail, Return Receipt Requested]*

You are notified that the Contract Times under the above Contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

_____ *[add other requirements].*

Contractor

City of Terrell, Texas

Given by

Owner

Authorized Signature

Given by:

Title

Authorized Signature

Date

Title

Copy to Engineer

Date

<INTENTIONALLY LEFT BLANK>

EJCDC C-550 Notice to Proceed

Prepared by the Engineers Joint Contract Documents Committee and endorsed by the Construction Specifications Institute.

Page 2 of 2

APPLICATION FOR PAYMENT

INSTRUCTIONS

A. GENERAL INFORMATION

This standard form is intended as a guide only. Many projects required a much more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by the Engineer or Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Agreement permits (or the Law provides), and Contractor elects, the deposit of securities in lieu of retainage. Refer to Article 14 of the General Conditions for provisions concerning payments to the Contractor.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved as provided in paragraphs 2.6.3 and 2.9 of the General Conditions, should be copied in the space indicated on the Application For Payment form. Note that the cost of materials and equipment is often listed separately from the cost of their installation. All Change Orders affecting the Contract Price should be identified and include such supplemental Schedules of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. ENGINEER'S REVIEW

Engineer *must* review all Applications for Payment with care to avoid recommending any payments not yet earned by Contractor. All accompanying documentation of legal nature, such as lien waivers, should be reviewed by Owner's attorney, and Engineer should so advise owner.

<INTENTIONALLY LEFT BLANK>

Contractor's Application For Payment No.

3.	
Application Period:	Application Date:
From (Contractor):	Via (Engineer)
Project:	Contractor's Project No.:
Owner's Contract No.:	Engineer's Project No.:

APPLICATION FOR PAYMENT

Change Order Summary

CONTRACTOR'S CERTIFICATION

CONTRACTOR'S CERTIFICATION
The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

is recommended by:

_____ \$ (Line 8 or other - attach explanation of other amount)

is approved by:

Approved by: _____ Funding Agency (if applicable) _____ (Date) _____

Progress Estimate

Contractor's Application⁹

Progress Estimate

Contractor's Applications

Stored Material Summary

Contractor's Application³

Certificate of Substantial Completion

Project: Pressure Paving Streets 2021	Owner: City of Terrell	Owner's Contract No.: 21-14
Contract: City Project No. 21-14		Date of Contract:
Contractor: Donelson Construction Company, LLC		Engineer's Project No.: 400028

This [tentative] [definitive] Certificate of Substantial Completion applies to:

All Work under the Contract Documents: The following specified portions:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

Amended Responsibilities Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer Date

Accepted by Contractor Date

Accepted by Owner Date

<INTENTIONALLY LEFT BLANK>

GENERAL CONTRACT CONDITIONS

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

ITEM 9.3.

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. *Day:*
 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
 1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

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2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation , (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

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1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
- 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
- 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

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meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

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- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
- b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

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1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

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- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and “Or-Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. **“Or-Equal” Items:** If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
- 3) it has a proven record of performance and availability of responsive service.

- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*
 - a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
 - c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
 - d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

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by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

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shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

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- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

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8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

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continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

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9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise

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or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 - 1. deny the Claim in whole or in part;
 - 2. approve the Claim; or
 - 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

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said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

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limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
 1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

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the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

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neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

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1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

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involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

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so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

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1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTAL CONDITIONS OF THE AGREEMENT

1. GENERAL

The provisions of this Section of the specifications shall govern in the event of any conflict between them and the General Conditions of Agreement, TCSS, NCTCOG Public Works Standards, or TxDOT Standard Specifications.

2. OWNER

The word "Owner" in these specifications shall be understood as referring to the **City of Terrell**, 201 East Nash, Terrell, TX 75160.

3. ENGINEER

The word "Engineer" in these specifications shall be understood as referring to **Schaumburg & Polk, Inc.**, 200 South Virginia Street, Terrell, TX 75160, Engineer of the Owner, or such other Engineer, as may be authorized by said Owner to act in any particular position.

4. CONTRACTOR

The word "Contractor" in these specifications shall be understood as denoting the General Contractor signing this contract.

5. SUBLETTING

The Contractor will not be permitted to assign, sell, transfer or otherwise dispose of the contract or any portion thereof, or his rights, title or interest therein without the approval of the Owner. The Contractor will not be permitted to sublet any portion of the contract without the approval of the Owner and the Engineer. No sub-contract will, in any case, relieve the Contractor of his responsibility under the contract and bond.

The Contractor shall perform with his own organization and with the assistance of workmen under his immediate superintendence, work of a value not less than 50 percent of all work embraced in the contract exclusive of items not commonly found in contracts for similar work, or which require highly specialized knowledge, craftsmanship and/or equipment not ordinarily available in the organization of Contractors performing work of the character embraced in the contract.

6. TRADE NAMES

Except as specifically specified otherwise, wherever in the specifications an article or class of material is designated by a trade name, or by the name or catalog number of any maker, patentee, manufacturer, or dealer, such designation shall be taken as intending to mean and specify the articles described or another equal thereto in quality, finish, and serviceability for the purpose intended as may be determined and judged by the Engineer in his sole discretion.

7. MATERIALS AND WORKMANSHIP

Unless otherwise specified, all materials shall be new. No material which has been used by the Contractor for any temporary purpose whatever is to be incorporated in the permanent structure without written consent of the Engineer.

Where material or equipment are specified by a trade or brand name, it is not the intention of the

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Owner to discriminate against an equivalent product of another manufacturer, but rather to set a definite standard of equality or performance and to establish an equitable basis for the evaluation of bids. Where the words "equivalent", "proper" or "equal to" are used, they shall be understood to mean that the object referred to shall be proper, the equivalent of, or equal to some other object, in the opinion or judgement of the Engineer.

Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equivalent to approved samples. Notwithstanding that the words "or equal to" or other such expressions may be used in the specifications in connection with material, manufactured article, or process, the material, article, or process specifically designated shall be used, unless a substitute shall be approved in writing by the Engineer, and the Engineer shall have the right to require the use of such specifically designated material, article or process.

8. CASUALTY INSURANCE

The Contractor shall within one week after signing the contract, and before any work shall start, furnish the Owner with certificates of insurance satisfactory to the Owner indicating the existence of the following coverages:

1. Statutory Worker's Compensation Insurance.
2. Commercial General Liability (XCU and completed operations coverage must be included).
 - a. Combined Single Limit \$500,000
 - b. General Aggregate \$1,000,000
3. Commercial Automobile Liability (Owned, hired and non-owned vehicles)
4. Contractual Liability Insurance covering the indemnity provision of this Contract in same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, job number, and location;
5. Owner's Protective Liability naming (OWNER), Terrell, Texas, its offices, agents, and employees, and the Engineer as insured in the same amount and coverage as provided for in the Commercial General Liability Policy; and

Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts: (\$500,000, \$1,000,000, \$100,000)

9. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the (OWNER), the **City of Terrell, TX** and the Engineer from any and all claims, causes of actions, and damages of every kind, for injury to or death of any person and damages to property arising out of the construction of said improvements or the operations embraced by this contract or the use of the premises upon which the improvements under this contract are to be constructed, and including acts or omissions of the Owner or the Engineer in connection with said construction.

10. PERFORMANCE OF WORK

The Contractor shall commence work within ten (10) days after order to proceed and shall perform the work systematically and energetically so that all of his work will be completed within the contract time.

The work shall be done at such point and in such sequence as the Engineer may direct and in accordance with special provisions of working specifications.

The Engineer, on reasonable notice in writing to the Contractor may stop any portion of the work, if in his judgement, the weather or other conditions, such as labor troubles, poor materials, improper construction methods, noncompliance with plans and specifications, prevent the work from being properly done.

For delays occasioned by any act, neglect or default of the Owner, the Owner shall not be held liable for damages on account thereof, but an extension of time shall be granted to the Contractor for the completion of this contract, equivalent to the delays so caused.

Additional time shall be allowed the Contractor for the following causes:

Rises in streams, bad weather, delay of material in transit and proportionate for increased quantities of work or for other causes beyond reasonable control of the Contractor, which in the opinion of the Engineer, necessarily prevent work. Claims for additional time shall be presented to the Engineer at the end of each month covering delays during that month. Claims not so presented will not be considered.

11. LIQUIDATED DAMAGES FOR DELAYS

It is understood and agreed between the parties hereto that time is of the essence of this contract, and in case the Contractor shall fail to fully, entirely, and in conformity with the provisions of this contract, perform and complete said work within the time stated in the proposal with such allowances as herein before provided or within such further time as he may be allowed by the Owner, the Engineer shall compute the number of days of delinquency in said final and entire completion. It is hereby acknowledged by the Contractor that such delinquency caused additional overhead costs and expense to the Owner and costly inconveniences to the public by reason of interruption of traffic and/or services from the incomplete work, and that the said delinquency is a damage to the Owner caused through the fault of the Contractor.

It is hereby agreed between both parties to this contract that the amount of said damages are hereby ascertained and liquidated at the greater of **one-hundred, fifty (\$150.00) per day** of delay, or the actual measurable damages to the Owner including penalties, or other fees which may be charged to the Owner for failure to meet the time requirements. At a minimum, the Contractor agrees to pay the documented cost to the Owner for additional Resident Project Representative and Contract Administration services performed by the Engineer as a direct result of the delinquency. The Contractor hereby agrees to pay the stated sum to the Owner for each and every day of delinquency until final acceptance of the project.

12. RESPONSIBILITIES

The Contractor shall be responsible for all materials delivered to him for all parts of the work, including that which has been partially paid for, until final acceptance of the entire work, and shall be liable for all losses or damages thereto which may occur during the progress of construction and before final acceptance. The Contractor shall be required to make good at his own cost any loss,

injury or damage which the said materials or work may sustain from any source or cause whatsoever before final acceptance thereof.

The Contractor is required to replace or repair, if necessary, any portion of pavement or other street improvements adjoining his work which may have suffered through his operations, and all adjacent paving or other structures shall be left in a satisfactory and workmanlike condition, at least equal to that existing before the Contractor hereunder started his work.

13. CONNECTING WITH OLD WORK

The Contractor shall do all work that may be necessary to connect the new work with existing improvements in a proper and workmanlike manner. Only such portion of existing improvements shall be removed for new construction as shall be ordered by the Engineer. Any other damage to existing improvements shall be repaired by the Contractor at his own expense.

14. PARTIAL PAYMENTS BY THE OWNER

a. Progress Payment. Partial payment for the amount of work completed each month is specified in the General Conditions of the Agreement. Checks for partial payments will be issued by the Owner based on work performed under each proposal.

It is expressly understood, however, that such estimates and payments shall only be made when the work progresses as rapidly as may be required by the Engineer, and in accordance with the provisions of this contract, and furthermore, with the understanding that such partial payment on account shall not be construed as an acceptance of any part of the work.

The Contractor shall prepare his requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his review. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) **five** percent (5%) of the total amount, as a retainage; (2) any backcharges assessed in accordance with the contract documents; (3) any special withholding according to subitem "b" below; and (4) the amount of all previous payments.

The total value of work completed to date shall be abased on the estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown submitted and approved using the form contained in these specifications) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.

For purposes of partial payment, the quantity of materials on hand may not exceed the quantity of materials reasonably necessary to complete the project. Payment for materials on hand (prior to deduction for retainage) may not exceed the bid price or bid breakdown price for the work in which such materials will be incorporated. No payment will be made for materials not meeting specifications.

The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Owner in all details.

The **five** percent (**5%**) retainage of the progress payments otherwise due to the Contractor may not be reduced until the building of the project is substantially complete.

b. Withholding Payments. The Owner may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Owner, and if he so elects may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any acclaims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the Owner elects to do so. The failure or refusal of the Owner to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

The Owner may withhold liquidated damages for violation of overtime requirements.

At any time upon request of the Engineer, the Contractor shall submit evidence showing payment of his bills for labor, materials, freight, or other expenses on account of the work, and if it should be evident that the Contractor is not making prompt and full payment of his obligations, the Engineer may withhold the issuance of estimates until such unpaid wages and/or related liquidated damages are remedied.

c. Payments Subject to Submission of Certificates. Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of him and his subcontractors within these contract documents, and by other general and special conditions elsewhere in these contract documents.

15. SALES TAX

A. Tax Exempt Items

The Contractor performing construction under this contract may purchase materials, supplies, equipment, and other tangible property for either of the following purposes:

1. Incorporation of these items into the work being performed for the Owner.
2. Furnishing these items to the Owner uninstalled as specified by these contract documents.

B. Exemption Requirements - General

The Contractor is responsible for furnishing his suppliers with the required resale certificates in accordance with State Law. The Owner will furnish the Contractor with any necessary exemption certificates which are required from the Owner by the State Comptroller for sales tax exemption purposes, in accordance with State Law.

In order for the above described sales tax exemption to apply, this contract between the Owner and the Contractor must be a separated contract as defined by the State Comptroller (in which the Contractor's charges to the Owner for incorporated/furnished materials are stated separately from installation costs, consumable materials, etc.).

The Contractor shall submit to the Engineer a completed Separation of Materials

Form prior to contract execution, in order to make this document a part of the executed contract.

Separation of material prices will also be reflected in any change orders which are executed during (or before) construction, including final change orders if necessary. Each change order will include a total Contractor's price (to the Owner) for sales tax exempt materials, if applicable. This requirement applies to deducts for deleted items as well as to extra work.

Failure of the Contractor to provide the required material separation, either for the contract or for change orders, may result in disallowance by the State Comptroller of all or part of his sales tax exemption for incorporated/furnished materials for this project. In such cases, the Owner shall not bear any liability for such losses, even to the extent that they may be caused by increased as-built quantities.

In the event that the Comptroller should require any information or documentation regarding the Contractor's separated material prices, the Contractor shall be responsible for providing these items except for any documentation which may be required of the Owner by the Comptroller. The Owner shall not bear any liability for any disallowed sales tax exemptions as a result of action by the Comptroller.

No sales tax exemption is allowable for the following items:

1. Any materials, supplies, or incidentals, including motor fuel, used or consumed in the performance of this contract and not incorporated into the completed work.
2. Purchase, rental, or maintenance of any equipment used by the Contractor in the performance of the work.

C. Special Requirements-Items Furnished Uninstalled

One additional requirement applies to materials and equipment which are being furnished to the Owner uninstalled. These items must be purchased by the Contractor and furnished directly to the Owner without first being used by the Contractor. These items shall, if possible, be labelled by the supplier (prior to entering the custody of the Contractor) as belonging to the Owner.

The Contractor may make subsequent use of these items in performing the contract only under the following conditions:

1. Such use is specifically provided in the plans and specifications or by other written directives of the Owner.
2. Such use occurs only after the Owner takes title to and possession of the items.

These provisions shall not be construed to prevent the Contractor from any necessary assembly, modification, testing, or transportation of the items to be furnished uninstalled.

These provisions apply also to (a) materials which are incorporated into an item to be fabricated by the Contractor and furnished uninstalled, and (b) to items which are being purchased in a used condition by the Contractor and furnished uninstalled to

the Owner in accordance with plans and specifications.

16. USE OF UTILITY SYSTEM WATER

Locally available water is provided by the City of Terrell. The contractor may obtain a meter from the City of Terrell for a refundable deposit fee of \$750.00. These supplemental conditions will override conditions as described in the TCSS Appendix C, page 8, Section 504.4.2.1.

The City of Terrell will designate during construction the location which the Contractor may use for obtaining water. No person shall be allowed to open, turn off, interfere with, attach any pipe or hose to, or connect anything with, any fire hydrant, stop valve, or stop cock belonging to the City of Terrell without their prior permission.

The Contractor shall communicate and coordinate all efforts for obtaining water directly with the City of Terrell.

17. EQUAL EMPLOYMENT OPPORTUNITY POLICY

- a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that the employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, or recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor will be required to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- b. The Contractor shall, in all solicitations or advertisements for employees place by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, age, handicap, or national origin.
- c. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, the Age Discrimination in Employment Act of 1967, 29 U.S.C.A. 621 (1985), Executive Order 12250 of November 2, 1980, the Rehabilitation Act of 1973, 29 U.S.C.A. 701 et seq. (1985), and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspend in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor shall include all provisions of this item regarding Equal Employment Opportunity in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may detect as a means of enforcing such provisions, including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

18. USE OF STREETS

The Contractor shall obtain a permit to utilize the portions of public streets, or other public property adjacent to the structures for storage of materials and equipment which will immediately be used for the orderly prosecution of the work subject to such regulations as may be designated by the Engineer, or as stated in the detailed specifications, and provided that the following regulations are observed in connection therewith:

- a. The Contractor, at all times, shall conduct the work so as to insure the least practicable inconvenience to traffic in accordance with the special provisions of the Detailed Specifications. No street or part of street shall be closed to the public as a result of construction traffic.
- b. The Contractor shall provide and maintain suitable warning signals, flagmen, barricades, and night lights for night where necessary, to direct and protect traffic, and shall carry out any orders thereon which may be given by the Engineer. No street or part of street shall be closed to the public until such barricades and warning signals for day and night have been provided and placed by the Contractor. The failure of the Engineer to issue orders on this subject, or the inadequacy of orders which may be issued by him, shall not release the Contractor from any of his responsibilities.
- c. The Contractor shall provide temporary outlets for any surface water, the flow of which is blocked by his work, to the extent necessary to prevent damage to private property or hindrance to the public.
- d. The Contractor must obtain a street cut permit and any applicable barricading permits from the City prior to any of the following operations:
 - (1) removal of pavement, base, sidewalks, or curb and gutter within street right-of-way.
 - (2) Excavation, boring, or tunnelling within street right-of-way.
 - (3) Any operations outside street right-of-way causing excavated material to be placed within street right-of-way even temporarily.

Work shall be in conformance with such permits, and a copy of the permit shall be kept at the job
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site during construction. Separate permit applications will normally be required for various segments of the project. See Item 27, PERMITS, of these Special Conditions for details.

The Contractor shall provide storage space for materials which are not to be immediately used in the work.

All other permits for securing materials, storage space for materials, plant sites, material yards, camp sites, right to pass upon private property and all such other permits and licenses as he shall desire, or which are necessary for the proper executing of the work, must be secured by the Contractor at his expense, except as noted in Item 27, PERMITS.

19. REMOVAL OF CONDEMNED WORK

In the construction of the work contemplated in this contract and under these plans and specifications, the best workmanship, materials and equipment of the grade and make specified shall be used and installed, and to that end, judged by these standards. If any work, equipment or material is found to be imperfect or not in substantial compliance with the provisions of this contract, as interpreted by the Engineer, at any time prior to the acceptance of the entire work done under this contract, notwithstanding that it may have been passed, overlooked, or previously accepted by the Engineering Assistants, the Contractor shall, at his own cost and expense, remove it from the premises of the Owner, otherwise dispose of it as directed by the Engineer.

When such condemned work, material or equipment has been removed or disposed of, it shall be replaced by the Contractor at his own cost and expense, in accordance with the plans and specifications to the entire satisfaction of the Engineer. The Owner shall not be compelled nor be under any obligation to retain said condemned work, material or equipment nor any part thereof, nor pay the Contractor even the reasonable value of same.

In case the Contractor shall neglect or refuse to remove or replace any condemned work, material or equipment after written notice, within the time designated by the Engineer, such condemned work, material or equipment may be removed or replaced by the Owner and the Contractor hereby agrees to pay the cost of work so done, or material or equipment so purchased by the Owner.

20. BARRICADES, SIGNS AND HANDLING OF TRAFFIC

Barricades, signs, and handling of traffic shall be in accordance with the "Manual on Uniform Traffic Control Devices" as adopted by the Texas State Department of Highways and Public Transportation. Barricading shall be in conformance with the approved permits, and a copy of the permit shall be kept at the job site during construction and/or street blockage.

The Contractor shall remedy any deficiencies in barricading or traffic control immediately upon notification by the Owner and/or Engineer. Prior to construction, the Contractor shall furnish the Engineer a list of Contractor's personnel with telephone numbers for notification 24 hours a day, seven days a week. The listed personnel shall have adequate authority to correct barricading or traffic control promptly.

Corrective action must be taken upon verbal notice from the District, the Public Utilities Department, the Police Department, the Fire Department; or, where appropriate, other law enforcement agencies, or the Texas State Department of Highways and Public Transportation. The Contractor shall, within two (2) hours of actual or attempted notification, have sufficient barricades, lights, and/or other devices to control traffic as required by the City "Street Barricading Standards" or other applicable standard." Should the Contractor not comply with this notification within two (2) hours, the City may place barricades and backcharge the Contractor \$250.00 per day per construction site.

21. CONTRACTORS GENERAL WARRANTY AND GUARANTY

"Contractor warrants and guaranties to Owner, Engineer and Engineer's consultants that all work will be in accordance with the Contract Documents and will not be defective. If any work is found to be defective, the Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such defective work, or, if it has been rejected by Owner, remove it from the site and replace with non-defective work to the satisfaction of the Owner and Engineer"

If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective work corrected or the rejected work removed and replaced, an all direct, indirect and consequential costs of such removal and replacement, including but not limited to fees and charges of architects, engineers, attorneys and other professionals, shall be paid by the Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all work, the correction period for that item shall start at the commencement of continuous service.

The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefore which shall appear within a period of twenty four (24) months from the date of final acceptance of the work.

22. SUBMITTALS, OPERATION AND MAINTENANCE INFORMATION

Submittal, and operation and maintenance information for all equipment to be supplied in this project shall meet the requirements of the Technical Specifications.

23. MEASUREMENT

For lump sum priced contracts, the Contractor, before ordering any material or doing any work, shall verify all measurements of any existing and new work and shall be responsible for their correctness. Any differences which may be found shall be submitted to the Engineer for consideration before proceeding with the work. No extra compensation will be allowed because of differences between actual dimensions and measurements indicated on the working drawings. For unit price contracts, measurement shall be made of the actual installed quantities and Contractor's compensation shall be based on same. Measurement of work shall be as categorized by the Unit Cost Bid Proposal. All items of work shall be paid under the appropriate bid item in the Unit Cost Bid Proposal.

24. AS-BUILT DIMENSIONS, DRAWINGS, AND DATA

The Contractor shall make appropriate daily measurements of constructed facilities and shall keep accurate records of locations (horizontal and vertical) of all facilities. In cases of underground facilities, the Contractor shall also give the Engineer an opportunity to measure locations before backfilling, and/or shall place temporary reference markers as directed by the Engineer, adequately protected pending future use by Engineer.

Such location measurements shall be reported according to the reference line used by the Engineer for the facility under construction, or in such a manner that the locations can easily be tied into the reference line.

Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:

- a. Horizontal and vertical locations or work.

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- b. Changes in equipment and dimensions due to substitutions.
- c. Nameplate data on all installed equipment.
- d. Deletions, additions, and changes to scope of work.
- e. Any other changes made.

25. SUBSURFACE INFORMATION

Prior to bidding, bidders may make their own subsurface investigations under time schedule and arrangements approved in advance by the Owner or the Engineer. The Contractor shall determine to his satisfaction the subsoil conditions and their effect on the required construction and shall complete the work as required without additional cost to the owner.

A soils report is contained within to this contract book.

26. CONSTRUCTION STAKES

The Owner will establish such general reference points as in his judgement will enable the Contractor to proceed with the work. The Contractor will be responsible for the layout of the work from these stakes and will protect and preserve the established reference points and will make no changes or relocations without prior written approval of the Owner. He will report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor will replace and accurately relocate all reference points so lost, destroyed, or moved.

27. PERMITS

The Owner will acquire any permits and/or easements required for crossing or paralleling county roads, drainage ditches, canals, power line easements, pipelines, and various private property. Street cut and barricade permits will be issued at no charge to the Contractor, should they be applicable. All other permits, fees and licenses necessary for the pursuit of the work shall be obtained and paid for by the Contractor.

Permit applications for street cuts and/or barricading shall be made on forms provided by the County. These forms may be obtained from the County Engineer. The application shall include or be accompanied by any necessary drawings showing the location of the proposed street cuts and proposed barricades.

The Contractor shall submit to the Engineer his plans for barricading and traffic control for all portions of the project, at least two (2) business days before the preconstruction conference. Applications for street cuts and barricading for specific locations shall be submitted to the Engineer not less than five (5) business days prior to the proposed work.

The Texas Department of Transportation (TxDOT) may require revisions to barricading plans submitted with an application if, in their opinion, such revisions are necessary to serve the best interest of TxDOT.

In some cases, the scope of street cut and/or barricading requirements may be increased, as when the need for utility relocation is discovered during piping construction. In such cases the Contractor shall immediately apply for permit revisions as necessary.

28. MAINTENANCE OF SITE AND CLEANUP

The work site shall be kept reasonably clean at all times. Surplus materials shall be disposed of by the Contractor. In final clean-up operations all equipment, scrap materials and temporary structures shall be removed and the site left clean.

29. PROTECTION AND REPLACEMENT OF PROPERTY

Public or private property that is damaged, destroyed or removed by the Contractor during the construction shall be replaced to its original condition or better by the Contractor.

30. PROTECTION OF TREES, PLANTS AND SHRUBS

Care shall be exercised to prevent damage to trees, plants and shrubs along the work site. No tree, plant or shrub shall be removed unless it is designated for removal or interferes unduly with the construction work. Permission for such removal must first be obtained from the Owner. Provisions of the Technical Specifications shall govern in matters of this nature.

In the event that rare or endangered plant species are encountered during construction, the Contractor shall notify the Engineer immediately and shall immediately cease construction in the affected area. The Engineer will immediately consult with appropriate wildlife management agencies and/or a professional biologist to determine appropriate measures.

The Contractor shall take care to locate and identify before clearing operation those plant species, along with surrounding vegetation, which are designated for preservation.

31. LOCATION OF AND DAMAGE TO EXISTING UTILITIES

The Contractor is responsible for locating underground obstacles. It is not represented that the drawings show all underground obstacles.

The Contractor shall exercise caution to prevent damage to existing facilities during the progress of the construction work, taking care to locate same, where possible, in advance of the actual work. The Engineer will render all assistance possible to the Contractor in the matter of determining the location of existing utilities by making available such maps, records, and other information as may be accessible to him, when requested to do so, but the accuracy of such information will not be guaranteed. The Contractor shall make good all damage to existing utilities and/or pipelines resulting from his operations. Should the Contractor, in the layout of his work, encounter any pipe, underground utility, or structure, the location of which has not been furnished to him by the Engineer, he shall bring such conditions to the attention of the Engineer for his determination of the method to be used to remove or bypass such obstructions.

In cases where owners of existing pipelines or underground utilities provide services for locating their facilities, the Contractor shall coordinate the location marking and be responsible for preserving all stakes and markers set for this purpose. The Contractor's responsibility for these markers shall be similar to his responsibility for construction stakes (Item 25 above). The Contractor shall save harmless the Owner and the Engineer for any expenses for restoring damaged markers.

32. OBSERVATION OF THE WORK

It is agreed by the Contractor that the Engineer shall be and is hereby authorized to appoint from time to time such representatives as the said Owner may deem proper to observe the material furnished and the work done under this contract and to see that the said material is furnished and said work is done in accordance with the specifications therefor.

The Contractor shall furnish all reasonable aid and assistance required by these representatives for the proper observation of the work and all parts of the work. Except as hereinbefore provided, the authority of subordinate representatives shall be limited to the rejection of unsatisfactory work and materials until the questions of acceptability can be referred to the Engineer.

Representatives of various facilities being crossed or paralleled by the project shall have similar rights when their facilities are involved.

33. ACCESS TO THE WORK

Representatives of the Occupational Safety Health Administration shall have access to the work whenever it is in preparation or progress. The Contractor shall provide proper facilities for such access and inspection.

34. REVIEW BY OWNER

The Owner, authorized representatives and agents of the Owner, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract. However, all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.

35. CONSTRUCTION SCHEDULE

The Contractor shall within one week after signing the contract, and before any work shall start, furnish the Engineer with a Construction Schedule for approval. The Schedule shall indicate the orderly progress of work.

36. ON-SITE AND MATERIAL TESTING

If the Owner desires testing to be performed, other than items as specified for materials furnished by the Contractor the following procedure will be used:

1. Owner will select the laboratory and authorize the tests.
2. The Owner will pay the cost of each initial test.
3. In those cases where the item being tested fails to meet the specification requirements, the cost of retesting shall be charged to the Contractor.

All costs to furnish and perform the infiltration, exfiltration, hydrostatic pressure, low air pressure, and deflection testing, as specified, shall be borne by the Contractor, except for the free use of water.

37. CLAIMS

In the event of a claim or disagreement, the Contractor shall make all bid related documents (including but not limited to bid spread sheet, breakdowns, and quantity take-offs) available to Owner within one week of the date that the claim is filed, to assist in determining validity of dispute.

38. CHANGE ORDERS

Contractor acknowledges and agrees that the adjustments in contract price and/or contract time stipulated in Change Orders for this Contract represent full compensation for all increases or

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decreases in the cost of, or the time required to perform the entire work under the Contract, arising directly or indirectly from such Change Orders. Acceptance of this waiver constitutes an agreement between Owner and Contractor that each Change Order represents an all inclusive, mutually agreed on adjustment to the Contract, and the Contractor will waive all rights to file a claim on Change Orders after they are properly executed.

39. FINAL ACCEPTANCE AND PAYMENT

Upon the issuance by the Engineer of the Certificate of Completion following final inspection, the Engineer shall proceed to make final measurements and prepare a final statement of the value of all work performed and material furnished under the terms of the Contract. This statement shall be based on the carefully measured or computed quantity of each item of work at the applicable unit prices in the Bid Proposal, the Bid Breakdown for lump sum items, and/or approved change orders. The Engineer shall certify this statement to the Owner within ten days after the date of such Certificate of Completion. The total amount of the final balance due the Contractor shall be the amount computed in the statement less all previous payments and less any liquidated damages, backcharges, and/or other deductions provided under this contract.

The Owner shall pay the Contractor the balance due the Contractor under the terms of the Contract, provided the Contractor has fully performed his contractual obligations under the terms of the Contract; said payment shall become due in any event upon said performance by the Contractor. Final payment to the Contractor shall be made subject to his furnishing the Owner with a release in satisfactory form of all claims against the Owner arising under and by virtue of his contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release as provided under general and special conditions elsewhere in this contract.

The Owner, before paying the final estimate, may require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project or furnished to the Owner), and services to the Contractor, if the Owner deems the same necessary in order to protect the Owner's interests. The Owner, however, may if it deems such action advisable make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments so made shall in no way impair the obligations of any surety or sureties furnished under this Contract.

Withholding of any amount due the Owner, under general and/or special conditions regarding "Liquidated Damages," shall be deducted from the final payment due the Contractor, unless such deduction has been made earlier in the project in accordance with the agreement.

If the Owner should issue the Certificate of Acceptance following the issuance by the Engineer of the Certificate of Substantial Completion, the Engineer shall thereupon proceed to make final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the Contract, less a retention of the Engineer's estimated cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work.

40. PROJECT SITE

The Project Site is located within the City of Terrell, Texas as shown in the contract book designated as **Drawing title Pressure Paving City Project No 21-14 Project Location Map.**

41. TIME FOR COMPLETION

The work which the Contractor is required to perform under this Contract shall be commenced at the

time stipulated by the Owner in the Notice to Proceed to the Contractor and shall be fully completed within **60 consecutive calendar days** thereafter.

42. COMMUNICATIONS

- a. All notices, demands, requests, instructions, approvals, proposals and claims must be in writing. Only written communications will be considered as binding.
- b. Any notice to or demand upon the Contractor shall be delivered to the location stated on the signature page of the Agreement (or at such other office as the Contractor may from time to time designate in writing to the Owner), or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
- c. All papers required to be delivered to the Owner shall, unless otherwise specified in writing to the Contractor, be delivered to

City of Terrell	Attn:	Glenn Caldwell
201 East Nash		Director of Public Services
Terrell, TX 75160		

Any notice to or demand upon the Owner shall be sufficiently given if so delivered, or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to said Owner or to such other address as the Owner may subsequently specify in writing to the Contractor for such purposes.

- d. Any such notice shall be deemed to have been given as of the time of actual delivery or (in the case of mailing) when the same should have been received in due course of post, or (in the case of telegrams) at the time of actual receipt, as the case may be.
- e. In the case of conflicts, acceptability of materials or workmanship, interpretations of contract documents, or changes which significantly affect the cost of the work, only written communication from the Engineer will be considered binding.
- f. The Engineer will issue directions, field orders, interpretations and written orders orally and in writing to the Contractor. No other communications whether written or oral, whether from Engineer to subcontractor or from Owner to Contractor or from Owner to subcontractors, will be official and enforceable.

43. CONTRACT DOCUMENTS AND DRAWINGS

The Owner will furnish the Contractor without charge 3 (three) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

44. EXISTING STRUCTURES

The Owner assumes no responsibility for failure to show the location of any or all of the existing surface and subsurface structures on the plans, or to show them in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional

compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate the building of special work, provisions for which are not made in the plans and proposal, in which case the provisions in these specifications for extra work shall apply.

45. DISPOSAL OF WASTE AND SURPLUS EXCAVATION

All trees, stumps, slashings, brush or other debris removed from the job site as a preliminary to the construction of the work or its appurtenances shall be removed from the property and disposed of in a manner approved by the Engineer.

46. OWNER'S RIGHT TO DO WORK

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after ten (10) days written notice to the Contractor, may, without prejudice to any other remedy the Owner may have, make good such deficiency and may deduct the cost thereof from the payment then or thereafter due the Contractor. Any money due the Owner after such deduction shall be paid by the Contractor of his sureties who hereby agree to these provisions.

47. DEWATERING EXCAVATION

The prospective bidders shall make sufficient subsurface explorations to determine the location of ground-water which might be encountered. The Contractor shall at his own expense, utilize a pumping system in order to place materials in de-watered excavations.

CONSTRUCTION DOCUMENTS

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PRESSURE
PAVING
CITY PROJECT
No 21-14
PROJECT
LOCATION MAP

REVISI0NS:



DRAWN BY:

T. SIMOES

REVIEWED BY:

F. STEPHENS

SPL PROJECT NO:
400028SHEET NO:
1

1 OF 1



SUMMARY OF QUANTITIES: PRESSURE PAVING, CITY PROJECT No. 21-14

City of Terrell, TX

Street	Start	End	Length (FT)	Width (FT)	Area (SF)
Fourth	Lane	Warren	1,344	14	2,090
Medora	Grove	Rochester	858	15	1,430
Hattie	Grove	Cottage	426	19	900
Talty	FM 148	West End	1,318	20	2,928
Newton	Ann	Rockwall	651	18	1,302
West End	Mitchell	Talty	1,575	20	3,500
Athens	College Mound	Dixon	959	20	2,130
Brin	Virginia	Rockwall	1,923	27	5,770
College Mound	Harrell	Athens	574	19	1,211
Dallas	Delphine	Virginia	365	24	972
Grove	Delphine	Virginia	302	32	1,073
Newton	Adelaide	Virginia	359	17	678
Gardner	Moore	650 feet south	660	21	1,539
Vine	College Mound	Thomas	258	24	689
Jackson	Adelaide	Virginia	330	20	733
Greenwood	Virginia	Crockett	872	22	2,131
San Jacinto	Greenwood	McCouliskey	1,317	21	3,074
Alamo	Frances	Rockwall	753	22	1,840
First	Griffith	Johnson	733	25	2,037
Elm	Rockwall	Ninth	1,931	28	6,009
Ann	High	College	327	22	800
Rockwall	Newton	University	3,179	40	14,129
Rosehill	Lincoln	Park	2,200	18	4,399
Frances	Brin	High	656	27	1,967
Frances	High	Nash	300	29	967
Frances	Nash	Moore	303	24	807
Bradshaw	West End	Mineral Wells	1,056	18	2,111
Cottage	Delphine	Adelaide	876	20	1,946
Cottage	Frances	Medora	320	20	711
Heath	Frances	Catherine	342	22	836
Robert	Nash	High	297	20	661
Rochester	Rockwall	Frances	790	18	1,580
Rochester	Virginia	Adelaide	160	18	320
TOTAL					73,270

PROJECT NOTES

The purpose of these Project Notes is to provide general guidance concerning construction of the project not specifically addressed elsewhere in the contract documents (Project Manual).

Prior to beginning construction, the City of Terrell and the contractor shall agree on a work schedule that defines the streets and spot locations designated for Pressure Paving. General agreement should be reached on the sequence of work, traffic control, and details.

The following submittals shall be required for review and approval prior to beginning work:

1. Construction Schedule
2. Traffic Control Plan

Trucks hauling construction equipment and materials shall be routed over Federal or State number routes as much as possible. Heavily loaded trucks and heavy construction equipment shall move on local streets only by the shortest route from the nearest highway to the equipment parking area, material stockpile area, or work area. This requirement is in compliance with local ordinances. Drivers who do not comply with the ordinances and who neglect this routing requirement may be ticketed by the local police.

The Contractor shall provide a minimum of forty-eight (48) hours advance notice to the adjoining residents or business operators of the proposed work to occur on designated streets. Notice shall be in writing, in the form of a door hanger (sample available) or otherwise, and may be supplemented by a personal visit. The notice should advise as to the type of work that is to be performed and of any period during which access may be restricted.

Access for local traffic must be maintained at all times.

The Contractor shall coordinate and schedule his work so that routine services such as mail delivery and trash pickup are not interrupted. It is the Contractor's responsibility to notify service providers and local residents prior to beginning work.

The Contractor is hereby notified that all existing utilities, whether buried or overhead may not be shown on the plans. Exact locations of all existing utilities, whether shown on these plans or not, should be determined in the field prior to construction. Any damage to existing utilities shall be the responsibility of the Contractor and repairs shall be made immediately at the Contractor's expense. Contact Texas811 by dialing 811 for locates.

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RESOLUTION NO. 1044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2021A CERTIFICATES OF OBLIGATION.

WHEREAS, the City Council of the City of Terrell, Texas (the “City”), has determined that certificates of obligation (the “Certificates”) should be issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, for the purpose of paying contractual obligations to be incurred for (i) acquiring, constructing, improving and equipping park and recreation facilities and the acquisition of land and rights-of-way therefor, (ii) acquiring land for public facilities, to wit: fire-fighting facilities, library facilities, community center facilities, town square, City administrative offices, City parks and public parking facilities, (iii) acquiring, constructing, improving and equipping a City museum and demolition of existing facilities related thereto and the acquisition of land therefor, (iv) constructing and improving streets, including drainage, landscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor, (v) constructing and improving flood control improvements including the acquisition of rights-of-way therefor, (vi) rehabilitating and improving City buildings including administrative offices, fire department and airport facilities therefor and (vii) professional services rendered in connection therewith; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the City and on the City’s website, said notice stating (i) the time and place the Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the certificates are to be issued and (iv) the manner in which the Council proposes to pay the certificates.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TERRELL:

SECTION 1: The City Secretary is hereby authorized and directed to cause notice to be published of the Council’s intention to issue certificates of obligation, in one or more series, in a principal amount not to exceed the amount set forth in **Exhibit A** attached hereto, for the purpose of paying contractual obligations to be incurred for (i) acquiring, constructing, improving and equipping park and recreation facilities and the acquisition of land and rights-of-way therefor, (ii) acquiring land for public facilities, to wit: fire-fighting facilities, library facilities, community center facilities, town square, City administrative offices, City parks and public parking facilities, (iii) acquiring, constructing, improving and equipping a City museum and demolition of existing facilities related thereto and the acquisition of land therefor, (iv) constructing and improving streets, including drainage, landscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor, (v) constructing and improving flood control improvements including the acquisition of rights-of-way therefor, (vi) rehabilitating and improving City buildings including administrative offices, fire department and airport facilities therefor and (vii) professional services

rendered in connection therewith, and such certificates shall be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this Resolution for all purposes.

SECTION 2: The City Secretary shall cause the aforesaid notice to be (i) published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least forty-six (46) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation and (ii) posted continuously on the City's website for at least forty-five (45) days before the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3: Upon the passage and adoption of this Resolution, Resolution No. 1030 adopted by the City Council on May 4, 2021 shall be and is hereby repealed and any notice published by the City pursuant to Resolution No. 1030 is hereby rescinded and cancelled.

SECTION 4: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 5: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND APPROVED this 8th day of June, 2021.

CITY OF TERRELL, TEXAS

E. RICK CARMONA, Mayor

ATTEST:

Dawn Steil, City Secretary

Mary Gayle Ramsey, City Attorney

EXHIBIT A

NOTICE OF INTENTION TO ISSUE CITY OF TERRELL, TEXAS SERIES 2021A CERTIFICATES OF OBLIGATION

TAKE NOTICE that the City Council of the City of Terrell, Texas, shall convene at 7:00 o'clock p.m. on August 3, 2021, at the City Hall, 201 East Nash Street, Terrell, Texas, and, during such meeting, the City Council will consider the passage of one or more ordinances authorizing the issuance of certificates of obligation, in one or more series, in a principal amount not to exceed \$22,250,000 for the purpose of paying contractual obligations to be incurred for (i) acquiring, constructing, improving and equipping park and recreation facilities and the acquisition of land and rights-of-way therefor, (ii) acquiring land for public facilities, to wit: fire-fighting facilities, library facilities, community center facilities, town square, City administrative offices, City parks and public parking facilities, (iii) acquiring, constructing, improving and equipping a City museum and demolition of existing facilities related thereto and the acquisition of land therefor, (iv) constructing and improving streets, including drainage, landscaping, retaining walls, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor, (v) constructing and improving flood control improvements including the acquisition of rights-of-way therefor, (vi) rehabilitating and improving City buildings including administrative offices, fire department and airport facilities therefor and (vii) professional services rendered in connection therewith, and such certificates shall be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined Waterworks and Sewer System. In accordance with Texas Local Government Code Section 271.049, (i) the current principal amount of all of the City's outstanding public securities secured by and payable from ad valorem taxes is \$48,670,000; (ii) the current combined principal and interest required to pay all of the City's outstanding public securities secured by and payable from ad valorem taxes on time and in full is \$61,003,328; (iii) the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$36,250,000; (iv) the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and (v) the maximum maturity date of the certificates to be authorized is August 15, 2051. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271.

City Secretary
City of Terrell, Texas

RESOLUTION NO. 1045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2021B CERTIFICATES OF OBLIGATION.

WHEREAS, the City Council of the City of Terrell, Texas, has determined that certificates of obligation should be issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's sewer system and (ii) professional services rendered in connection with such projects and the financing thereof; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the City, said notice stating (i) the time and place the Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the certificates are to be issued and (iv) the manner in which the Council proposes to pay the certificates,

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TERRELL:

SECTION 1: The City Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation, in one or more series, in a principal amount not to exceed the amount set forth in **Exhibit A** attached hereto for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's sewer system and (ii) professional services rendered in connection with such projects and the financing thereof, and such certificates shall be payable from ad valorem taxes and a pledge of the surplus net revenues of the City's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2: The City Secretary shall cause the aforesaid notice to be (i) published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least forty-six (46) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation and (ii) posted continuously on the City's website for at least forty-five (45) days before the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 4: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND APPROVED, this 8th day of June, 2021.

CITY OF TERRELL, TEXAS

ATTEST:

E. RICK CARMONA, Mayor

Dawn Steil, City Secretary

Mary Gayle Ramsey, City Attorney

EXHIBIT A

**NOTICE OF INTENTION TO ISSUE CITY OF TERRELL, TEXAS
SERIES 2021B CERTIFICATES OF OBLIGATION**

TAKE NOTICE that the City Council of the City of Terrell, Texas, shall convene at 7:00 o'clock P.M. on August 3, 2021, at the City Hall, 201 East Nash Street, Terrell, Texas, and, during such meeting, the City Council will consider the passage of one or more ordinances authorizing the issuance of certificates of obligation, in one or more series, in a principal amount not to exceed \$10,045,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's sewer system and (ii) professional services rendered in connection with such projects and the financing thereof, and such certificates shall be payable from ad valorem taxes and a pledge of the surplus net revenues of the City's combined Waterworks and Sewer System. In accordance with Texas Local Government Code Section 271.049, (i) the current principal amount of all of the City's outstanding public securities secured by and payable from ad valorem taxes is \$48,670,000; (ii) the current combined principal and interest required to pay all of the City's outstanding public securities secured by and payable from ad valorem taxes on time and in full is \$61,003,328; (iii) the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$14,370,000; (iv) the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and (v) the maximum maturity date of the certificates to be authorized is August 15, 2051. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271.

City Secretary
City of Terrell, Texas

RESOLUTION NO. 1046

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE TAXABLE SERIES 2021C CERTIFICATES OF OBLIGATION.

WHEREAS, the City Council of the City of Terrell, Texas, has determined that certificates of obligation should be issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's waterworks system and (ii) professional services rendered in connection with such projects and the financing thereof; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the City, said notice stating (i) the time and place the Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the certificates are to be issued and (iv) the manner in which the Council proposes to pay the certificates;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TERRELL:

SECTION 1: The City Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation, in one or more series, in a principal amount not to exceed the amount set forth in **Exhibit A** attached hereto for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's waterworks system and (ii) professional services rendered in connection with such projects and the financing thereof, and such certificates shall be payable from ad valorem taxes and a pledge of the surplus net revenues of the City's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2: The City Secretary shall cause the aforesaid notice to be (i) published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least forty-six (46) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation and (ii) posted continuously on the City's website for at least forty-five (45) days before the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 4: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND APPROVED, this 8th day of June, 2021.

CITY OF TERRELL, TEXAS

ATTEST:

E. RICK CARMONA, Mayor

Dawn Steil, City Secretary

Mary Gayle Ramsey, City Attorney

EXHIBIT A

**NOTICE OF INTENTION TO ISSUE CITY OF TERRELL, TEXAS
TAXABLE SERIES 2021C CERTIFICATES OF OBLIGATION**

TAKE NOTICE that the City Council of the City of Terrell, Texas, shall convene at 7:00 o'clock P.M. on August 3, 2021, at the City Hall, 201 East Nash Street, Terrell, Texas, and, during such meeting, the City Council will consider the passage of one or more ordinances authorizing the issuance of certificates of obligation, in one or more series, in a principal amount not to exceed \$1,535,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing and improving the City's waterworks system and (ii) professional services rendered in connection with such projects and the financing thereof, and such certificates shall be payable from ad valorem taxes and a pledge of the surplus net revenues of the City's combined Waterworks and Sewer System. In accordance with Texas Local Government Code Section 271.049, (i) the current principal amount of all of the City's outstanding public securities secured by and payable from ad valorem taxes is \$48,670,000; (ii) the current combined principal and interest required to pay all of the City's outstanding public securities secured by and payable from ad valorem taxes on time and in full is \$61,003,328; (iii) the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$2,270,000; (iv) the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and (v) the maximum maturity date of the certificates to be authorized is August 15, 2051. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271.

Dawn Steil
City Secretary
City of Terrell, Texas

RESOLUTION NO. 1047

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS,
SUPPORTING THE CITY OF TERRELL'S APPLICATION TO THE TEXAS
DEPARTMENT OF TRANSPORTATION'S 2021 TRANSPORTATION
ALTERNATIVES SET-ASIDE (TA) CALL FOR PROJECTS; AUTHORIZING THE
MAYOR AND CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS
NECESSARY FOR SUBMISSION OF THE APPLICATION; AND DECLARING AN
EFFECTIVE DATE**

WHEREAS, the Texas Department of Transportation issued a call for projects in January, 2021, for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TA) Program; and

WHEREAS, the TA funds may be used for development of preliminary engineering (plans, specifications, and estimates and environmental documentation) and construction of pedestrian and/or bicycle infrastructure. The TA funds require a local match, comprised of cash or Transportation Development Credits (TDCs), if eligible. The City of Terrell would be responsible for all non-reimbursable costs and 100% of overruns, if any, for TA funds; and

WHEREAS, the City has determined that the importance of pedestrian safety and pedestrian mobility is key to improving the FM 148 corridor. A project of adding a sidewalk to FM 148 and the missing gap section between the northern end of the recent pass through project and the southern end of the pending US 80/FM 148 reconstruction is a high priority for the City of Terrell; and

WHEREAS, the City Council has determined it to be in the best interest of the citizens of the City of Terrell to submit an application for funding assistance through the Transportation Alternatives Set-Aside (TA) Program for the FM 148 Gap Sidewalk Project currently estimated at roughly \$650,000.00.

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

Section I.

The City of Terrell supports funding this project as referenced above and also further described in the 2021 TA Detailed Application (including the preliminary engineering budget, if any, construction budget, the department's 15% direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City of Terrell is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding.

Section II.

The City Council authorizes the Mayor and City Manager to execute any and all documents necessary on behalf of the City of Terrell relating to the filing of the Application.

Section III.

This Resolution shall be effective immediately after its passage.

PASSED AND APPROVED by a majority vote of all members of the City Council of the City of Terrell, Texas, on this ____ day of June, 2021.

E. RICK CARMONA, Mayor

ATTEST:

Dawn Steil, City Secretary