Consent Agenda
The Consent Agenda includes non-controversial and routine items that the Court may act on with one single vote. The Judge or a Commissioner may pull any item from the Consent Agenda in order that the court discuss and act upon it individually as part of the Regular Agenda.
(Items 5- 12)

AGENDA ITEM 5

Consider approving a line item transfer for 911 Communications:

From:	0581-005751	Office Equipment	2000.00
To:	0581-005740	Computer Equipment	2000.00

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve a line item transfer for 911 Communications:

From:	0581-005751	Office Equipment	2000.00
To:	0581-005740	Computer Equipment	2000.00

Vote: **5 - 0**

< Attachment >

COPY

ORDER APPROVING A LINE ITEM TRANSFER FOR

0581 — 911 Communications — Lynna Simpson

Fund — *Department* — *Signature*

WHEREAS, the Williamson County Commissioners Court has carefully studied the public necessity of transferring funds from one line item to another within the above mentioned department's budget; and WHEREAS, the Williamson County Commissioners Court, due to unforeseeable circumstances, did not appropriate sufficient funds in the proper line items when adopting the current county budget; and

WHEREAS, on the 29TH *day of* JANUARY, 2002, *a motion made by* COM. LIMMER *and duly seconded by* JUDGE DOERFLER, *the motion carried by a vote of* 5 *votes for, and* 0 *votes against.*

THEREFORE, BE IT ORDERED THAT THE 2001/2002 FISCAL YEAR WILLIAMSON COUNTY BUDGET BE AMENDED AND THE FOLLOWING AMOUNT(S) BE TRANSFERRED FROM THE FOLLOWING LINE ITEMS INTO THE NEEDED LINE ITEMS:

FUNDS TO BE REMOVED FROM THE FOLLOWING LINE ITEM:

Line Item #	*Description*	*Amount*
0581-005751	Office Equipment	$2000.00

FUNDS TO BE INCREASED IN THE FOLLOWING LINE ITEM:

Line Item #	*Description*	*Amount*
0581-00 ~~3010~~ 5740	Computer equipment	$2000.00

WHEREUPON, A motion made and seconded, the Williamson County Commissioners Court did authorize the County Judge to sign this Order, the County Clerk was instructed to file a copy of this Order with the existing budget and to forward a copy of this order to the County Auditor.

John C. Doerfler 1-29-02

John C. Doerfler, County Judge

ATTEST:

Nancy E. Rister

Nancy E. Rister, County Clerk

AGENDA ITEM 6

Consider approving a line item transfer for Constable Precinct #1:

From:	100-409-4998	Contingencies	24000.00
To:	100-551-5700	Vehicles	24000.00

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve a line item transfer for Constable Precinct #1:

From:	100-409-4998	Contingencies	24000.00
To:	100-551-5700	Vehicles	24000.00

Vote: **5 - 0**

< Attachment >

ORDER APPROVING A LINE ITEM TRANSFER FOR

100 *from Non Departmental to Constable #1* John C. Doerfler

Fund *Department* *Signature*

WHEREAS, the Williamson County Commissioners Court has carefully studied the public necessity of transferring funds from one line item to another within the above mentioned department's budget; and WHEREAS, the Williamson County Commissioners Court, due to unforeseeable circumstances, did not appropriate sufficient funds in the proper line items when adopting the current county budget; and

WHEREAS, on the 29th *day of* JANUARY, *2002*, *a motion made by* COM. LIMMER *and duly seconded by* JUDGE DOERFLER, *the motion carried by a vote of* 5 *votes for, and* 0 *votes against.*

THEREFORE, BE IT ORDERED THAT THE 2001/2002 FISCAL YEAR WILLIAMSON COUNTY BUDGET BE AMENDED AND THE FOLLOWING AMOUNT(S) BE TRANSFERRED FROM THE FOLLOWING LINE ITEMS INTO THE NEEDED LINE ITEMS:

FUNDS TO BE REMOVED FROM THE FOLLOWING LINE ITEM:

Line Item #	*Description*	*Amount*
100-409-4998	*Contingencies*	*24,000.00*

FUNDS TO BE INCREASED IN THE FOLLOWING LINE ITEM:

Line Item #	*Description*	*Amount*
100-551-5700	*Vehicles*	*24,000.00*

WHEREUPON, A motion made and seconded, the Williamson County Commissioners Court did authorize the County Judge to sign this Order, the County Clerk was instructed to file a copy of this Order with the existing budget and to forward a copy of this order to the County Auditor.

John C. Doerfler 1-29-02
John C. Doerfler, County Judge

ATTEST:

Nancy E. Rister
Nancy E. Rister, County Clerk

AGENDA ITEM 7

Consider accepting a $75.00 donation from Crystal Falls Village and a $25.00 donation from Ethel Black of Leander, on behalf of EMS.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To accept a $75.00 donation from Crystal Falls Village and a $25.00 donation from Ethel Black of Leander, on behalf of EMS.
Vote: **5 - 0**

< Attachment >

Jane Tableriou

From: Wendy Coco
Sent: Wednesday, January 23, 2002 9:01 AM
To: Jane Tableriou
Subject: FW: Agenda Items

-----Original Message-----
From: John Sneed
Sent: Wednesday, January 23, 2002 8:34 AM
To: Wendy Coco
Subject: RE: Agenda Items

Dear Wendy:

Would you please add the following to the Commissioner's Court Agenda?

Consider accepting a $75.00 donation from Crystal Falls Village and a $25.00 donation from Ethel Black of Leander, on behalf of EMS.

Thanks for all of your help.

Sincerely,

John

Approved 1-29-02
John C. Doerfler

-----Original Message-----
From: Wendy Coco
Sent: Tuesday, January 22, 2002 1:30 PM
To: John Sneed
Subject: Agenda Items

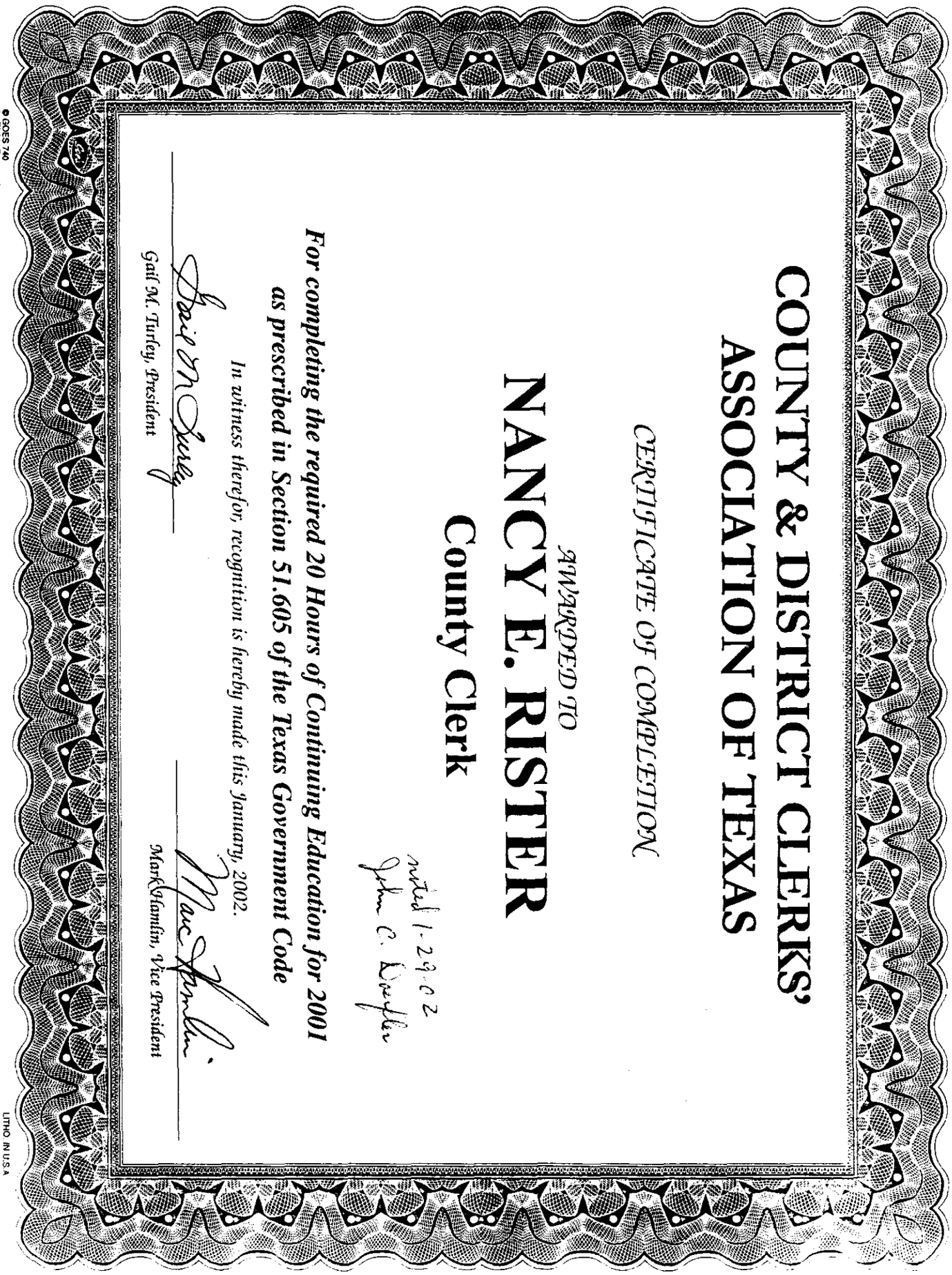
Hi John,
I wanted to check w/ you and make sure you still wanted those items on the agenda for the 29th. I never did get anything from you, so I wanted to double check. Let me know. Thanks and have a great day!
Wendy

AGENDA ITEM 8

Consider noting in the minutes continuing education hours from the County Clerk.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To note in the minutes continuing education hours from the County Clerk.
Vote: **5 - 0**

< Attachment >



AGENDA ITEM 9

Note the receipt of Over Axle/Over Gross Weight Tolerance Permits from Texas Dept. of Transportation.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To note the receipt of the Over Axle/Over Gross Weight Tolerance Permits from TxDOT.
Vote: **5 - 0**

< Attachment >

agenda 1/29

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

January 11, 2002

Attn: County Clerks,

In accordance with Texas Transportation Code, Chapter 623.013, enclosed is the notification to counties concerning the issuance of Over Axle/Over Gross Weight Tolerance Permits. The statute directs the Texas Department of Transportation to notify each county listed in the permit application for a permit issued under authority of the Texas Transportation Code, Chapter 623, Subchapter B.

If this report is going to the incorrect address please notify the Motor Carrier Division of any mailing address changes.

If you have any questions concerning this information, please contact me at 512-465-3500 or 512-465-3590.

Sincerely,

noted 1-24-02
John C. Doerfler

for: Lawrance R. Smith, Director
Motor Carrier Division

Enclosure

Over Axle Weight Tolerance Permit Report
for
WILLIAMSON County
December 15- December 28
2001

CX Transportation div TIC Unit	**4645 N Central Expwy**		**Dallas**	**TX**	**75205**
011219550172	1FUYDEDB8PP475888	R2DT17	TX		
011219550181	2HSFHALR2SC020112	R38602	TX		
011219550188	1HTGCN6R0NH432317	3NRL04	TX		
011219550189	1HTGCAAR6RH582101	3NRL06	TX		
Quality Grain L.P.	**BOX 780**		**ROGERS**	**TX**	**76569**
011220550131	1XP5D69X3RD326227	2AC226	TX		
011220550132	1XP5DB9X4MD305648	2AC225	TX		
011220550134	1XP5DR9X0PD326106	2AC227	TX		
Word, Dean, Company	**Box 310330**		**New Braunfels**	**TX**	**78131**
011221550262	1FUP2RYB9JP339487	2DP053	TX		

Over Axle Weight Tolerance Permit Report
for
WILLIAMSON County
December 01 - December 14
2001

BOTTLINGER GRAIN		**RT 1 BOX 74**		**HAMILTON**	**TX**	**76531**
	011212550185	1XP5DR9X3RD340410	2BF620	TX		
	011212550209	1XP5DR9X4RD336558	2BF622	TX		
	011212550210	1XP5DB9X0TD399252	2BF625	TX		
	011212550212	1XP5DB9X8UD399258	2BF627	TX		
	011212550214	1XP5DB9X4UD425516	2BF626	TX		
	011212550215	1XP5DB9X0SN357124	2BF624	TX		
	011212550217	1XP5DB9X2RN356647	2BF621	TX		
	011212550219	1XP5DB9X6UD425521	2DX257	TX		
Ben's Short Stop Inc		**3321 Hillcrest Dr**		**Waco**	**TX**	**76708**
	011213330029	1XPCD29X3JD254887	2CE793	TX		
CRENWELGE OIL CO.		**PO BOX 452**		**FREDERICKSBURG**	**TX**	**78624**
	011212550120	2HSFHCBR7RC080961	R1LW84	TX		
	011212550124	2HSFBDVR0FCA16696	R49601	TX		
	011212550131	2HSFBJXRXFCA13736	R1LW85	TX		
CX Transportation div TIC Unit		**4645 N Central Expwy**		**Dallas**	**TX**	**75205**
	011210550090	1FUYDDZB6TP546034	2CE967	TX		
DEANCO, INC.		**P. O. BOX 299**		**PINEHURST**	**TX**	**77362**
	011207880087	1NKWLB9X955672433	2CJ072	TX		
	011207880092	1M2AA18C0XW117330	2CJ073	TX		
Frank Smith Trucking		**PO Box 764**		**Marble Falls**	**TX**	**78654**
	011213550147	1fuydcyb6sh834379	r2sy94	TX		
GONZALES, RALPH TRUCKING INC.		***PO BOX 1121***		***EL CAMPO***	***TX***	**77437**
	011203880138	1XKAD69XXSS660098	2DZ608	TX		
HIBBS, ODEEN TRUCKING COMPANY		**PO BOX 14332**		**AUSTIN**	**TX**	**78761**
	011205880160	2HSFMAXROWC047868	2CZ046	TX		
	011205880162	2FUPFSEB3WA945551	2CZ056	TX		
	011205880164	4V1JDBPF3SN842529	2AK911	TX		
	011205880165	1XPFDB9X81D561758	2AB650	TX		
	011205880168	1XPFDU9X9XD500567	2CZ083	TX		
	011205880170	1XPFDU9X3XD500564	2CZ081	TX		
	011205880172	1XPFDU9X1XD500563	2CZ084	TX		
	011213330018	1XP5DB9X5TD381748	2AS250	TX		
Heritage Dedicated Services		**3220 Gholson Rd**		**Waco**	**TX**	**76705**
	011203880174	1FUYZSEB7TL846619	2CG341	TX		
	011203880177	*1FUPFSEBOWP947132*	2CE903	*TX*		
Jose Herrera		**8618 Shallow Ridge**		**San Antonio**	**TX**	**78239**
	011207880241	1XKAD69X1NJ572048	2AG696	TX		
MISSION PETROLEUM CARRIERS		**PO BOX 87788**		**HOUSTON**	**TX**	**77287**
	011207880036	2XKBD99X1SM655716	2BY891	TX		
	011207880039	1XKBD99X2SR685235	2BY892	TX		
MURPHY, WILLIAM P.		**P.O. BOX 8**		**CONVERSE**	**TX**	**78109**
	011204220397	1FVXJLBB8XHA71087	4ZML10	TX		
	011204220399	1M2P267C1YM050983	2AE493	TX		
	011204220400	1M2P270C11M056823	4DLT08	TX		

Over Axle Weight Tolerance Permit Report
for
WILLIAMSON County
December 01 - December 14
2001

Majestic Trucking	**4699 N Ih35**			**Georgetown**	**TX**	**78628**
011207880133	1FUYDCYB4RH872753	2DJ913		TX		
RAM CONSTRUCTION CO., LTD	***PO BOX 3595***			***TEMPLE***	***TX***	***76505***
011207880096	2FUYDCYB9NH525994	2CJ743		TX		
011207880105	1FUPDPYB3RH434129	2AD081		TX		
011207880112	12HSFHAMR5SC01543	2ED022		TX		
011207880119	1FUYDMCB2VP660463	2CE976		TX		
Ray Crain Trucking	**11410 Richland Rd**			**Coupland**	**TX**	**78615**
011203880187	1XP5DB9X8LD290795	2DK279		TX		
SHALLOW FORD CONSTRUCTION CO I	**700 N. General Bruce Dr.**			**TEMPLE**	**TX**	**76505**
011205880144	1M2P267Y8VM029135	TC6285		TX		
SHERROD SERVICES	**311 LCR 730**			**THORTON**	**TX**	**76687**
011212330113	2M2N27748J007336	2EH369		TX		
011212330114	1M2N187Y2KW026253	2EH370		TX		
STATEWIDE TRANSPORT, INC.	**P. O. BOX 791550**			**SAN ANTONIO**	**TX**	**78279**
011203880114	1XP5D89X3LD291451	2AG919		TX		
Socorro V. Pallares	**13220 Cherokee Rd**			**Sanger**	**TX**	**76266**
011203880191	1HSZJJSR2FHA40364	2AY408		TX		
TRIPLE JB TRANSPORTATION	**BOX 343**			**SANGER**	**TX**	**76266**
011203880143	1XKDDR9X3PJ583635	2AS019		TX		
TXI Transportation Co	**245 Ward Rd**			**Midlothian**	**TX**	**76065**
011207880062	1xp5db9x5sd357786	R39792		Tx		
011207880070	1XP5DB9X8SD357782	R39799		TX		

AGENDA ITEM 10

Consider approving to commission Michael V. Gomez as a non-paid Deputy Constable for Precinct #2.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve commission of Michael V. Gomez as a non-paid Deputy Constable for Precinct 2.
Vote: **5 - 0**

< Attachment >

Jim Wilson
Constable
Williamson County Precinct Two
350 Discovery Blvd, Ste. 205 • Cedar Park, Texas 78613
Phone 512-260-4270 • Fax 512-260-4275

January 22, 2002

Re: Non-paid Deputy Commissions

I am requesting the approval to commission Michael V. Gomez as a non-paid Deputy Constable.
Mr. Gomez is currently employed with Texas Department of Health and Human Services as a fraud investigator. Mr. Gomez has a Bachelor's Degree in Criminal Justice and is a certified Texas Peace Officer.

Approved 1-29-02
John C. Doerfler

Cordially,

Jim Wilson
Constable

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

AGENDA ITEM 11

Consider approving to commission Christopher J. Jakubowski as a non-paid Deputy Constable for Precinct 4.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve commission of Christopher J. Jakubowski as a non-paid Deputy Constable for Precinct 4.
Vote: **5 - 0**

< Attachment >

OFFICE OF CONSTABLE
MARTY RUBLE

Justice Precinct Four
County of Williamson
State of Texas

115 W. 6th St.
Taylor, Texas 76574
Office (512) 365-3491

January 23rd 2002

Jane

Please put the following on the Commissioners Consent Agenda:

Submit Christopher J. Jakubowski for the non-paid position of reserve Deputy Constable.

Thank you,

Mark Birchard
Chief Deputy Constable

approved 1-24-02
John C. Doyle

AGENDA ITEM 12

Consider approving Waiver of Penalty and Interest report as recommended by Tax Assessor.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve Waiver of Penalty and Interest report as recommended by the Tax Assessor/Collector.
Vote: **5 - 0**

< Attachment >

Deborah M. Hunt, CTA
Williamson County Tax Assessor/Collector
710 South Main Street, Suite 102
Georgetown, Texas 78626
(512) 943-1603
Fax (512) 943-1619

To: Members of the Commissioners Court

From: Deborah M. Hunt, CTA

Date: January 16, 2002

Re: Waiver of Penalty & Interest

In accordance with Section 33.011 of the Texas Property Tax Code, "The Governing Body of a taxing unit shall waive penalties and may provide for the waiver of interest if interest on a delinquent tax is an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency."

Account #	Name	P&I + Attorney	Description
R018982	Randolph Griffin	$46.36 + $30.26	Clerical error made during Taylor ISD tax sale by Linebarger, Goggan, Blair, Pena & Sampson before we began collections for Taylor ISD.
R350441	Dina & Ernest Macron	$338.93 + $296.81	Clerical error - Georgetown ISD mailed statement to prior owner instead of current owner.
TOTAL		$385.29 + $327.07	

Approved 1-29-02
John C. Doerfler

REGULAR AGENDA

AGENDA ITEM 13

Hear presentation of annual report from the Williamson County Historical Commission.

Irene Varan, President of the Williamson County Historical Commission, presented her annual report to the Texas Historical Commission to the court, and brought copies of the Williamson County Historical Commission's book on Williamson County that was published recently. She expressed concern about vandalism of historical markers within the county, and the cemetery that has been discovered near the Parmer Lane extension project. She gave the court a proposed list of appointments to replace two members of the board.

< Attachment >

TEXAS HISTORICAL COMMISSION
The State Agency for Historic Preservation

RICK PERRY, GOVERNOR
JOHN L. NAU, III, CHAIRMAN
F. LAWERENCE OAKS, EXECUTIVE DIRECTOR

COUNTY HISTORICAL COMMISSION
End of Year Report - 2001

This form is also available as a Word document, ready to be completed directly on your computer.
To request this version, please e-mail us at: *history@thc.state.tx.us*

This form will assist you in reporting your county historical commission (CHC) activities to the county commissioners court and will be utilized in preparing our reports to the Texas Historical Commission (THC) and the state legislature. If you have not already submitted a report to our office, please complete this form and return by February 28, 2002. Thank you.

Irene Varan — Name of CHC Chair
Williamson — County

1. How many members currently serve on the Commission? 26 plus 4 associate members
2. How many meetings did the Commission hold this year? 9

   In which communities were the meetings held? Georgetown
   Average attendance was 19
3. How many volunteer hours did the Commission members work this year? 6570
4. Does the Commission sponsor or work with young people in the county? Yes

   If yes, please describe or list such activities: Claire Maxwell spoke to Taylor Middle School students on the history of Taylor
   Ralph Love spoke to home school students on the history of Williamson County; Round Rock High School band students assisted in the cleanup of Shiloh Cemetery; Hazel & James Hood presented flag programs at Deepwood, Chisholm Trail, Thrall and Elgin Elementary Schools. Benold Middle School students assisted with a fundraiser.
5. Does the county provide funds in its budget for your Commission? ☒ Yes ☐ No
   If yes, how much was your allocation in fiscal year 2001? $1,000

   Does the county provide office space for your Commission ☒ Yes ☐ No
   If the county provides other operating help, please list:

   Repairs and maintenance of building exterior

6. Does the Commission have other sources of funding? ☒ Yes ☐ No

If yes, please briefly describe sources and amounts of such income: Contributions: $133; Special Projects: Books $5,882; Cemetery Maps $306; Videos $340; pioneer photos $24; Interest $991

7. What is the duration of your fiscal year (i.e., January-December, September-August, etc.)
January - December

8. Please check all that apply to your commission:

- ☒ participated in Distinguished Service Award activities in 2001
- ☒ one or more members attended the annual historic preservation conference in Austin
- ☐ one or more members attended a Regional Meeting conducted by the Texas Historical Commission
- ☐ member, Preservation Texas
- ☒ member, Texas Historical Foundation
- ☐ member, Texas Oral History Association
- ☐ member, National Trust for Historic Preservation
- ☐ member, American Association for State and Local History
- ☒ member, Texas Association of Museums
- ☐ Certified Local Government

9. Please check all areas of work in which your commission worked actively to promote historic preservation in the county:

- ☒ Historical marker(s)
- ☒ Historic cemeteries
- ☒ History museum(s)
- ☐ National Register designation
- ☐ Oral history
- ☒ Archives
- ☒ Served as advisor to commissioners court on matters related to history and preservation
- ☒ Assisted the commissioners court with the Texas Historic Courthouse Preservation Program (i.e., development of the master plan, preparation of the grant application, serving as an advocate for restoration of the county courthouse, etc.)
- ☐ Survey of architectural resources
- ☐ Protection of archeological resources
- ☒ Texas Archeological Stewardship Network
- ☒ Newsletter production
- ☐ Local newspaper column
- ☒ Local history publication
- ☒ Main Street Program

(continued on next page)

☒ Heritage tourism
☒ Texas Heritage Trails Program (formerly known as Texas Travel Trails Regional Program)
☒ Historic building rehabilitation
☒ Historical observances (check all that apply)
  ☒ County/City Birthdays ☐ National Preservation Week
  ☒ Texas Archeological Awareness Month ☐ Women's History Month
  ☒ Black History Month
  ☒ Other (please list) Taylor 125th Anniversary; Veteran's Day; Memorial Day

10. Provide a brief narrative description of the county historical commission's successes over the past year, as well as its not-so-successful activities (i.e., which of your goals for the year were met, and which were not met?)

Successes include significant progress toward restoration of our museum building. Funded by the county, a new roof, A/C and heating, elevator shaft, termite extermination and asbestos abatement were completed. Beginning in August, monthly exhibits of photos and memorabilia depicting historic summer activities, school days, archeology awareness and county veterans were displayed. However, our goal to find a docent was not realized.
4 members attended the Gault Site Archeolgy Field School, one of whom served as registrar.
Only 2 new applications for historical markers were completed, falling short of our goal of 5. 2 pending applications were approved, 4 marker dedications were held, and 2 historic cemetery designations were awarded.
Considerable progress was made on the restoration of the Palm House in Round Rock, while little was made on the Shotgun House in Georgetown.
Vandalism continues to be a problem. Of 5 markers reported missing this year, only one has been recovered.

11. The THC attempts to copy the CHC on correspondence regarding projects in the county. Do you find this practice helpful? ☒ Yes ☐ No
Were/are there any projects for which the CHC's input was not solicited? ☐ Yes ☒ No
If yes, please elaborate:

12. Please list any significant properties in your county that are currently threatened. If possible, provide an address and brief description of the threat.

Ganzert Cemetery located 2½ miles southeast of Round Rock on Gattis Road - endangered by construction of SH 45.

Surveyers working on the extension of Parmer Lane north of FM1431 have discovered evidence of burials at the southwest corner of the intersection of CR 272 and CR 178.

Washington Bower (Home of Adam Lawrence) Southeast of Taylor on FM 112 approximately 1 mile north of Lawrence Chapel Church and Cemetery. This 150 year old residence has been repeatedly vandalized, and in extreme disrepair.

100 year old Methodist parsonage at 401 W. Main in Round Rock will be razed to make way for city buildings.

13. Please list any significant properties (officially designated or not) that were damaged or destroyed by fire, wind, flooding, demolition, or other event.

14. Have any cellular telephone or other communications towers been constructed that adversely affect historic sites or districts? (The impact may be physical or visual.) ☐ Yes ☒ No
If yes, please elaborate:

15. Did members of your CHC participate in the THC's regional meeting in your area in 2001? If so, please provide a brief evaluation for us, including whether/how the meeting was helpful to you, and topics you'd like to see covered in future regional meetings.

None of our members were able to attend the meeting in Granbury due to the travel time involved.

16. How can the Texas Historical Commission be of greater assistance to you in carrying out your local preservation activities?

The Texas Historical Commission has responded promptly to our requests for assistance, and we would like to thank you for your cooperation.

In the immediate future we will be needing guidance in establishing our museum.

Short deadlines often make it difficult for us to participate in some projects.

Name of person completing this report: Irene Varan

Mailing Address: 716 S. Austin Ave, Georgetown, TX 78626

Daytime Phone: 512/996-8582 E-mail address: _____

County Historical Commission Home Page address on the Internet: _____

If the Texas Historical Commission staff can provide you with any additional information or assistance, please let us know (telephone 512/463-5853; e-mail *history@thc.state.tx.us*). Thank you.

Please return by February 28, 2002, to:

History Programs Division
Texas Historical Commission
P O Box 12276
Austin, Texas 78711

OR

FAX: 512/475-3122

SIGNED: _____
John Doerfler, County Judge
Williamson County

DATE: _____

AGENDA ITEM 14

Consider approving interlocal agreement with Capital Metro regarding construction of a portion of Lakeline Boulevard from the proposed intersection of Lakeline Boulevard and Lyndhurst Boulevard to the railroad crossing.

Road Bond Manager Mike Weaver addressed the court concerning this agenda item. He stated that Capital Metro personnel have decided that Capital Metro does not require an interlocal agreement for this project.

No action was taken on this agenda item.

AGENDA ITEM 15

Consider and adopt resolutions requesting the Texas Department of Transportation to waive the local match participation requirement on approved federal off-system bridge program projects within Williamson County in return for Williamson County performing equivalent match projects within Williamson County.

Road Bond Manager Mike Weaver addressed the court concerning this agenda item, stating that the resolutions will ask TxDOT to give the county credit for performing Williamson County bridge replacement projects.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To adopt a resolution requesting the Texas Department of Transportation to waive the local match participation requirement on approved federal off-system bridge program projects within Williamson County in return for Williamson County performing equivalent match projects within Williamson County.
Vote: **5 - 0**

< Attachment >

Resolution

The State of Texas }

} Know All Men By These Presents:

County of Williamson }

That on this, the 29th day of January, A. D. 2002, the Commissioners Court of Williamson County, Texas, met duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

John Doerfler, County Judge, Presiding
Mike Heiligenstein, Commissioner Precinct One, and
Greg Boatright, Commissioner Precinct Two, and
David Hays, Commissioner Precinct Three, and
Frankie Limmer, Commissioner Precinct Four

WHERE, among other matters, came up for consideration and adoption the following Resolution:

WHEREAS, Williamson County is planning to replace several drainage structures in the near future as part of its Road Bond Program, and

WHEREAS, the Texas Department of Transportation (TxDOT) also has several structures, not on state highway routes, within the County listed in their Off-System Bridge Program, and

WHEREAS, the Federal Off-System Bridge Program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, Williamson County, hereinafter referred to as the Local Government owns bridges at the locations listed below and such projects are currently listed in the approved Off-System Bridge Program as authorized by the Texas Transportation Commission Minute Order Number 108653 dated September 2001

	Estimated Construction Cost
CR 434 at Brushy Creek	$453,800
NBI Structure Number AA03-51-003	
CR 456 at Boggy Creek	$240,000
NBI Structure Number AA04-10-002	

CR 456 at Brushy Creek	$240,000
NBI Structure Number AA04-10-001	
CR 120 at Weir Branch	$160,000
NBI Structure Number AA02-70-001	
Thorndale Rd at Draw	$110,000
NBI Structure Number C006-40-001	
On E. 3rd at Bull Branch	$217,400
NBI Structure Number C007-40-001	
CR 436 at Berry Branch	$281,300
NBI Structure Number AA03-56-003	
Total	$1,702,500

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government; and

WHEREAS, Texas Administrative Code, Title 43, Section 15.55(d) (43 TAC Section 15.55(d)) provides that under specified conditions the 10 percent Local Government match fund participation requirement may be waived with agreement by the Local Government to perform, or cause to be performed, an equivalent dollar amount of structural improvement work on other deficient bridges or deficient mainlane cross-drainage structures within its jurisdiction, such a project of structural improvement work being referred to as an "equivalent-match project"; and

WHEREAS, the total estimated local match fund participation requirement on those seven (7) bridges on the approved Federal Off-System Bridge program is one hundred seventy thousand two hundred fifty dollars and no cents ($170,250), hereinafter referred to as the "participation-waived" projects, such participation requirement the Local Government proposes be waived and in return perform or cause to be performed equivalent-match projects for structural improvement work; and

WHEREAS, TAC rules, Section 15.52 describes the agreements to be executed between TxDOT and the County for projects that will use Federal and/or State funds and Section 15.52(8) allows for the County to request to let and manage construction contracts that will utilize Federal and/or State funds,

THEREFORE, BE IT RESOLVED that the Local Government perform, or cause to be performed, the following equivalent-match project(s) in return for waiver of the local match fund participation requirement on the approved Federal Off-System Bridge Program (participation-waived) project not yet awarded:

The Local Government proposes to replace the bridges at the following locations with new bridges designed to accommodate current legal loads:

	Estimated Construction Cost
CR 406 at Battleground Creek	$237,000
NBI Structure Number AA04-25-002	
CR 390 at No Name	$118,000
CR 351 at Donahue Creek	$130,000
CR 427 at Springbrook Creek	$120,000
Total	$605,000

FURTHER RESOLVED, that in receiving this waiver the Local Government acknowledges its obligation to conform with all conditions of 43 TAC Section 15.55(d); such conditions that include but are not restricted to the following:

1. The Local Government must be currently in compliance with load posting and closure regulations as defined in National Bridge Inspection Standards under US Code of Federal Regulations, Title 23, Section 650.303
2. The equivalent-match project work increases the load capacity of the existing bridge or other mainlane cross-drainage structure, or upgrades the structure to its original load capacity with a minimum upgrade to safely carry school bus loading if located on a school bus route.
3. In performing, or causing to be performed, the equivalent-match project(s), the Local Government assumes all responsibilities for engineering and construction, and complying with all applicable state and federal environmental regulations and permitting requirements for the structures being improved.
4. The work on the proposed equivalent-match project(s) has not begun and will not begin until the local match fund participation waiver approval process has been completed.
5. The Local Government will be allowed three years after the contract award of the participation-waived project to complete the structural improvement work on the equivalent-match project(s).
6. Should this waiver request be approved, an appropriate written agreement or amendment to a previously executed agreement will be executed between the State and Local Government.

And, the County requests accelerating the construction of all of these structures to completion as soon as possible, and

Further Resolved, that the County is currently designing a new bridge on CR 434 at Brushy Creek (NBI Structure Number AA03-51-003) and requests authority to let and manage the construction contract for the structure on CR 434 at Brushy Creek utilizing Federal and/or State Funds, and

Further Resolved, that County Judge John Doerfler be, and is hereby, authorized to sign this Resolution as the act and deed of Commissioners Court and to execute any and all necessary documents in connection with these projects.

The foregoing Resolution was lawfully moved by Commissioner Limmer, duly seconded by Judge Doerfler, and was then adopted by a vote of 5 voting for and 0 voting against. County Judge John C. Doerfler was duly authorized to sign said resolution as the act and deed of Commissioner's Court of Williamson County and of said County.

John C. Doerfler 1-24-02
John Doerfler, Williamson County Judge

Attest:

Nancy E. Rister
Nancy Rister, Williamson County Clerk

January 29, 2002

Texas Department of Transportation
Ms. Patricia L. Crews-Weight, P.E.
District Design Engineer
P.O. Drawer 15426
Austin, TX 78761-5426

Dear Ms. Crews-Weight:

Attached is a copy of a resolution passed by the Williamson County Commissioners Court committing to replace several bridges at no cost to the State and requesting that this cost be approved as "equivalent-match," as is allowed under TxDOT rules, TAC, Title 43, Section 15.5, for other bridges, "participation waived projects", in the District's Off-System Bridge Program. The bridges the County will be replacing are listed in the resolution along with a preliminary estimated construction cost. The bridges that we are aware of being authorized in the State's program are also listed in the resolution, along with the cost shown in the program. If there are other Williamson County bridges in your program that we are unaware of, please advise us, as we would like to have our equivalent-match approved for those as well.

The County proposes to go to contract with some of our bridges as soon as March, 2002, so your early approval of our equivalent-match projects is requested.

The County is also requesting in the resolution that the TxDOT Executive Director approve Williamson County to let and manage the construction of the bridge on CR 434 at Brushy Creek utilizing Federal and State funds as is allowed in TAC, Title 43, Section 15.52. We have a consulting firm beginning the design of the bridge at this location. We propose to finish the design at County expense and seek your funding only for construction. We currently project going to contract for this construction project in mid-2002. Therefore, we request your early addition of this structure to the State Transportation Improvement Plan (STIP).

In managing the construction utilizing Federal and State funds, the County commits to complying with Federal and State laws and TxDOT standards and specifications. And, we understand that you will review and approve the CR 434 plans, contract award and change orders. We will be sending written documentation of our contract letting process for your review and approval.

As for the other bridge locations listed in the State's program, the County requests that they be accelerated to construction as soon as possible. We would be willing to discuss the idea of our consultants assisting you with the design of these structures, if that would accelerate project completion.

Your early consideration and approval is appreciated.

Sincerely,

John C. Doerfler
Williamson County Judge

Attachment: Resolution

Cc: Commissioner Mike Heiligenstein, Precinct 1
Commissioner Greg Boatright, Precinct 2
Commissioner David Hays, Precinct 3
Commissioner Frankie Limmer, Precinct 4
Michael J. Weaver, Prime Strategies, Inc.
John Wagner, P.E. (TxDOT)
Mary L. Ralls, P.E. (TxDOT)
Jim Randall, P.E. (TxDOT)

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

FOR TxDOT USE ONLY

_____participation waiver approved

_____participation waived disapproved

_____

_____

_____

_____
William C. Garbade, P.E.
Austin District Engineer

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

AGENDA ITEM 16

Consider and adopt resolution supporting the County's request to the Texas Department of Transportation for the authorization of the US 79 expansion project from McNutt Creek (CR 110) to the Taylor Loop (Loop 427).

Moved: **Commissioner Limmer**
Seconded: **Commissioner Boatright**
Motion: To adopt a resolution supporting the County's request to the Texas Department of Transportation for the authorization of the US 79 expansion project from McNutt Creek (CR 110) to the Taylor Loop (Loop 427).
Vote: **5 - 0**

< Attachment >

THE STATE OF TEXAS :

: KNOW ALL MEN BY THESE PRESENTS

:

THE COUNTY OF WILLIAMSON

That on this, the 29th day of January, A.D., 2002, the Commissioners Court of Williamson County, Texas, met in duly called Session at the Courthouse in Georgetown, Texas, with the following members present:

John C. Doerfler, County Judge,

Mike Heiligenstein, Commissioner Precinct One,

Greg Boatright, Commissioner Precinct Two,

David Hays, Commissioner Precinct Three,

Frankie Limmer, Commissioner Precinct Four;

and at said meeting, among other business, the Court considered the following:

WHEREAS, the expansion of US 79 was identified in the Williamson County Multi-Corridor Transportation Plan as a priority project and identified in the County's successful November 2000 bond referendum; and

WHEREAS US 79 in Williamson County is a significant component of the Texas Trunk System, representing over 10% of the roadway in Texas; and

WHEREAS, Williamson County is the second-fastest growing county in Texas; and

WHEREAS, existing US 79 between McNutt Creek (CR 110) and the Taylor Loop (Loop 427) is an undivided 4-lane rural roadway; and

WHEREAS, US 79 in the project area is a dangerous roadway, with 860 accidents and 16

fatalities, at a cost of over $74 million, having occurring on US 79 from IH-35 to the Milam County Line from 1995 to 2000; and

WHEREAS, the Texas Department of Transportation Bryan, Tyler and Atlanta District Offices are currently pursuing expansion of US 79 to a 4-lane divided facility; and

WHEREAS, as part of Williamson County's right-of-way corridor preservation program, the County has adopted a traffic impact ordinance policy requiring municipalities to identify a method for right-of-way preservation for necessary improvements and minimize driveway access; and

WHEREAS, Williamson County is pursuing project development of facilities parallel to US 79, such as the Hutto Bypass project, that would provide additional east-west travel capacity and assist in alleviating traffic on US 79; and

WHEREAS, Williamson County has committed to provide all environmental and engineering documents, 50% of right-of-way costs, and 10% of utility relocation costs, totaling over 30% of projects costs; and

WHEREAS, the expansion of US 79 to a 4-lane divided facility would improve local and regional mobility, improve safety conditions, and generally support the Texas Department of Transportation's current and proposed policies regarding improved traffic flow operation and safety;

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONER'S COURT OF WILLIAMSON COUNTY, TEXAS, that the County requests that the Texas Transportation Commission authorize the expansion of US 79 from McNutt Creek (CR 110) to the Taylor Loop (Loop 427) and to proceed in the most feasible and economic manner with project development to include any necessary agreements, and to be programmed in Priority 2 of

Texas Department of Transportation's 2002 Unified Transportation Program.

The foregoing Resolution was duly moved by Commissioner Limmer and seconded by Commissioner Boatright, and was then adopted by a vote of 5 voting for and 0 voting against. County Judge John C. Doerfler was duly authorized to sign said resolution as the act and deed of Commissioner's Court of Williamson County and of said County.

John C. Doerfler 1-29-02

JOHN C. DOERFLER, County Judge

ATTEST:

Nancy E. Rister

NANCY RISTER, County Clerk

P:\Prime Strategies Data\Projects\WC-0155\US 79\US 79 Williamson County Resolution.wpd

AGENDA ITEM 17

Discuss and consider approving preliminary plat for Woods of Fountainwood, Phase 3.

Moved: **Commissioner Hays**
Seconded: **Commissioner Limmer**
Motion: To approve preliminary plat for Woods of Fountainwood, Phase 3.
Vote: **4 – 0. Commissioner Boatright was absent from the dais.**

AGENDA ITEM 18

Discuss and consider approving preliminary plat for Star Ranch.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve the preliminary plat for Star Ranch, ***subject to review by the County Engineer, the Road Bond Manager and the State, with the stipulation that if any problems arise involving SH 130, then it will be brought back to the court for further consideration, otherwise the plat will stand as approved.***
Vote: **5 - 0**

AGENDA ITEM 19

Consider approving suggested rate increases for Smith, Robertson, Elliott & Glen for road bond work.

Moved: **Commissioner Heiligenstein**
Seconded: **Commissioner Hays**
Motion: To approve the suggested rate increases for Smith, Robertson, Elliott & Glen for road bond work, with the exception that the rate for Craig Douglas will be $165.00/hour instead of the $180.00/hour requested by the firm.
Vote: **5 - 0**

< Attachment >

SMITH, ROBERTSON, ELLIOTT & GLEN, L.L.P.
ATTORNEYS AT LAW
1717 WEST SIXTH STREET, SUITE 350
AUSTIN, TEXAS 78703
(512) 225-5800
FAX (512) 225-5838

ALAN M. GLEN
PARTNER

DIRECT DIAL NUMBER:
(512) 225-5801
DIRECT FAX:
(512)225-5821
E-MAIL: aglen@sreglaw.com

January 16, 2002

Eugene D. Taylor, Esq.
Georgetown County Attorney
Courthouse Annex, Second Floor
405 Martin Luther King, Box 7
Georgetown, TX 78626

Re: Rate Adjustment

Dear Mr. Taylor:

Each year we evaluate our rates for possible adjustment. As you are aware, our rate schedule for Williamson County is significantly discounted from our customary rates. Based upon our review of the rates charged for Williamson County, we would like to propose a fairly minor adjustment. In light of his increased experience and familiarity with relevant matters, we propose increasing Thornton Wood's rate on Williamson County matters from $120/hr. to $140/hr. We propose leaving the partner level rates at $230/hr. Finally, Craig Douglas has become more and more involved in these matters and we propose his rate for 2002 at $180/hr. $165 jd

We believe that these rates are very competitive for the nature of the services provided, particularly in view of our policy of not charging for most in-house expenses such as fax, phone, hand deliveries, and postage. We do charge .10/page for in-house copies.

We hope these modest rate adjustments are acceptable to Williamson County, and would be glad to answer any questions you may have. We greatly appreciate the continuing opportunity to be of service to our favorite public entity.

Best regards,

Alan M. Glen

Approved 1-29-02
John C. Doerfler

AMG/jbm

SMITH, ROBERTSON, ELLIOTT & GLEN, L.L.P.
ATTORNEYS AT LAW

cc: The Honorable John C. Doerfler
Mr. Mike Weaver
Mr. George Power

AGENDA ITEM 20

Hear presentation of proposed road reconstruction schedule from Road and Bridge.

Road & Bridge Supervisor Greg Bergeron gave a report on the proposed road reconstruction schedule and requested that the commissioners inform him of any changes they want to make to the schedule.

< Attachment >

Unified Road System - Reconstruction Schedule

Revised 01/24/02

	County Road	Length & Width	Existing ROW	Additional ROW required	Type of Construction	Crew	Approx. Start Date	Approx. Comp. Date	ADT	Material Costs	ROW Costs	Approx. Labor & Equip. Costs	Total Estimate	Comments
1	458	11,434' x 22'	60'	None	Total	No. 1	11/5/01	1/18/02	360	$44,827.64	0			*All base there except for 2,500'. Have last P.O. for hauling rest of the base. Weather problems. Base for 458 from state materials on 290, 13,000 tons will be used. Need cost per ton of this base to complete estimate for hauling. Estimate is for paving only.*
2	401	4,460' x 22'	60'	None	Total	No. 2	11/8/01	1/14/02	220	$10,971.60	0			All the base is in place, needs to be set up to pave, weather permitting. May be ready earlier than 1/14/02. Cost of paving only.
3	Schwertner streets	900'x20'	40'	None	Total	No. 3	1/15/02	2/12/02		$4,714.00	0			Will by done by maintenance crew.
4	127	8,136' x 22'	50'	None	Total	No. 2	1/15/02	1/23/02		$20,014.56	0			All the base is in place, needs to be set up. Cost of paving only. (Drainage)
5	282	17,265'x22'				No. 2-w	1/17/02	3/15/02	850	$67,771.00		$44,000.00	$111,771.00	From FM 1869 to Travis County line.
6	124(156&157)	23,777'x22'	50'	None	Total	No. 1	1/19/02	3/30/02		$211,000.00		$104,000.00	$315,000.00	Hay's C.O.'s. (Partial)
7	245	17,015'x22'		Yes		No. 1-w	1/28/02	5/15/02	690	$178,091.00		$103,840.00	$281,931.00	From FM 970 to FM 2338. (Hay's C.O.)
8	414	10,345'x22'	50'	None	Total	No. 2	2/7/02	3/28/02	150	$114,000.00	0	$57,000.00	$171,000.00	Start when we can.
9	388	6,194'x22'	40'	None	Total	No.3	2/13/02	2/18/02		$15,287.24	0		$20,000.00	New box culverts have been constructed. (2 course only)
10	Thrall streets					No.3	2/20/02	3/30/02						Interlocal, will work when URS schedule allows.
11	284	9,440'x22'		Yes		No. 2-w	3/18/02	5/31/02	346	$55,906.00	$100,000.00	$52,800.00	$210,000.00	From CR 282.

	County Road	Length & Width	Existing ROW	Additional ROW required	Type of Construction	Crew	Approx. Start Date	Approx. Comp. Date	ADT	Material Costs	ROW Costs	Approx. Labor & Equip. Costs	Total Estimate	Comments
12	302	30,592'x22'	50'	For curves	Total	No. 1-4men	?/2/02	4/10/02		$23,262.60	$5,000.00			7,000 tons state base for this job. $20,000 from Com. Limmer's, $174,000.00 from Com. Hay's C.O. To make connect FM 1105 to FM 972.
13	110	10,771'x22'				No. 3	3/31/02	4/30/02	1,050				$120,000.00	From CR 109 to SH 79.
14	108	15,004'x22'	50'	None	Total	No. 2	4/1/02	6/3/02	490	$150,000.00	0			*Start when we can.*
15	347	3,340'x22'	50'	None		No.3	3/31/02		160					Under construction, part of it is base maintenance.
16	111	7,,264'x22'	50'	None	Total	No. 1	6/1/02	7/30/02	830	$64,408.60	0			
17	116	8,025'x22'					8/1/02	9/30/02	200				$96,000.00	In conjunction with CR 111.
18	339	8,140'x22'	50'	None	Total	No.3	5/1/02	6/1/02		$75,000.00				
19	234	12,500'x22'		Yes		No. 2-w	6/3/02	8/16/02	540				$150,000.00	
20	422	7,746'x22'	50'	None	Total	No. 2	6/4/02	6/28/02		$93,000.00	0			
21	104	17,593'x22'	50'	None	Total	No. 2	6/29/02	9/30/02	380	$149,000.00	0			Has two narrow bridges.
22	142	6,031'x22'	50'	None	Total	No. 1	8/30/02	9/30/02	460	$48,000.00	0			
23	Green Acres	6,431'x22'	50'	None	Total	No. 1	8/1/02	9/30/02		$48,000.00	0			
24	361	17,198'.22'	50'	None	Total	No. 1	10/1/02	12/1/02	104	$134,000.00	0			$100,000 from Com. Limmer's C.O.'s.
25	421	17,343'x22'	50'	None	Total	No. 2-4men	10/1/02	12/1/02	130	$203,000.00	0			

	County Road	Length & Width	Existing ROW	Additional ROW required	Type of Construction	Crew	Approx. Start Date	Approx. Comp. Date	ADT	Material Costs	ROW Costs	Approx. Labor & Equip. Costs	Total Estimate	Comments
26	367	5,600'x22'	50'	None		No.3-4 men	9/1/02	11/1/02	122					
27	134	11,706'x22'	60'	None	Total		2003			$122,000.00				
28	452	12,961'x22'	50'	None	Total				140	$139,000.00				
29	101						2003		340	$80,000.00				2 miles, per Com. Limmer, has ROW, will get figures.
30	410	7,440'x22'	50'	None			2003							
31	424	21,084'x22'	50'	None			2003		450					
32	368	12,867'x22'	50'	None			2003		120					
33	369	17,875'x22'	50'	None			2003		60					
34	220	15,375'x22'		Yes			ROW/02-04		160	$91,858.00		$57,200.00		From CR 226 to CR 223.
35	223	8,916'x22'					ROW/02-04		320	$53,196.00		$35,200.00		From CR 138 to Burnet County CR 211.
36	258	11,290'x22		Yes			ROW/02-04		450	$67,325.00		$44,000.00		From SH 183 east.
37	255	23,360'x22'		Yes			ROW/02-04		160	$142,935.00		$79,200.00		From CR 254 to SH 3405.
38	229	15,095'x22'		Yes			ROW/02-04		378	$90,386.00		$44,000.00		From SH 195 to CR 230.
39	228	16,870'x22'					ROW/02-04		700	$101,536.00		$57,200.00		From SH 195 to Bell County.
40	227	6,740'x22'		Yes			ROW/02-04		170	$40,691.00		$44,000.00		From SH 195 to Bell County.

	County Road	Length & Width	Existing ROW	Additional ROW required	Type of Construction	Crew	Approx. Start Date	Approx. Comp. Date	ADT	Material Costs	ROW Costs	Approx. Labor & Equip. Costs	Total Estimate	Comments
41	213	3,830'x22'					ROW/02-04		188	$23,036.00		$3,274.00		From SH 183 to SH 29.
42	106						2005		260					
43	176			Yes			2005		720					Park.
44	177						2005		200					Park.
45	179						2005		34					Park.

Asphalt Sealcoat

County Road		Length		Width
C.R. 311		13854		22
C.R. 145		9519		22
C.R. 261		4857		20
C.R. 147		3001		18
C.R. 147		7910		20
C.R. 146		10846		16
C.R. 234		18606		22
C.R. 106		10073		20
C.R. 105		14273		20
C.R. 303		7124		20
C.R. 194		1969		12
C.R. 155		8648		18
C.R. 237		10753		18
C.R. 310		5207		17
C.R. 216		3567		20
C.R. 314		16183		22
C.R. 133		3673		20
C.R. 132		15347		22
C.R. 366		6528		22
C.R. 100		34819		22-20
River Vue		788		20
Parkview Dr.		2153		20
Burr Oak		1122		20
	Total	39.93	Miles	
Mesquite		2421		20
C.R. 139		9506		22
C.R. 198		6021		22
C.R. 301		6256		22
C.R. 326		4608		19
C.R.355		4700		20
C.R. 354		17744		20
C.R. 387		9297		22-20
C.R. 450		12520		20
C.R.450		11064		22
C.R. 446		3402		20
Tucek Rd		3173		18
C.R. 166		3322		20
C.R. 270		8801		19
C.R. 271		9720		20
C.R. 280		4673		20
C.R. 276		3047		20
C.R. 278		3413		12
Ridgmar Rd		6712		20
	Total	24.7	Miles	

2001 - 2002
Williamson County Road and Bridge
Pavement Overlay List

County Road/Street	Length	Width	Tonnage	
Sevilla Dr.	2519	26	690	
La Paloma	2053	26	563	
Sequoia Spur	4804	26	1316	
Verde Ct.	282	23	68	
Azul Ct.	364	24	94	
Oro Ct.	341	24	87	
CR 180	4710	24	1193	
CR 175	11813	21	4800	
Great Oaks Dr.	7124	42	3153	
Jim Hogg Rd	7590	28	4000	
Adventure Ln.	1400	22	326	These roads have been completed.
Wildlife Run	1934	22	449	
Pocono Dr.	1895	32	640	
Chert Dr.	1420	26	389	
Chert Cv.	275	26	76	
Carmel Dr.	1964	26	539	
Valley View	1950	26	534	
Eagles Way	1435	26	394	
Quail Run	1153	24	291	
Oak Bend Dr.	2082	26	571	
CR 272	7224	20	1523	
Mathew Ln.	1165	20	290	
Lantana Dr.	2250	27	612	
Buckeye Ln.	1200	27	327	
Bluebonnet Dr.	1305	27	355	
West Bowman Dr.	2225	41	920	
CR 279	10610	22/28	5187	
CR 111	7264	22	3268	

RECORDERS MEMORANDUM
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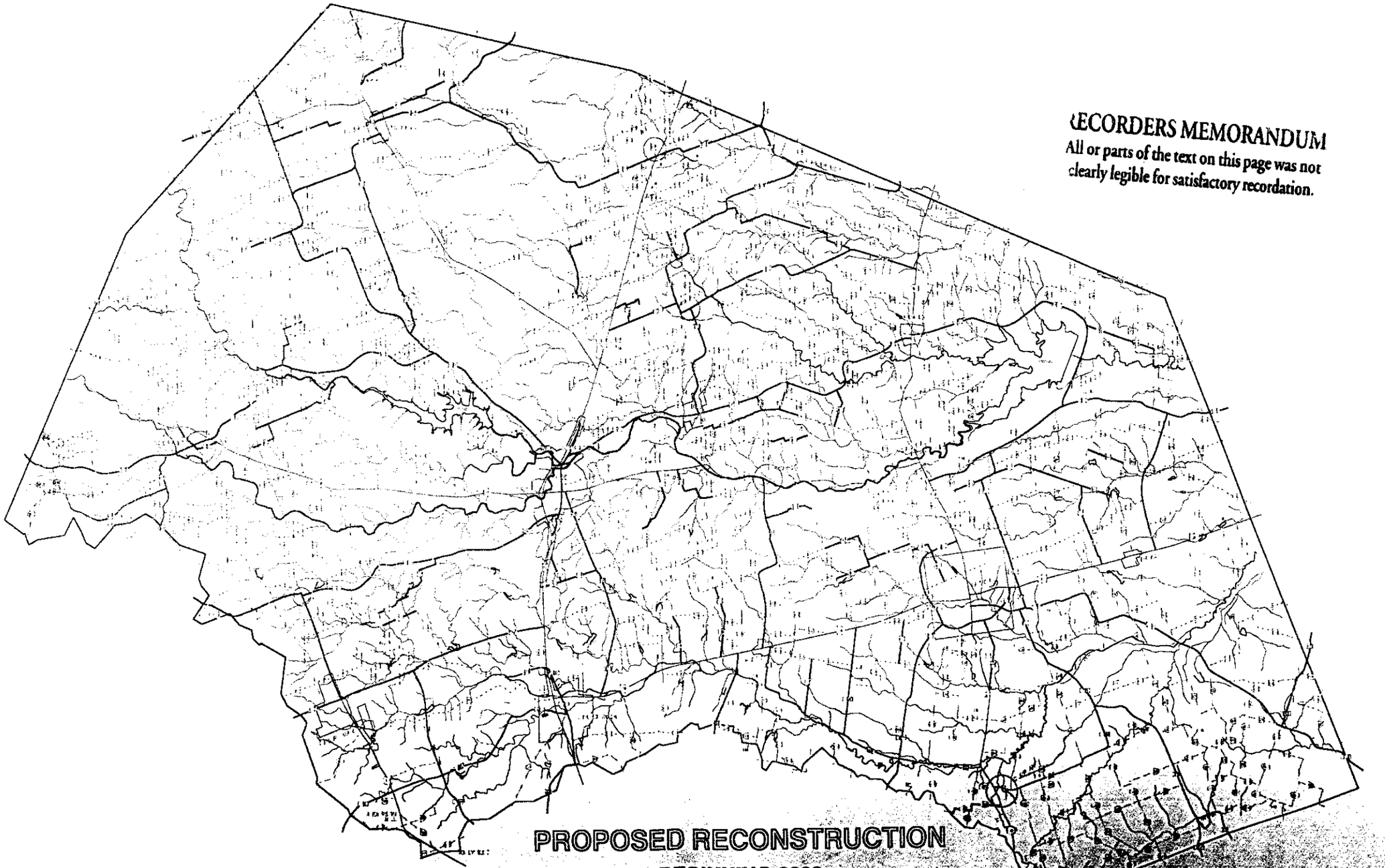

AGENDA ITEM 21

Discuss and take appropriate action on road bond program.

Road Bond Manager Mike Weaver discussed the Karst Conservation Program, Regional Mobility Authorities, and the effect of SB 324 on highway projects if voters adopt it in November 2002. He also discussed a possible bond sale in early May 2002 for road projects. He asked for direction from the court on SH 45 right-of-way issues.

Charlie Crossfield stated that some of the necessary right-of-way for SH 45 is located in Travis County, and that the County is unable to enter into a contract for right-of-way in Travis County.

Judge Doerfler suggested that the court seek a resolution to the problem with the City of Round Rock to purchase right-of-way for SH 45.

No action was taken on this agenda item.

A copy of the Williamson County Environmental Compliance Strategy is available for inspection in the County Clerk's office during regular business hours.

< Attachment >

Regional Mobility Authorities

Talking Points:

- RMAs will operate much like current toll authorities and will build, operate and maintain newly created toll projects.

- An RMA can receive grants or loans from TxDOT for turnpike construction, operation or maintenance. Surplus toll revenues can be used for other transportation purposes.

- The toll equity-financing tool allows roads to be built sooner to reduce congestion on existing roadways.

- Prior to the passage of Proposition 15, TxDOT could loan highway funds for toll projects but the Texas Constitution required that such funds be repaid. Foregoing repayment to the state for its share will make a toll project more viable because it will accelerate debt retirement and hasten the production of toll revenue.

- Toll equity will free up more state dollars for other projects since the state's share of a toll project will be less than if the project were funded by fuel tax dollars alone.

- In Texas, the heavily populated urban centers help fund infrastructure in the less populated rural areas.

- With escalating traffic demand in the urban areas, more dollars from an already limited funding source will be needed.

- If urban areas require more transportation funds, less will be available to meet the needs of the rural areas.

- By providing various funding options, such as toll roads, it will help stretch the limited transportation funds so more highway needs could be met in both urban and rural parts of the state.

- As an example – Let's say TxDOT is looking at a very congested stretch of roadway that desperately needs to be expanded. The cost, in round terms, is $1 billion. TxDOT would spend $1 billion, but stretched over 10 years at $100 million each year, and the project would suffer corrosive effects of inflation and 10 years of construction congestion.

- The local community, knowing the project would take 10 years, decides it would be willing to toll itself if the road could be delivered faster. The bond market says the road is "80 percent toll viable," which means that tolls could cover about 80 percent of the project's costs. The capital markets would be willing to finance the project if the remaining 20 percent could be secured.

- TxDOT steps in with the $200 million over a shorter period. Besides the obvious benefit of preserving $800 million for non-toll projects, the project will be delivered faster and don't forget, toll roads pay for their own maintenance, which results in tremendous savings over the life of a major project.

- Previously, any money provided by TxDOT for the construction of toll roads had to be repaid. Since Proposition 15 has passed, it is now up to a community to decide whether they want to go with a toll equity approach. If the community decides to form an RMA, they may not have to repay the portion the state funded for the construction of the toll road ($200 million dollars in this case).

KEN ODEN
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County of TRAVIS
STATE OF TEXAS

June 21, 2001

TRANSACTIONS DIVISIO
JOHN C. HILLE, JR.
BARBARA J. WILSON†
TAMARA A. ARMSTRONG†
MARY ETTA GERHARDT
JAMES M. CONNOLLY
PATRICIA GOODMAN
TENLEY A. ALDREDGE
TOM NUCKOLS
†MEMBER OF THE COLLEGE OF THE STATE BAR

The Honorable Ron Davis
Travis County Commissioner, Precinct 1
P.O. Box 1748
Austin, Texas 78767

RE: Implications of SB 342 on SH 130

Dear Commissioner Davis:

You have asked what scenarios for construction of SH 130 Travis County will face if SB 342 becomes law. As you know, SB 342 will become law only if on November 6, 2001, Texas voters adopt the constitutional amendment proposed by SJR 16.

How SB 342 Changes the Law

SB 342 changes existing law in three major ways:

1. Together with SJR 16 and SB4, it creates more flexibility to finance highway projects, including authorizing the Texas Transportation Commission (TxTC) to issue bonds and allowing TxTC to grant money for toll projects without requiring repayment.

2. It abolishes the Texas Transportation Authority's (TTA) board of directors. It is important to note that SB 342 does not abolish TTA's existing powers, functions, and authorities. Rather, it simply transfers them to TxTC.

3. It authorizes TxTC to create a new type of regional entity called a "regional mobility authority."

With these changes, there are now three different entities that could participate in the SH 130 project: TxTC, a regional mobility authority, and a regional tollway authority. Given

the magnitude of the SH 130 project, it is virtually certain that TxTC will participate in a major way. Therefore, as a practical matter, the main issue is whether TxTC will partner with a regional authority and what type of authority that will be. Discussion of the three probable scenarios follows.

TxTC Undertakes SH 130 Itself

Currently, the state (in the form of the TTA board) has almost complete control over SH 130. If SB 342 becomes law, the members of TxTC assume control of SH 130 from the members of the TTA board. Hence, the main change would simply be that a different group of people would be making the decisions. To the extent that the TTA board members were more attuned than the TxTC members to Travis County's desires for SH 130, this would be a diminution of local influence over the project. If the TTA board is abolished, TxTC may choose simply to step into the TTA board's shoes and continue SH 130 as an exclusively state project with no participation from a regional authority. Of the three scenarios, this one offers the least amount of local influence over SH 130.

TxTC Partners with a Regional Mobility Authority

Under new §361.003, TEX. TRANS. CODE ANN., TxTC will be able to create a regional mobility authority (RMA) for a specific project. If TxTC does not want to retain exclusive state control, they can form an RMA and allow it to have some control over SH 130. Two key aspects of an RMA are its membership and how it finances projects.

> Membership—The commissioners courts of the counties in which the RMA's project is located appoint the members of the RMA board, except that the governor appoints the chair of the RMA board.
>
> Financing—An RMA has no independent authority to issue bonds or otherwise finance a project. Its only authority is to receive grants or loans from TxTC and, once a toll project is generating surplus toll revenue, to decide how that revenue is spent. Even then, the RMA's decisions on spending the revenue must comply with TxTC rules.

The RMA board is dominated by locally-appointed members who would be attuned to local concerns. However, it is heavily dependent on and subject to control by TxTC. Therefore, an RMA is best described as a vehicle by which the state transfers some control over a project to a locally-dominated board, but reserves much of the control for itself.

Exactly what aspects of SH 130 an RMA would control is completely up to TxTC. Since SB 342 allows an RMA to use surplus toll revenues from one project to finance other projects, it is reasonable to infer that the Texas Legislature desires that TxTC create RMAs to keep surplus toll revenues in the region where they were generated. SB 342 also gives RMAs purchasing and contractual authority, so it can also be inferred that TxTC should allow an RMA to control the construction of its projects.

TxTC Partners with a Regional Tollway Authority

The third scenario involves a regional tollway authority (RTA) under Chapter 366, TEX. TRANS. CODE ANN. A county with a population over 300,000 and one or more adjoining counties can initiate an RTA simply by adopting commissioners court resolutions. The RTA is then created upon approval by TxTC. Again, two key aspects of this type of regional authority are its membership and how it finances projects.

> Membership—The governor appoints three members of the RTA board and the commissioners court of each county appoints one member. The members choose which of them chairs the board.
>
> Financing—RTAs have authority to issue their own revenue bonds for a toll project.

RTAs and RMAs are similar in that their boards are made up heavily of appointees of the commissioners courts of the member counties. They differ in that an RTA's ability to issue bonds makes it more independent from TxTC than an RMA. Again, given SH 130's magnitude, an RTA probably cannot finance and construct SH 130 without significant participation by TxTC. However, if TxTC is to have a regional partner, an RTA not only can perform any function an RMA could, it has greater ability to go beyond that and fill gaps that an RMA can't. For example, an RTA might be able to independently finance and construct segments of SH 130 that TxTC is either unable or unwilling to undertake in the near future.

Discussion

Ultimately, TxTC completely controls which entity or entities participate in SH 130. If TxTC wants to retain exclusive state control, they can simply refuse to allow creation of either an RTA or an RMA. If TxTC wants some, but not much, local control over SH 130, they can create an RMA themselves but refuse to consent to creation of an RTA. Finally, if TxTC is amenable to a greater degree of local control over SH 130, they can allow Travis County and an adjoining county to create an RTA, either now or in the future.

The counties affected by SH 130 have very limited legal means of influencing TxTC's decision. By creating an RTA now, Travis County and one or more adjoining counties can preempt TxTC from pursuing the RMA option later. Under §361.003(d), TEX. TRANS. CODE ANN., if a county is within an RTA as of November 6, 2001, TxTC is prohibited from creating an RMA for a project in that county.

Gaining the required TxTC approval of an RTA by that date, if at all, would be difficult. Under 43 TEX. ADMIN. CODE Chapter 27, TxTC will not approve creation of an RTA unless (1) a feasibility study is done, and (2) every municipality and metropolitan planning organization in the counties forming the RTA adopt a resolution in support. Moreover, TxTC's main criterion for approval is that the RTA not duplicate state efforts

and be able to complete the project faster than the state, which is something TxTC would be reluctant to admit. Finally, TxTC may be unwilling to approve creation of an RTA simply because the mere existence of an RTAs' independent financing authority over SH 130 might complicate TxTC's own issuance of bonds for SH 130. On the other hand, TxTC might be willing to allow an RTA to be created to finance and build only those segments of SH 130 that TxTC is unable to undertake itself in the foreseeable future.

Please let me know if you need more information. I am available at your convenience if you have any questions or would like to discuss this matter.

Sincerely,

/s/

Tom Nuckols
Assistant County Attorney

cc: Commissioners Court

COMPARISON OF "REGIONAL MOBILITY AUTHORITIES" AND "REGIONAL TOLLWAY AUTHORITIES"

	REGIONAL MOBILITY AUTHORITIES (RMA)	REGIONAL TOLLWAY AUTHORITIES (RTA)
Creation	Created by order of the Texas Transportation Commission (TxTC) "for the purposes of conctructing, maintaining, and operating a turnpike project." TxTC cannot create an RMA in a county that was part of an RTA on November 6, 2001.	Created by resolution of the Commissioners Courts of: • a county over 300,000 population; and • one or more adjoining county. Creation is subject to TxTC approval, which requires: • A feasibility study • Resolutions of support from the MPO and each municipality in the member counties • A finding by TxTC that the RTA can construct the turnpike faster than TxDOT could and will not duplicate or conflict with TxDOT efforts.

Geographic Area	Each county in which the turnpike is proposed to be located is automatically included in the RMA.	At a minimum, the county over 300,000 and one adjoining county. An RTA can extend its turnpike into other counties that are not members of the RTA.
Membership of Board	Board consists of "representatives of political subdivisions." Governor appoints one member, who chairs the board. Commissioners Court of each member county where turnpike is <u>proposed</u> appoints one member. In addition, each county containing an <u>operating</u> turnpike appoints additional members as follows: • If only one county, county appoints two additional members. • If two counties, each appoints one additional member. • If three or more counties, each appoints two additional members.	Governor appoints three members. Commissioners Court of each member county appoints one member. Board members choose the chair from amongst themselves.

Functions & Powers	May purchase and contract. Subject to TxTC rules, may spend surplus toll revenue on other "transportation projects," including toll or toll-free projects of cities, counties, and other governmental entities. With TxTC approval , may convert part of the free state highway system into a turnpike. May accept grants or loans from TxTC.	May purchase and contract. Without state supervision, may spend surplus toll revenue on other turnpikes. With TxTC and the Governor's approval, may convert part of the free state highway system into a turnpike. May accept grants or loans from TxTC. May issue revenue bonds. May condemn land.

[Go To Best Hit]

AN ACT

relating to the participation of the Texas Department of Transportation in the acquisition, construction, maintenance, and operation of toll facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 222.103, Transportation Code, is amended to read as follows:

Sec. 222.103. COST PARTICIPATION. (a) The department may participate, by spending money from any available source, in the cost of the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission. The commission:

(1) may require the repayment of any money spent by the department for the cost of a toll facility of a public entity; and

(2) shall require the repayment of any money spent by the department for the cost of a toll facility of a private entity[~~, including requirements for repayment~~].

(b) Money repaid as required by the commission shall be deposited to the credit of the fund from which the expenditure was made. Money deposited as required by this section is exempt from the application of Section 403.095, **Government** Code.

(c) A bond or other debt obligation issued by a public or private entity to finance the cost of a toll facility in which the department participates is an obligation of the issuing entity and is not an obligation of this state.

(d) [~~An entity receiving cost participation from the department under this section is a successor agency to the Texas Turnpike Authority for the purposes of Section 52-b, Article III, Texas Constitution.~~]

[~~(c)~~] On the request of a member of the legislature, the department shall provide the member a status report on all highway construction projects, by legislative district, that are under contract or awaiting funding. The report shall include projects that would be funded in any manner by state, federal, or toll funds.

(e) [~~(d)~~] On the request of a member of the legislature, not later than the 90th day before the date a loan is granted or an expenditure is made by the department for a project under this section, the department shall notify each member of the legislature that represents any part of the area affected by the project of the status of the project and how any other project in any other district would be affected.

(f) This section applies to any participation by the department in the cost of a project under Chapter 284, 361, or 366.

(g) The commission shall adopt rules to implement Subsection (a).

(h) Money granted by the department each federal fiscal year under this section may not exceed 30 percent of the obligation **authority** under the federal-aid highway program that is distributed to this state in that year.

(i) Any project that uses money that is granted or loaned from constitutionally dedicated funds for the construction or maintenance of a project must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder.

(j) Notwithstanding Subsection (i), the Texas Turnpike **Authority** division of the department, or a successor **agency**, may enter into exclusive development agreements on four projects before March 1, 2004. This subsection expires March 1, 2004.

SECTION 2. Subchapter A, Chapter 361, Transportation Code, is amended by adding Sections 361.003 and 361.005 to read as follows:

Sec. 361.003. **REGIONAL MOBILITY AUTHORITY.** (a) The commission by order may authorize the creation of a **regional mobility authority** for the purposes of constructing, maintaining, and operating a turnpike project in a **region** of this state.

(b) The governing body of a **regional mobility authority** is a

board of directors consisting of representatives of political subdivisions in each county in which a turnpike project is proposed to be located. The commissioners court of each county of the **authority** shall appoint two directors to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board.

(c) The commissioners court of each county of the **authority** that contains an operating turnpike project shall appoint additional directors, as follows:

(1) if only one county of the **authority** contains an operating turnpike project, the commissioners court of that county shall appoint two additional directors;

(2) if two counties of the **authority** contain an operating turnpike project, the commissioners court of each county shall each appoint one additional director; and

(3) if more than two counties of the **authority** contain an operating turnpike project, the commissioners court of each county shall each appoint two additional directors.

(d) A **regional mobility authority** may not construct, maintain, or operate a turnpike project in a county that, on November 6, 2001:

(1) was part of a **regional** tollway **authority**; or

(2) operated a project under Chapter 284.

(e) A **regional mobility authority**:

(1) is a political subdivision of this state for purposes of Chapter 101, Civil Practice and Remedies Code;

(2) is subject to Chapter 552, **Government** Code;

(3) is a state governmental body for purposes of Chapter 551, **Government** Code;

(4) has the powers and duties of a county under Subchapter C, Chapter 262, Local **Government** Code, other than Section 262.029 of that subchapter and excepting contracts subject to Section 361.231; and

(5) is a local **government** for purposes of Subchapters D and F, Chapter 271, Local **Government** Code.

(f) The commission may grant or loan funds for the construction, maintenance, or operation of a turnpike project under this section in accordance with the provisions of this chapter or other law.

(g) Each year, if a **regional mobility authority** determines that it has surplus revenue from turnpike projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the **region** in accordance with Subsection (h), or deposit the surplus revenue to the credit of the Texas **Mobility** Fund.

(h) Consistent with other law and commission rule, and in accordance with Subsection (g), a **regional mobility authority** may spend surplus revenue on other transportation projects by:

(1) assisting in the financing of a toll or toll-free transportation project of a governmental entity; or

(2) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to a governmental entity if:

(A) the governmental entity authorizes the **regional mobility authority** to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project upon its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

(i) The commission by order may convert a segment of the free state highway system to a turnpike project and transfer that segment to a **regional mobility authority** if:

(1) the commission determines that the proposed transfer is an integral part of the **region's** overall plan to improve **mobility** in the **region**; and

(2) the **regional mobility authority** agrees to assume all liability and responsibility for the maintenance and operation of the turnpike project on its transfer.

(j) To the extent of a conflict between this section and Section 361.189, this section prevails.

(k) In this section:

(1) "Governmental entity" includes a municipality, county, the department, or other public entity authorized to construct, maintain, and operate a transportation project within the **region** of a **regional mobility authority**.

(2) "Surplus revenue" means toll revenue that exceeds the **regional mobility authority's** debt service requirements, coverage requirements of any bond indenture, costs of operation and maintenance, cost of repair, expansion or improvement of a turnpike project, and reserves and reserve funds maintained by the **regional mobility authority**.

(3) "Transportation project" includes a project or type of project described by commission rule.

(1) The commission shall adopt rules to implement this section.

Sec. 361.005. TRANSFER OF BOARD'S POWERS AND DUTIES. (a) The powers and duties of the board under this chapter or other law are transferred to the commission.

(b) A reference in law to the board is a reference to the commission.

SECTION 3. Subsection (b), Section 361.184, Transportation Code, is amended to read as follows:

(b) The board may transfer, or direct the **authority** to transfer, into the project revolving fund money from any permissible source, including:

(1) money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project;

(2) money received under Subchapter I or from a transfer of a turnpike project under Subchapter H;

(3) money received [~~advances~~] from the state highway fund [~~if the advances are repaid as required by Section 52-b, Article III, Texas Constitution~~]; and

(4) contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

SECTION 4. Section 361.191, Transportation Code, is amended to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY DEPARTMENT OF TRANSPORTATION. (a) The Texas Department of Transportation may provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project by the **authority**. The department may require the **authority** to repay money provided under this section from toll revenue or other sources on terms established by the commission.

(b) Money repaid as required by the department shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, **Government** Code. [~~If money from the state highway fund is spent under this section, the fund shall be repaid from tolls or other turnpike revenue.~~]

SECTION 5. Subsection (b), Section 366.174, Transportation Code, is amended to read as follows:

(b) An **authority** may transfer into its revolving fund money from any permissible source, including:

(1) money from a turnpike project if the transfer does not diminish the money available for the project or the system, if any, of which it is a part to less than an amount required to be retained by the bond proceedings pertaining to the project or system;

(2) money received by the **authority** from any source and not otherwise committed, including money from the transfer of a turnpike project or system or sale of **authority** assets;

(3) money received from the state highway fund [~~advances authorized under Section 52-b, Article III, Texas Constitution~~]; and

(4) contributions, loans, grants, or assistance from the United States, another state, a political subdivision of this state, a foreign governmental entity, including the United Mexican

States or a state of the United Mexican States, a local governmental entity, any private enterprise, or any person.

SECTION 6. Subsection (c), Section 366.301, Transportation Code, is amended to read as follows:

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department may require money contributed by the commission or department [~~Money from the state highway fund spent~~] under this section to [~~must~~] be repaid from tolls or other revenue of the turnpike project or system on which the money [~~from the state highway fund~~] was spent [~~expended~~]. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, **Government** Code.

SECTION 7. The following sections of the Transportation Code are repealed:

(1) Subsections (b) through (e), Section 361.031;

(2) Subsection (g), Section 361.031;

(3) Sections 361.032 through 361.037; and

(4) Sections 362.004 and 362.005.

SECTION 8. (a) Section 222.103, Transportation Code, as amended by this Act, applies only to cost participation by the Texas Department of Transportation in the acquisition, construction, maintenance, or operation of a toll facility that occurs on or after the effective date of this Act. Cost participation by the Texas Department of Transportation in the acquisition, construction, maintenance, or operation of a toll facility under Section 222.103, Transportation Code, that occurred before the effective date of this Act is governed by Section 222.103 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Subsection (b), Section 361.184, Transportation Code, as amended by this Act, applies only to a transfer of money from the state highway fund by or at the direction of the board of directors of the Texas Turnpike **Authority** division of the Texas Department of Transportation under Section 361.184, Transportation Code, that occurs on or after the effective date of this Act. A transfer of money from the state highway fund under Section 361.184, Transportation Code, that occurred before the effective date of this Act is governed by Section 361.184 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Section 361.191, Transportation Code, as amended by this Act, applies only to an expenditure of money for the acquisition, construction, maintenance, or operation of a turnpike project that is provided by the Texas Department of Transportation under that section on or after the effective date of this Act. An expenditure of money by the Texas Department of Transportation under Section 361.191, Transportation Code, that was provided before the effective date of this Act is governed by Section 361.191 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Subsection (b), Section 366.174, Transportation Code, as amended by this Act, applies only to the transfer of money received from the state highway fund by a **regional** tollway **authority** to the **authority's** revolving fund under Section 366.174 of that code on or after the effective date of this Act. A transfer of money to the revolving fund of the **authority** under Section 366.174, Transportation Code, that occurred before the effective date of this Act is governed by Section 366.174 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Subsection (c), Section 366.301, Transportation Code, as amended by this Act, applies only to an obligation or expense

incurred by the Texas Transportation Commission or the Texas Department of Transportation under Section 366.301 of that code on or after the effective date of this Act. An obligation or expense incurred by the Texas Transportation Commission or the Texas Department of Transportation under Section 366.301, Transportation Code, imposed before the effective date of this Act is governed by Section 366.301 of that code, including any requirement of repayment, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. (a) This Act takes effect:

(1) on the date on which the constitutional amendment proposed by S.J.R. No. 16, 77th Legislature, Regular Session, 2001, takes effect; and

(2) only if S.B. No. 4, 77th Legislature, Regular Session, 2001, is enacted and becomes law.

(b) If the constitutional amendment proposed by S.J.R. No. 16 is not approved by the voters, or if S.B. No. 4 does not become law, this Act has no effect.

SECTION 10. (a) On the effective date of this Act, the board of directors of the Texas Turnpike **Authority** division of the Texas Department of Transportation is abolished. On that date, all powers, duties, obligations, rights, contracts, leases, records, employees, and real or personal property of the board are transferred to the Texas Transportation Commission. Unspent and unobligated appropriations and other funds under the control of the board shall be transferred to the Texas Transportation Commission. Before that date, the board with the agreement of the commission may transfer any records, employees, or real or personal property of the board to the commission in preparation for the transfer provided for in this section.

(b) The abolishment of the board of directors of the Texas Turnpike **Authority** division of the Texas Department of Transportation does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the board.

(c) All rules, policies, procedures, and decisions of the board of directors of the Texas Turnpike **Authority** division of the Texas Department of Transportation are continued in effect as rules, policies, procedures, and decisions of the Texas Transportation Commission until superseded by a rule or other appropriate action of the commission.

(d) Any action or proceeding before the board of directors of the Texas Turnpike **Authority** division of the Texas Department of Transportation is transferred without change in status to the Texas Transportation Commission, and the commission assumes, without a change in status, the position of the board in any action or proceeding to which the board is a party.

(e) If S.B. No. 4, 77th Legislature, Regular Session, 2001, is enacted and becomes law, all unspent and unobligated appropriations and other funds transferred to the Texas Transportation Commission under Subsection (a) of this section shall be transferred to the Texas **Mobility** Fund on the effective date of S.B. No. 4.

S.B. No. 342

President of the Senate Speaker of the House

I hereby certify that S.B. No. 342 passed the Senate on March 1, 2001, by a viva-voce vote; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 27, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 342 passed the House, with amendments, on May 18, 2001, by a non-record vote; May 22, 2001,

House granted request of the Senate for appointment of Conference Committee; May 27, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

AGENDA ITEM 22

Hold public hearing regarding the County's submission of an application to Texas Parks and Wildlife for the proposed Berry Springs County Park and Preserve and the impact of the flood plain on the proposed improvement.

Judge Doerfler announced the public hearing open at 10:05 a.m. on Tuesday, January 29, 2002.

Margaret Hardin, a grant writer with Langford Community Management Services, addressed the court concerning the submission of the grant application. She stated that Texas Parks and Wildlife requires a public hearing on proposed projects that are funded by state grants.

No one from the public addressed the court concerning the project.

Judge Doerfler announced the public hearing closed at 10:08 a.m. on Tuesday, January 29, 2002.

AGENDA ITEM 23

Consider approving resolution to authorize grant application to Texas Parks & Wildlife for development of Berry Springs County Park and Preserve.

Moved: **Commissioner Hays**
Seconded: **Commissioner Heiligenstein**
Motion: To approve a resolution to authorize grant application to Texas Parks & Wildlife for development of Berry Springs County Park and Preserve.
Vote: **5 - 0**

< Attachment >

RESOLUTION AUTHORIZING APPLICATION

TEXAS RECREATION & PARKS ACCOUNT PROGRAM

(REVISED 9/94)

A RESOLUTION OF WILLIAMSON COUNTY, TEXAS HEREINAFTER REFERRED TO AS "APPLICANT", DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE "APPLICANT" IN DEALING WITH THE TEXAS PARKS & WILDLIFE DEPARTMENT, HEREINAFTER REFERRED TO AS "DEPARTMENT", FOR THE PURPOSE OF PARTICIPATING IN THE TEXAS RECREATION & PARKS ACCOUNT GRANT PROGRAM, HEREINAFTER REFERRED TO AS THE "PROGRAM"; CERTIFYING THAT THE "APPLICANT" IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE "APPLICANT" MATCHING SHARE IS READILY AVAILABLE; AND DEDICATING THE PROPOSED SITE FOR PERMANENT PUBLIC PARK AND RECREATIONAL USES.

WHEREAS, the Texas Legislature has approved the "Program" (Section 24 of the Parks & Wildlife Code) for the purposed of allowing the political subdivisions of the State of Texas to participate in the Program; and

WHEREAS, the "Applicant" is fully eligible to receive assistance under the "Program"; and

WHEREAS, the "Applicant" is desirous of authorizing an official to represent and act for the "Applicant" in dealing with the "Department" concerning the "Program";

BE IT RESOLVED BY THE "APPLICANT"

SECTION 1: That the "Applicant" hereby certifies that they are eligible to receive assistance under the "Program".

SECTION 2: That the "Applicant" hereby certifies that the matching share for this application is readily available at this time.

SECTION 3: That the "Applicant" hereby authorizes and directs its County Judge to act for the "Applicant" in dealing with the "Department" for the purpose of the "Program", and John C. Doerfler is hereby officially designated as the representative in this regard.

SECTION 4: The "Applicant" hereby specifically authorizes the official to make application to the "Department" concerning the site to be known as "Berry Springs County Park and Preserve" in Williamson County for use as a park site. That "Berry Springs County Park and Preserve" is hereby dedicated (or will be dedicated upon completion or the proposed acquisition) for public park and recreation purposes in perpetuity.

Introduced, read and passed by the affirmation vote of the "Applicant" on this 29th day of January, 2002.

John C. Doerfler 1-29-02

John C. Doerfler, County Judge
Williamson County

ATTEST:

Nancy E. Rister

Nancy E. Rister, County Clerk
Williamson County

ASSURANCE OF ELIGIBILITY

FOR USING SPONSOR/PUBLICLY-OWNED LAND AS THE LOCAL MATCHING SHARE

ON BEHALF OF WILLIAMSON COUNTY, I HEREBY CERTIFY THAT ALL PROPERTY DESCRIBED BELOW HAS NEVER BEEN DEDICATED, PLATTED, MANAGED OR ACQUIRED FOR PUBLIC PARK OR RECREATION USE, AND THAT SAID PROPERTY IS ELIGIBLE TO SERVE AS THE GRANT MATCHING SHARE FOR BERRY SPRINGS COUNTY PARK AND PRESERVE, PURSUANT TO TEXAS RECREATION & PARKS ACCOUNT PROGRAM GUIDELINES.

126.185 acres of a tract of 210.5140 acres of land, more or less, out of the John Berry Survey, Abstract No. 51, in Williamson County, Texas, more particularly described by metes and bounds on the attached Exhibit A, Tract II. This land is located east of Interstate Highway 35 and west of County Road 152, north of the City of Georgetown.

AS THE OFFICIAL REPRESENTATIVE OF THE PROJECT SPONSOR, I FULLY UNDERSTAND THAT THE FALSE CERTIFICATION OF SAID ASSURANCE WILL CAUSE THE AFOREMENTIONED PROJECT TO BE WITHDRAWN FROM CONSIDERATION, AND THAT FUTURE ELIGIBILITY FOR GRANT CONSIDERATION MAY BE JEOPARDIZED.

John C. Doerfler

Signature of Official Authorized in Resolution

John C. Doerfler, County Judge

Type or Print Name and Title

1-29-02

Date

AGENDA ITEM 24

Consider approving resolution to prevent mining and drilling on county property being utilized for Texas Parks & Wildlife park development projects.

Moved: **Commissioner Hays**
Seconded: **Judge Doerfler**
Motion: To approve a resolution to prevent mining and drilling on county property being utilized for Texas Parks & Wildlife park development projects, but to include wording that the County would only drill wells that would be necessary for park purposes.
Vote: **4 – 0. Commissioner Limmer was absent from the dais.**

< Attachment >

RESOLUTION NO.

A RESOLUTION OF WILLIAMSON COUNTY, TEXAS, RESOLVING TO PREVENT MINING AND DRILLING ON COUNTY PROPERTY BEING UTILIZED FOR A TEXAS PARKS AND WILDLIFE PARK DEVELOPMENT PROJECT.

WHEREAS, Williamson County is applying to the Texas Parks and Wildlife Department for a park development grant project located within the county; and

WHEREAS, the Texas Parks and Wildlife Department grant program requires assurances that mining and drilling will not take place on property utilized for park development purposes;

NOW THEREFORE BE IT RESOLVED that the Commissioners' Court of Williamson County declares and determines that no mining or drilling will take place in perpetuity on county park land except for water well drilling for park use only, if Texas Parks and Wildlife grant funds are utilized for its development.

PASSED AND APPROVED this 29th day of January, 2002.

John C. Doerfler 1-29-02
John C. Doerfler, County Judge
Williamson County, Texas

ATTEST:

Nancy E. Rister
Nancy E. Rister, County Clerk
Williamson County, Texas

AGENDA ITEM 25

Hear presentation on Berry Springs County Park and Preserve master plan from Hall/Bargainer Inc.

Phil Wanke of Hall/Bargainer gave an overview of the master plan for the Berry Springs County Park and Preserve.

< Attachment >

ECORDERS MEMORANDUM
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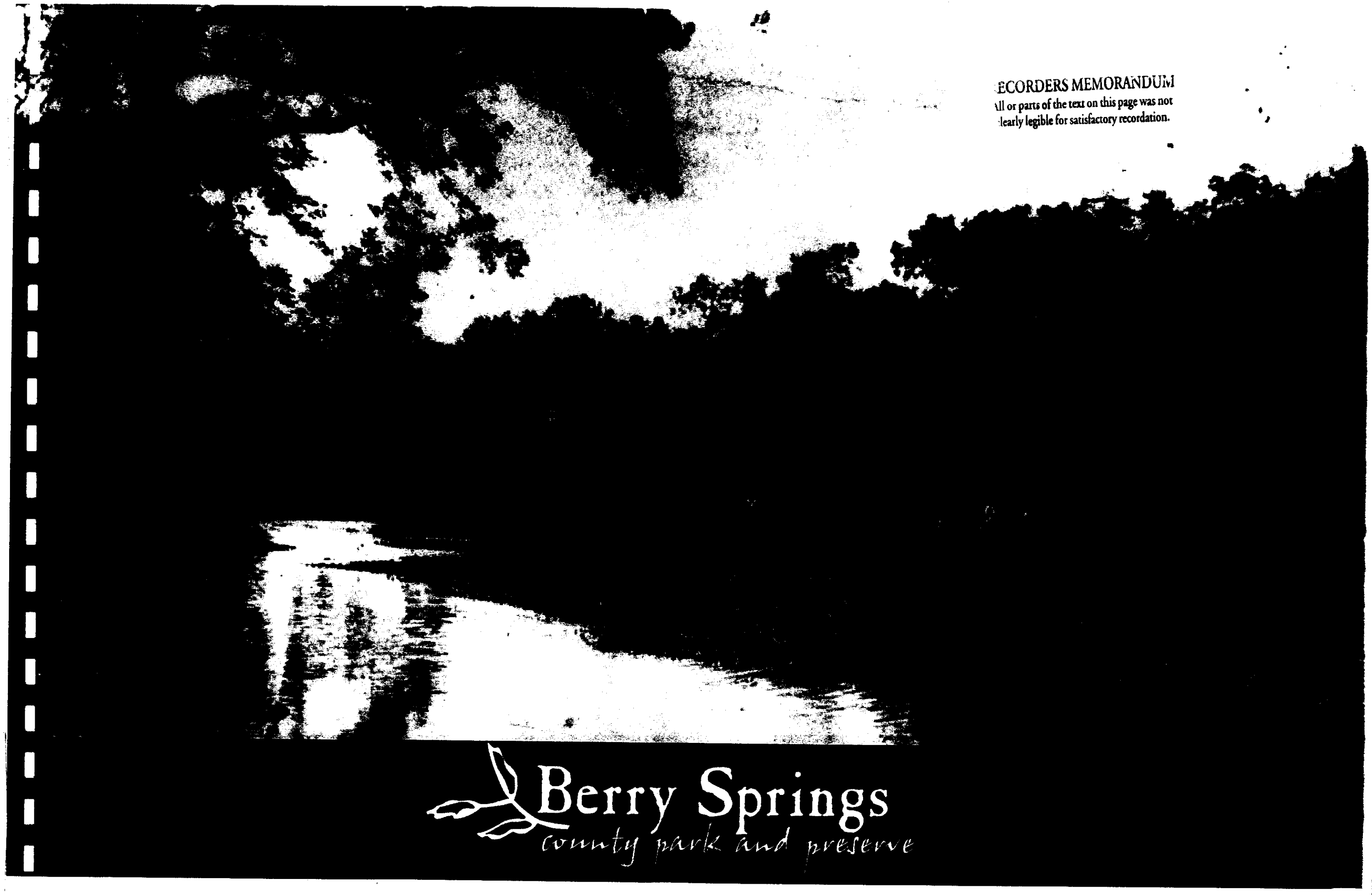

RECORDERS MEMORANDUM
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INTRODUCTION	02
PARTICIPANTS	03
OBJECTIVES	04
SITE ANALYSIS	05
MASTER PLAN	06
PHASE ONE	07
CHARACTER SKETCHES	08
GRANT APPLICATION	10
SUMMARY	11

RECORDERS MEMORANDUM
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clearly legible for satisfactory recordation.

"THEY COME FROM FAR AND NEAR TO SEE MY SPRING. TO SEE THIS GREAT FOUNTAIN OF WATER BOILING UP ON TOP OF THE EARTH, PURE AND COLD. THIS LAND IS THE BEST FARMING LAND I HAVE EVER SEEN. THE COUNTY IS PLEASANT AND HEALTHFUL."

JOHN BERRY

BERRY SPRINGS COUNTY PARK & PRESERVE WAS CONCEPTUALLY MASTER PLANNED TO PRESERVE, CONSERVE AND PROTECT THE COUNTY-OWNED 295-ACRE PROPERTY NORTH OF GEORGETOWN. THE PROPERTY FEATURES MANY HISTORIC ELEMENTS NEEDING RESTORATION OR RECONSTRUCTION TO PRESERVE A PIECE OF WILLIAMSON COUNTY'S VAST AND GREAT HERITAGE. FROM THE PECAN ORCHARD TO THE SPRINGS, POND AND CREEK, THE ENVIRONMENTAL FEATURES MAKE THIS PARK A WELCOME DEPARTURE FROM THE URBAN SPRAWL THAT IS QUICKLY CONSUMING THE BEAUTIFUL HILL COUNTRY. THE PLAN EMPHASIZES THESE ELEMENTS GIVING WILLIAMSON COUNTY RESIDENTS A PARK FULL OF MYSTERIES AND HISTORIES UNCOVERED.

RECORDERS MEMORANDUM
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CLIENT / OWNERS

WILLIAMSON COUNTY COMMISSIONERS COURT
400 WEST MAIN STREET. SUITE 216
ROUND ROCK. TEXAS 78664
P.512.248.3238
F.512.248.3243
CONTACT. ANNETTE TODD *DIRECTOR OF PROJECTS*
{ ATODD@WILCO.COM }

JOHN C. DOERFLER	COUNTY JUDGE
MIKE HEILIGENSTEIN	COMMISSIONER PRECINCT 1
GREG BOATRIGHT	COMMISSIONER PRECINCT 2
DAVID HAYS	COMMISSIONER PRECINCT 3
FRANKIE LIMMER	COMMISSIONER PRECINCT 4

PLANNERS / LANDSCAPE ARCHITECTS

HALL / BARGAINER. INC.
400 WEST MAIN STREET. SUITE 220
ROUND ROCK. TEXAS 78664
P.512.238.8912
F.512.238.8913
CONTACT. TIM BARGAINER *PRINCIPAL*
{ TBARGAINER@HALLBARGAINER.COM }
CONTACT. KELLY MILES *PROJECT MANAGER*
{ KMILES@HALLBARGAINER.COM}

CIVIL ENGINEER

HAYNIE CONSULTING INC.
1010 PROVIDENT LANE
ROUND ROCK. TEXAS 78664
P.512.837.2446
F.512.837.9463
CONTACT. TIM HAYNIE
{ TIMHAYNIE@SWBELL.NET }
CONTACT. CHRIS REID EXT.215
{ CHRISREID@SPRINTPCS.COM}

GRANT APPLICATION CONSULTANT

LANGFORD AND ASSOCIATES
13740 RESEARCH BLVD. SUITE G1
AUSTIN. TEXAS 78750
P.512.452.0432
F.512.452.5380
CONTACT.JUDY LANGFORD
{ LANGFD@TEXAS.NET }

ENVIRONMENTAL CONSULTANT

ATHABASCA CONSULTING. INC.
1001 MOPAC CIRCLE. SUITE 100
AUSTIN. TEXAS 78746
P.512.347.9000
F.512.306.0974
CONTACT. STEVE PAULSON
{ SPAULSON@ATHABASCA.NET }

RECORDERS MEMORANDUM
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- TO DEVELOP A PARK MASTERPLAN THAT PRESERVES AND RESTORES THE HISTORICAL, ENVIRONMENTAL AND CULTURAL ELEMENTS OF THE NORTH EAST COUNTY PARK.

- TO SUBMIT AN OUTDOOR GRANT APPLICATION TO TEXAS PARKS AND WILDLIFE'S TEXAS RECREATION AND PARKS ACCOUNT PROGRAM ON JANUARY 31, 2002.

- TO CREATE A PHASING PLAN FOR FUTURE GRANT APPLICATIONS AND OTHER POTENTIAL FUNDING SOURCES.

- TO FULFILL ALL OR MOST OF THE PARK FACILITY PRIORITY NEEDS OF WILLAMSON COUNTY RESIDENTS.

- TO FULFILL ALL OR MOST OF THE PARK FACILITY PRIORITY NEEDS OF PRECINCT THREE RESIDENTS.

- TO CREATE A PHASE ONE SITE PLAN THAT INCLUDES ELEMENTS WITH THE HIGHEST POTENTIAL POINTS UNDER THE PARKS AND WILDLIFE GRANT SCORING SYSTEM.

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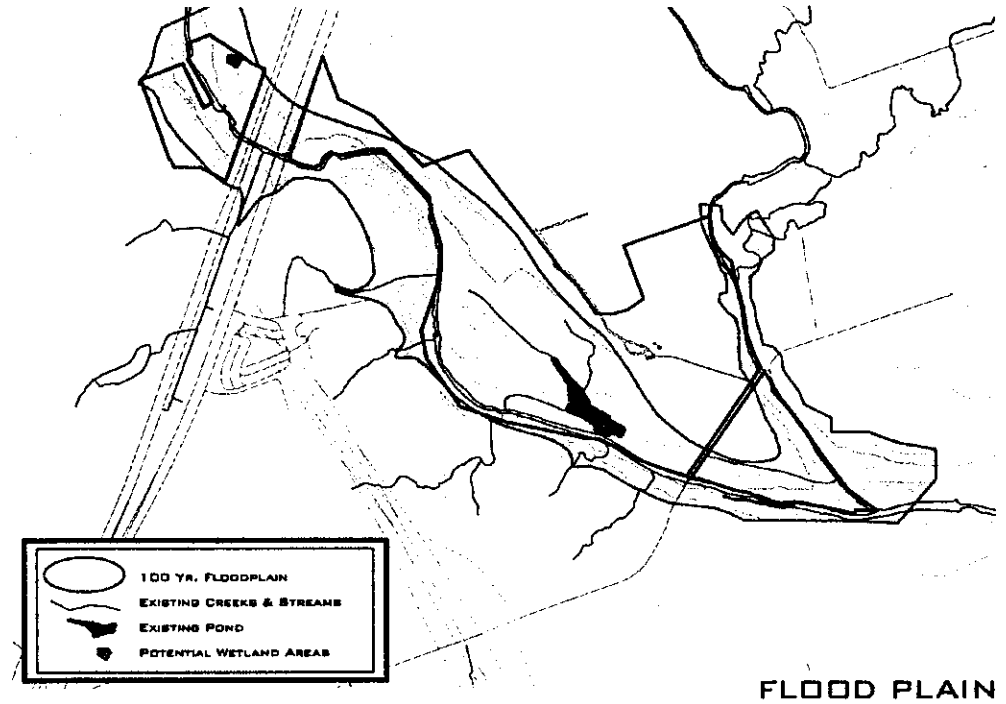
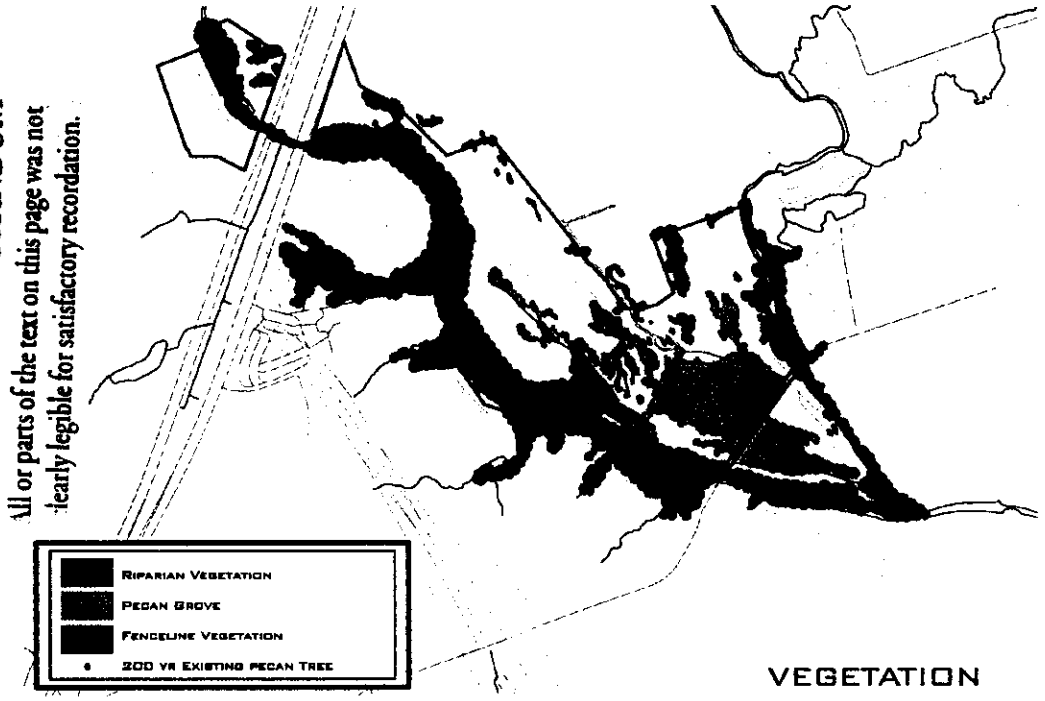
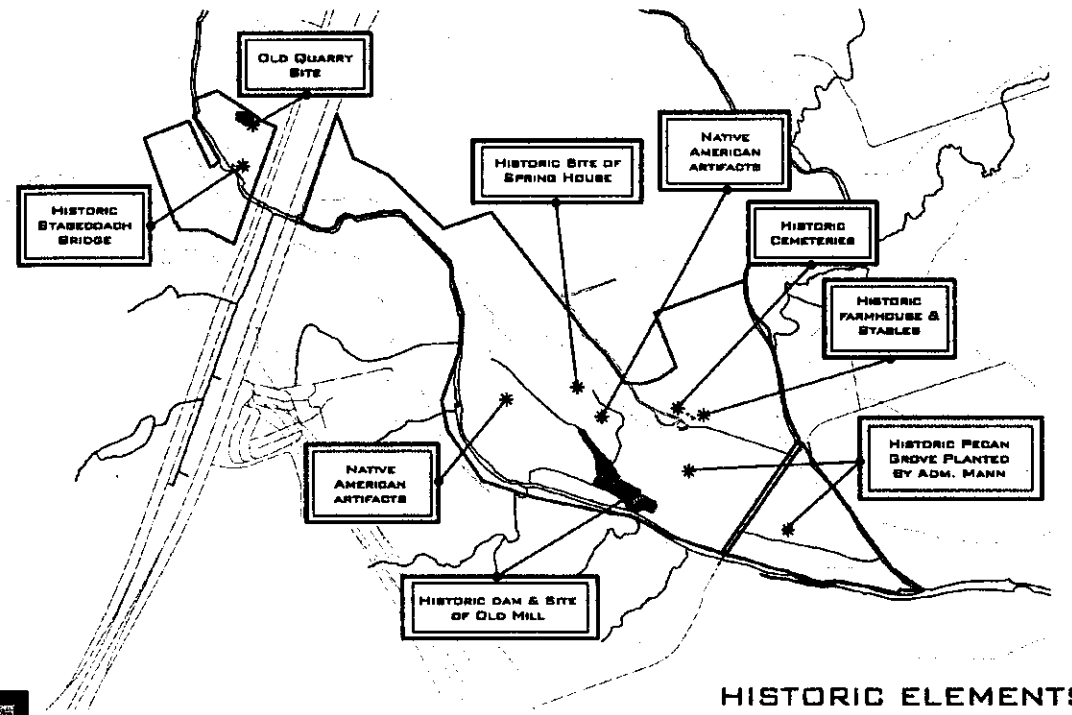


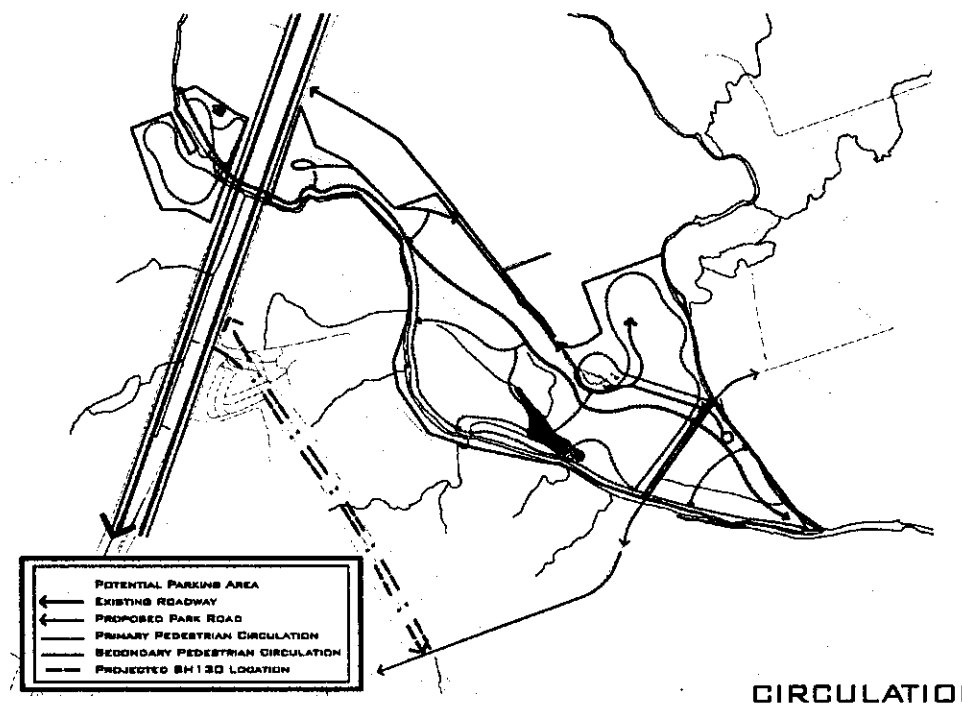
FLOOD PLAIN



VEGETATION



HISTORIC ELEMENTS



CIRCULATION

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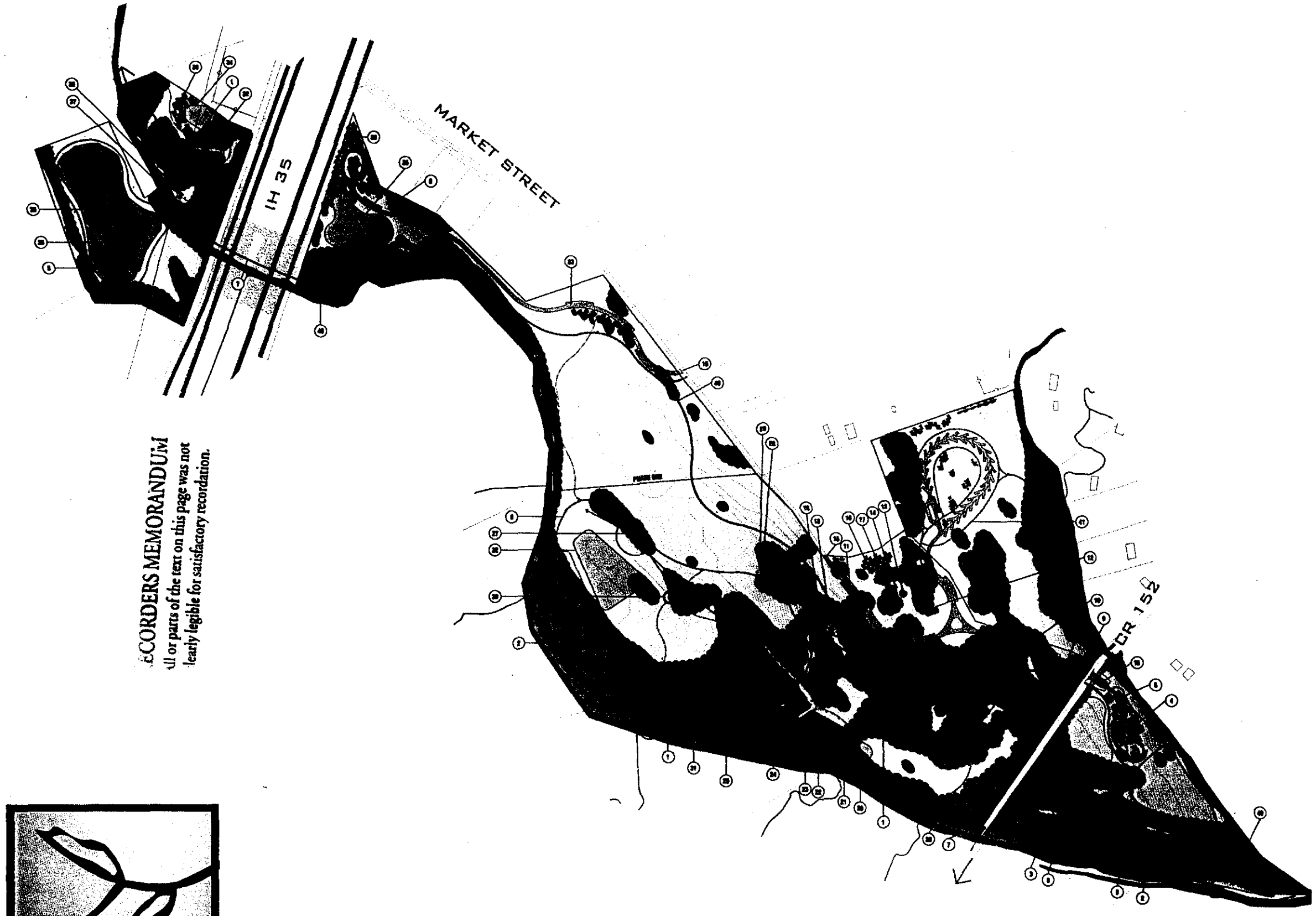
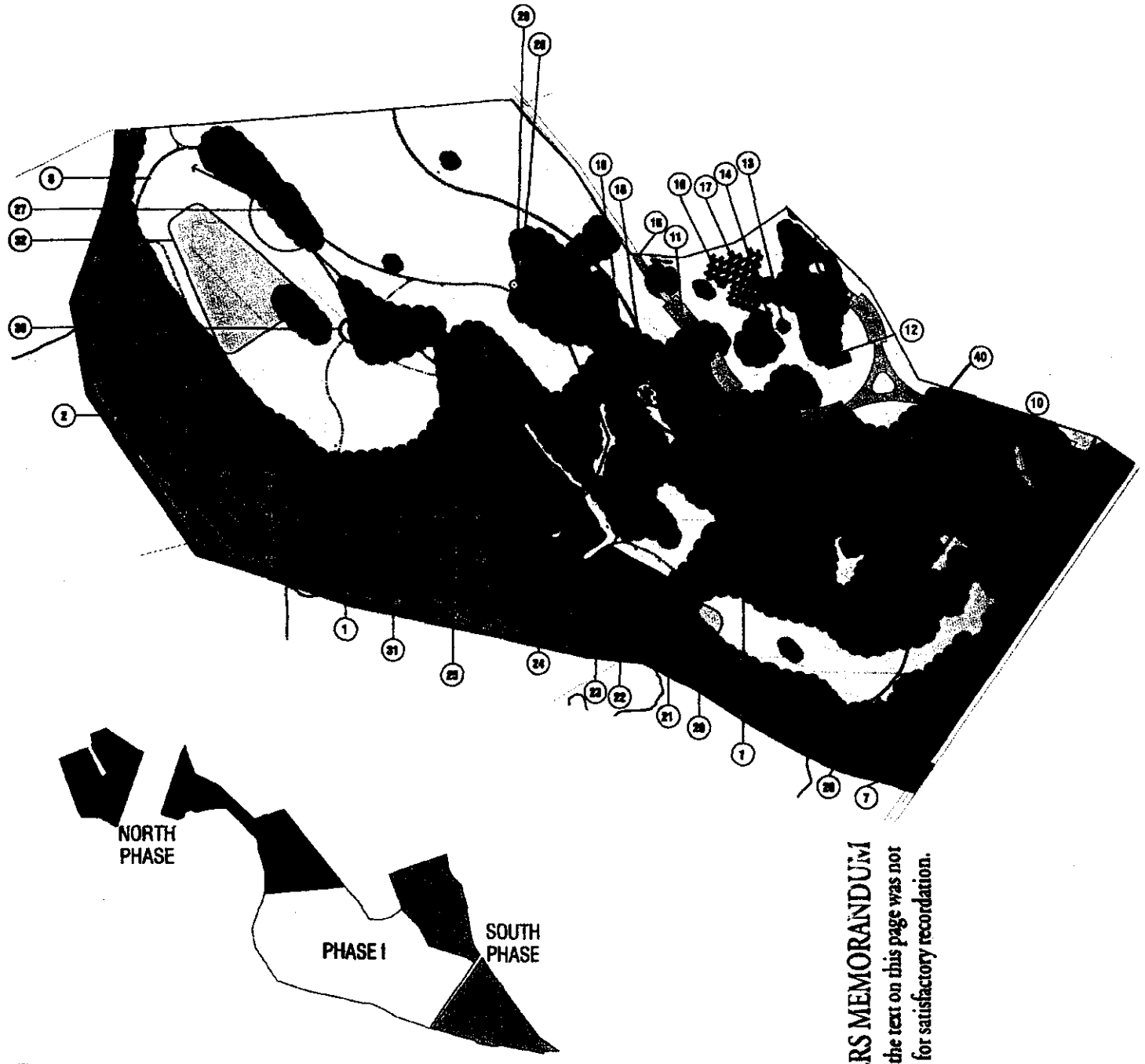


legend

1. Nature Trails- 4' Stabilized Earth
2. "Pack In" Camping Area with BBQ Grills and Tent Pads
3. 3 Acre Plot for Georgetown Nature Center
4. Large Outdoor Amphitheater (Seats 250)
5. 75 Paved Parking Spaces - 7 Bus/RV Parking with drop off
6. Pavilion w/ Restrooms
7. Under Bridge Trail Crossing
8. 6' Crushed Granite Hike Trail
9. Main Park Entrance with Guard Shack
10. Pecan Allee Entrance with 116 Overflow Parking Spaces (Gravel)
11. Roadway with 157 paved parking spaces
12. Restored Farmhouse with Memorial Gardens (drip irrigation)
13. Reunion Pavilion with Restrooms & Photocell or Timed Lights
14. Historical Cemetery
15. Gated Secondary Entrance
16. Educational Center (John Berry's Cabin)
17. Fruit Orchard
18. Frontier Playground
19. Open Air Picnic Pavilion
20. Wetland Area (with Boardwalk)
21. Seatwall Plan Overlook of Berry's Mill
22. Restored Original Dam
23. New Fishing Pier with Canoe Rental (Composite Decking)
24. Aquifer Viewing Platform
25. Picnic Tables with Grills throughout
26. 6' Benches throughout
27. Bird Viewing Area
28. Rebuilt Old Spring House with Educational Kiosk
29. Wagon Circle educational Amphitheater with artistic representation of springs & creeks
30. Tonkawa Fire Circle with Educational Kiosk
31. Open Space Area
32. Wildscape Meadow
33. Roadway with 108 head in paved parking spaces
34. Wetland Area (Site of Old Quarry)
35. Wildflower Meadow
36. Native Tree Plantings with Drip Irrigation
37. Recycled County Bridge
38. Leash Free Area
39. Old Stagecoach Bridge (Preserved) with Educational Signage
40. 8' Concrete Hike/ Bike Trail
41. RV Camping Area (44 Spaces w/ Restroom & Dump Station)



legend

1. Nature Trails- 4' Stabilized Earth
2. "Pack In" Camping Area with BBQ Grills and Tent Pads
7. Under Bridge Trail Crossing
9. 6' Crushed Granite Hike Trail
9. Main Park Entrance with Guard Shack
10. Pecan Allee Entrance with
    116 Overflow Parking Spaces (Gravel)
11. Roadway with 157 paved parking spaces
12. Restored Farmhouse with Memorial Gardens
    (drip irrigation)
13. Reunion Pavilion with Restrooms & Photocell or Timed Lights
14. Historical Cemetery
16. Gated Secondary Entrance
16. Educational Center (John Berry's Cabin)
17. Fruit Orchard
18. Frontier Playground
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21. Seatwall Plan Overlook of Berry's Mill
22. Restored Original Dam
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24. Aquifer Viewing Platform
25. Picnic Tables with Grills throughout
26. 6' Benches throughout
27. Bird Viewing Area
28. Rebuilt Old Spring House with Educational Kiosk
29. Wagon Circle educational Amphitheater with
    artistic representation of springs & creeks
30. Tonkawa Fire Circle with Educational Kiosk
31. Open Space Area
32. Wildscape Meadow
33. 8' Concrete hike / bike trail

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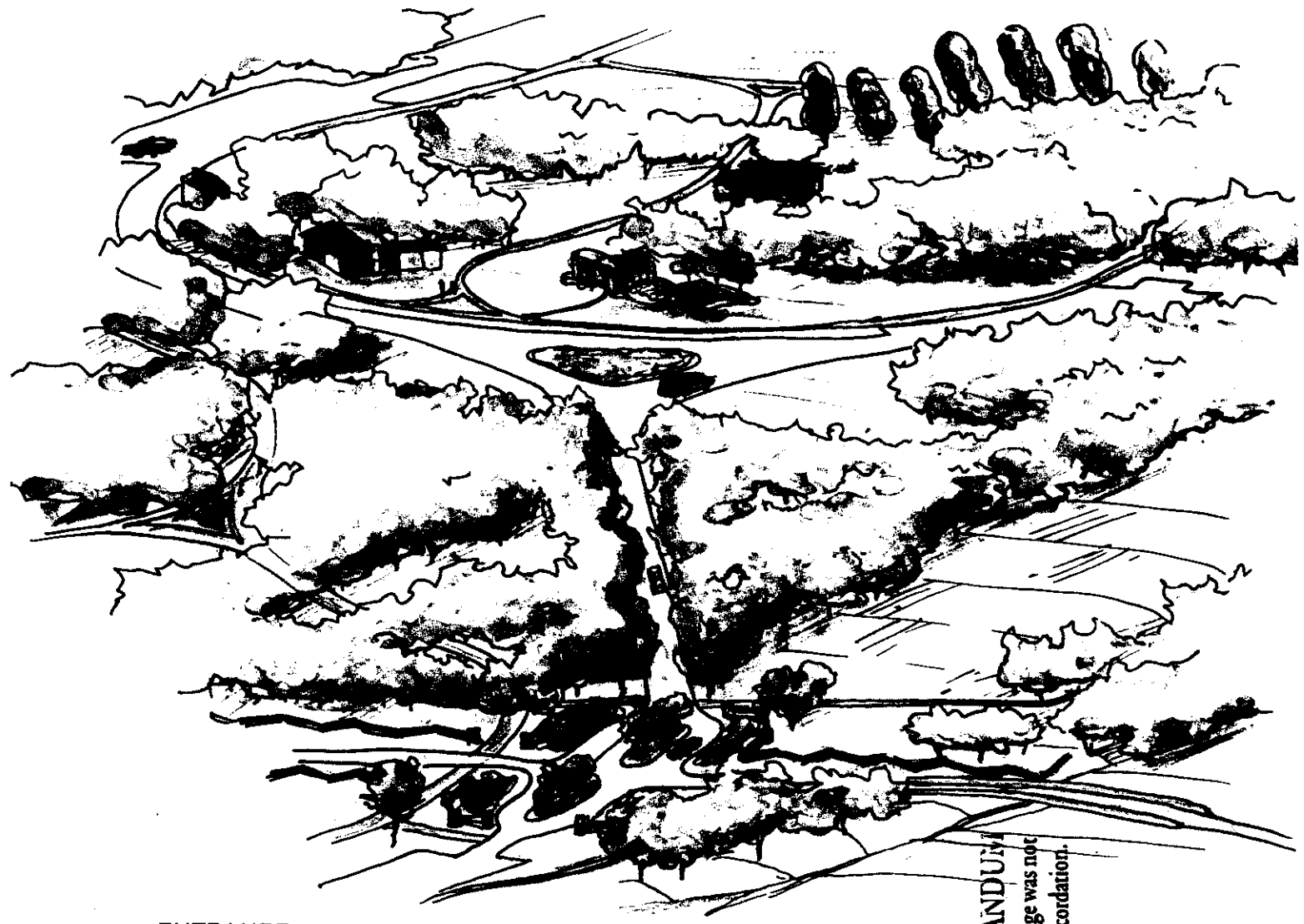
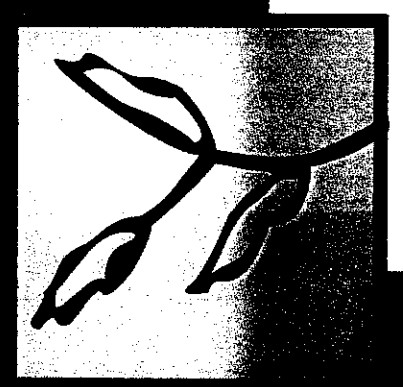


ENTRANCE



JOHN BERRY, BORN IN KENTUCKY IN 1786 AND A PATRIOT OF THE WAR OF 1812, RECEIVED AN ORIGINAL LAND GRANT IN 1845 FROM THE REPUBLIC OF TEXAS FOR SERVICES RENDERED DURING THE WAR OF INDEPENDENCE. LOCATED IN WESTERN MILAM COUNTY, NOW WILLIAMSON COUNTY, THE BERRY LEAGUE WAS WHERE JOHN WOULD MAKE HIS HOME, AND HIS FINAL RESTING PLACE. A TRUE FRONTIERSMAN, HE BUILT CABINS, A BLACKSMITH SHOP AND FORGE; PLANTED CROPS, A FRUIT ORCHARD AND ROW UPON ROW OF PECAN TREES; AND RAISED AT LEAST TWELVE OF HIS EIGHTEEN CHILDREN ON THIS LAND. HE ALSO BUILT ONE OF THE FIRST GRISTMILLS IN WILLIAMSON COUNTY, TO WHICH OTHER SETTLERS, EVEN THE NATIVE AMERICANS, IN THE AREA CAME TO GRIND THEIR CORN AND WHEAT. HE WAS DESIGNATED BY THE TEXAS LEGISLATURE AS ONE OF THE COMMISSIONERS TO ORGANIZE THE COUNTY AND ESTABLISHED THE COUNTY SEAT. JOHN BERRY DIED IN 1866 AT THE AGE OF 80, AND WAS BURIED IN THE FAMILY CEMETERY ON HIS BELOVED LAND IN WILLIAMSON COUNTY.

.CORDERS MEMORANDU
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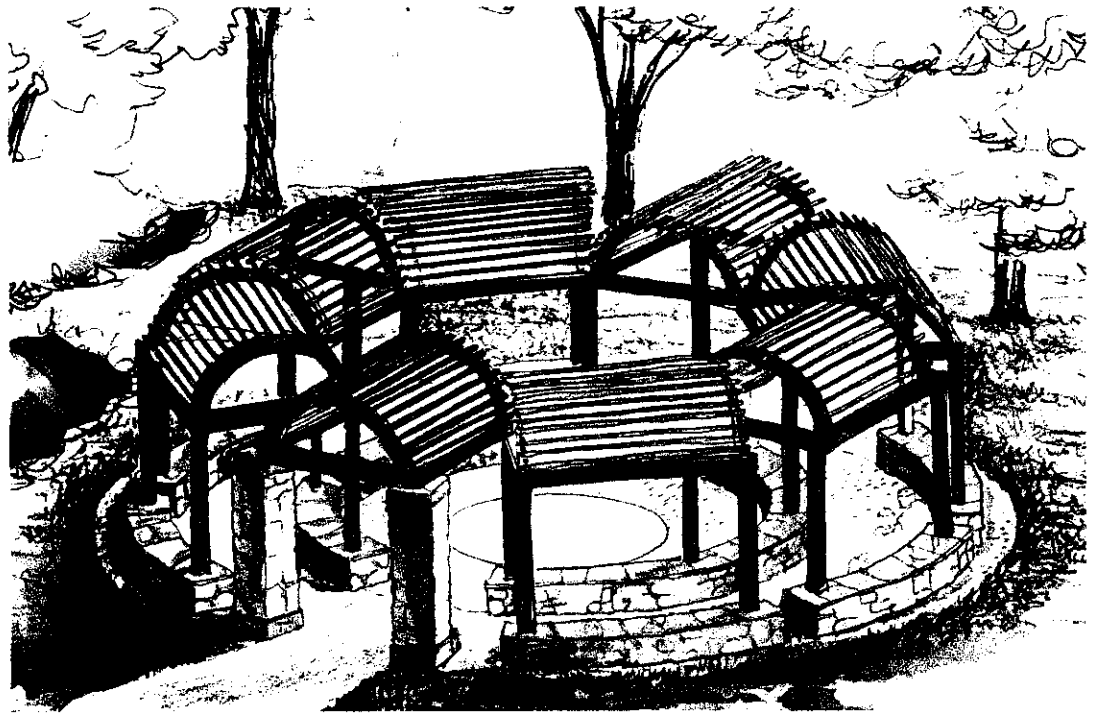
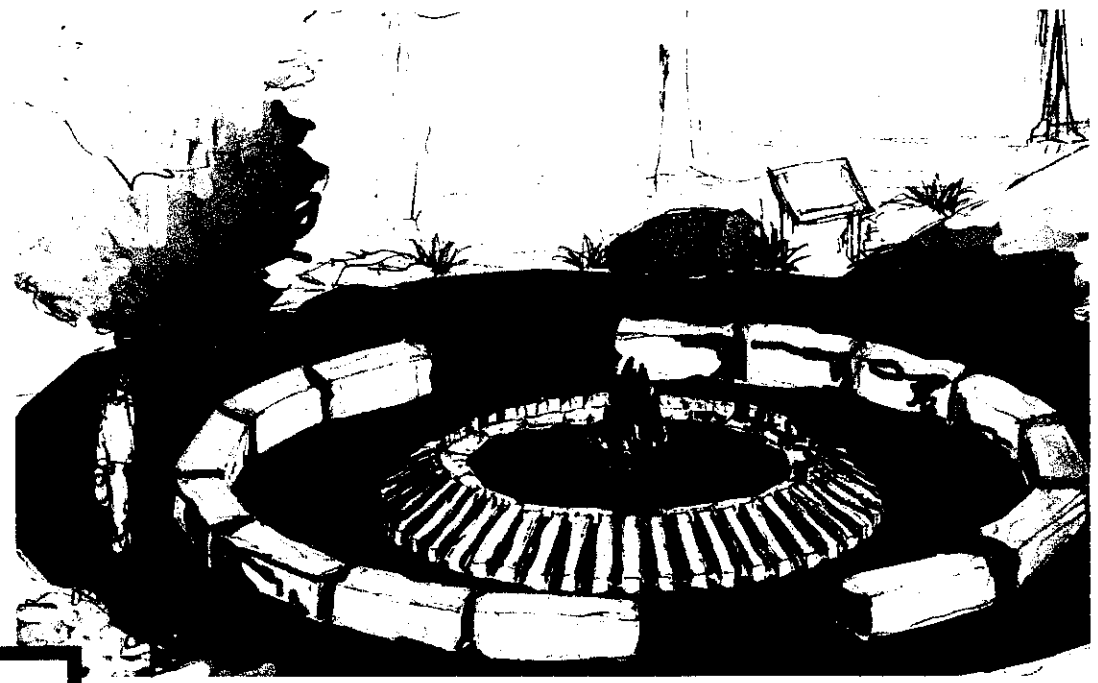


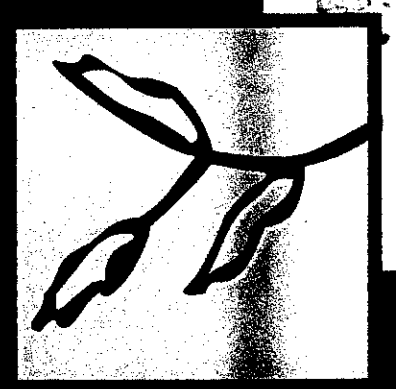
WAGON CIRCLE AMPHITHEATER

JOHN BERRY EDUCATIONAL CENTER



COUNCIL RING

REUNION PAVILION



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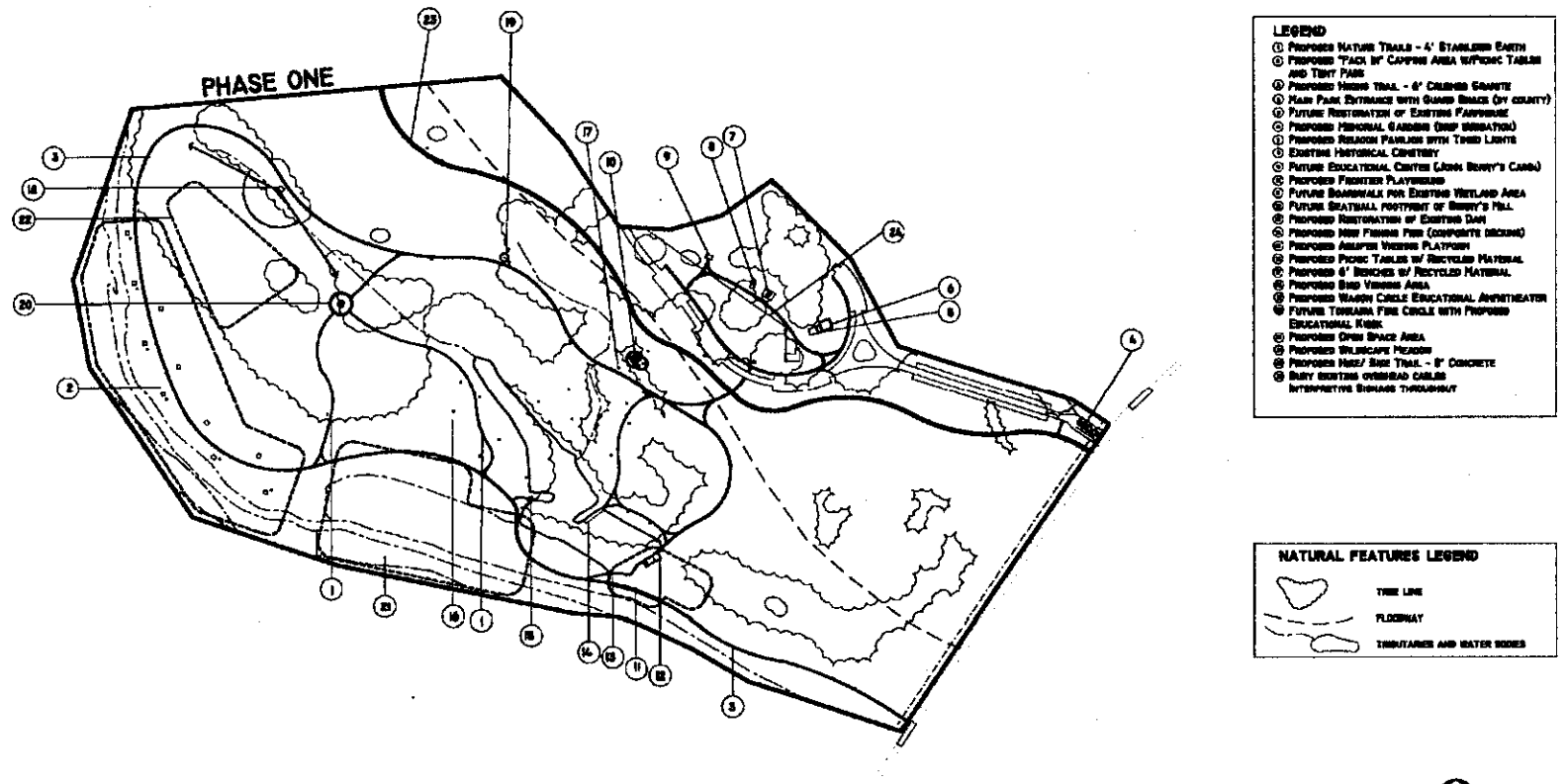
Berry Springs
county park and preserve

SITE PLAN



LEGEND
1. Proposed Nature Trails - 4' Stabilizer Earth
2. Proposed "Pack In" Camping Area w/Picnic Tables and Tent Pads
3. Proposed Hiking Trail - 6' Colored Granite
4. Main Park Entrance with Guard Shack (by county)
5. Future Restoration of Existing Farmhouse
6. Proposed Memorial Gardens (drip irrigation)
7. Proposed Relandscape Parking with Timed Lights
8. Existing Historical Cemetery
9. Future Educational Center (John Berry's Cabin)
10. Proposed Frontier Playground
11. Future Boardwalk for Existing Wetland Area
12. Future Stairwell footprint of Berry's Hill
13. Proposed Restoration of Existing Dam
14. Proposed New Fishing Pier (composite decking)
15. Proposed Aquatic Viewing Platform
16. Proposed Picnic Tables w/ Recycled Material
17. Proposed 6' Benches w/ Recycled Material
18. Proposed Bird Viewing Area
19. Proposed Wagon Circle Educational Amphitheater
20. Future Tonkawa Fire Circle with Proposed Educational Kiosk
21. Proposed Open Space Area
22. Proposed Wildscape Meadow
23. Proposed Hard/ Base Trail - 8' Concrete
24. Bury existing overhead cables
Interpretive Signage Throughout

NATURAL FEATURES LEGEND
TREE LINE
FLOODWAY
TRIBUTARIES AND WATER BODIES

JANUARY 29, 2002

NORTH
SCALE: 1" = 400'

RECORDERS MEMORANDUM
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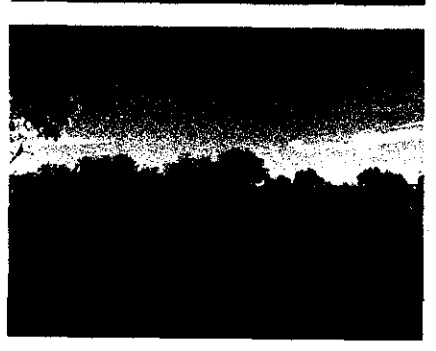
WILLIAMSON COUNTY, IN COOPERATION WITH THE CITY OF GEORGETOWN, PROPOSES THE ACQUISITION AND DEVELOPMENT OF APPROXIMATELY 126 ACRES OF LAND ALONG BERRY CREEK, NORTH OF GEORGETOWN. THIS UNIQUE PASSIVE RECREATION FACILITY WILL PRESERVE THE TEXAS LEGACY ESTABLISHED BY JOHN BERRY, THE ORIGINAL OWNER OF THE PROPERTY. BERRY SPRINGS COUNTY PARK & PRESERVE WILL CONSIST OF A MULTI-FACETED TRAIL SYSTEM, A

PLAYSCAPE, A GROUP PICNIC SHELTER, TENT CAMPING AREAS, AN AMPHITHEATER, A FISHING PIER, AN AQUATIC VIEWING PLATFORM, A BIRD VIEWING AREA, A WILDSCAPE MEADOW, BENCHES, PICNIC TABLES AND AN EDUCATIONAL KIOSK. A XERISCAPE MEMORIAL GARDEN WILL BE DEDICATED TO ADMIRAL MANN. INTERPRETIVE SIGNAGE WILL BE UTILIZED THROUGHOUT THE PARK TO EMPHASIZE THE HISTORICAL, CULTURAL AND EDUCATIONAL VALUE OF THE NATURAL CHARACTERISTICS OF THIS LAND AND THE SURROUNDING AREA. AN OPEN SPACE AREA WILL BE DEDICATED ALONG AND INCLUDING PART OF BERRY CREEK.

UPON SUCCESSFUL AWARD OF GRANT FUNDS NECESSARY TO COMPLETE THE DEVELOPMENT OF THE PROPOSED PARK (PHASE ONE), THIS LAND WILL BE DEDICATED FOR PARK LAND. WILLIAMSON COUNTY WILL CONSTRUCT ADEQUATE ROADWAYS, PARKING AREAS, RESTROOM FACILITIES, NECESSARY UTILITIES AND BARRIER FENCING SEPARATE FROM THE GRANT PROJECT.



BY RESPONDING TO THE PARK NEEDS OF WILLIAMSON COUNTY RESIDENTS, WE ARE PRESERVING THE LAND AND HISTORICAL ELEMENTS FOR THE ENJOYMENT OF FUTURE GENERATIONS.

FUTURE GRANT APPLICATIONS

-PARKS AND WILDLIFE INDOOR GRANT
[NATURE CENTER]
-PARKS AND WILDLIFE OUTDOOR GRANT
[FUTURE PHASES]

OTHER POTENTIAL FUNDING SOURCES

-CONTRIBUTIONS FROM ASSOCIATION
[SCHOOL DISTRICTS, ETC.]
-PRIVATE DONATIONS
-LCRA PARTNERSHIP GRANT
-FOUNDATIONS
-GENERAL OBLIGATION BONDS
-GENERAL OPERATING FUNDS
-AGRICULTURAL EXTENSION SERVICE
-NATURAL RESOURCES CONSERVATION SERVICE
-TEXAS DEPARTMENT OF TRANSPORTATION
-US FISH AND WILDLIFE SERVICE
-TEXAS FOREST SERVICE
-TEXAS NATURE CONSERVANCY

RECORDERS MEMORANDUM
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AGENDA ITEM 26

Hear presentation from Land Strategies, Inc. regarding Williamson County Regional Park.

Paul Linehan updated the court on the Williamson County Regional Park project. He stated that a WPAP plan (Water Pollution Abatement Plan) had been sent to the Texas Natural Resource Conservation Commission last week, and that a septic collection system plan will be submitted to the TNRCC on February 5, 2002. He said that due to some higher costs, the park project is over budget by $12,000.00. He presented the court with a cost estimate and financial summary of available funds for Phase 1, and addressed the court regarding water and wastewater alternatives for park facilities. He stated that a domestic water line from the City of Georgetown could be brought to the park through the Whitetail Subdivision for the cost of approximately $1,000,000.00, with the possibility of recovering the cost by attaching a surcharge to new hookups on the line. It would take about 8 months to complete the line. Another alternative would be to have ECO Resources, Inc. build the line on a lease agreement basis (to include a purchase option) with the County, which could be completed in approximately 4 months. The County would attach a surcharge to the line to finance buying back the line from ECO Resources, Inc.

John Moman, of Moman Architects, Inc., discussed restroom and concession stand structures and displayed some examples of construction materials to the court. Commissioner Heiligenstein asked Mr. Moman to consider an alternative to the proposed screening material for ventilation purposes.

Mr. Linehan stated that Thornhill & Associates is in the process of digging a pilot water well on the property. He said that he should know if the well would produce enough water to irrigate the playing fields by next week.

< Attachment >

Financial Summary for Funds Available for SW Regional Park Phase 1

Known $ amounts		
708 Funds Available 01/28/02	$	346,128
Existing Contract Remaining Amounts	$	(288,216)
Remaining Funds to be issued	$	8,000,000
Less Issuance Costs (Est. 3.25%)	$	(260,000)
Per Phase 1 Cost Estimate (see attached)	$	(8,020,666)
Sub-Total	$	(222,754)

Unknown $ amounts		
Commissioner Limmers' $1M (not yet authorized)	$	1,000,000
+- Actual awarded construction bids		???
Additional Professional Fees		???
Unforeseen future expenses		???
Unforeseen Change orders		???
Utilities		???

Notes: Below are the existing contracts

	Contract Amount	Remaining Amount
Baker - Aicklen & Associates SW 235 Acres	$ 26,750	$ 6,900
Gray Jansing - Sw Williamson County Park	$ 32,000	$ 1,282
Gray Jansing - Sports Complex	$ 65,000	$ 1,312
Hall Bargainer - Signage along CR 175 and 1431 for Park Location	$ 13,500	$ 13,500
Hicks & Company - SW 235 Acres	$ 22,885	$ 4,033
Hendrix Consulting Engineers - Phase 1	$ 22,885	$ 4,033
Horizon Environmental Services	$ 14,500	$ 2,053
Land Strategies, Inc.	$ 317,842	$ 204,647
Moman Architects - Concession/Bathroom Bldg. Design	$ 36,000	$ 19,207
Thornhill & Associates - Ground Water Assessment	$ 31,250	$ 31,250
Sub-Total	$ 582,612	$ 288,216

Southwest Williamson County Regional Park - Phase I Cost Estimate

100 Total Acreage within Limits of Construction
6 Total Number of Basketball Courts
8 Total Number of Tennis Courts
2 Total Number of Baseball Fields
1 Total Number of Football/Track Stadiums
10 Total Number of Soccer Fields
1 Total Number of Children Playgrounds
1066 Total Number of Parking Spaces
1215.3 Total Linear Footage of Median Roadways
7102 Total Linear Footage of 30' Roadways
9027.6 Total Linear Footage of Parking Roadways
9241 Total Linear Footage of Jogging Trails

Basketball Court (70' X 114')				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Rough Grading to acheive level area	198.0	$6.00	CY	$1,188.13
6" Flex Base for Court	319.2	$13.00	TON	$4,149.60
6" Concrete Pad for Court	7980.0	$4.50	SF	$35,910.00
Field Lighting	2.0	$15,000.00	Pole	$30,000.00
Athletic Equipment, backboards, field markers	1.0	$1,500.00	LS	$1,500.00
Subtotal Basketball Court	6.0	$72,747.73	EA	$436,486.40

Tennis Court (60' X 54')				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Rough Grading to acheive level area	80.4	$6.00	CY	$482.40
6" Flex Base for Court	129.6	$13.00	TON	$1,684.80
6" Concrete Pad for Court	3240.0	$4.50	SF	$14,580.00
Field Lighting	2.0	$15,000.00	Pole	$30,000.00
Athletic Equipment, nets, field markers	1.0	$2,500.00	LS	$2,500.00
Subtotal Tennis Court	8.0	$49,247.20	EA	$393,977.60

Baseball Field (400' Outfield)				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Rough Grading to acheive level area	3118.3	$6.00	CY	$18,709.91
Place 6" Imported Topsoil on Playing Field	2327.1	$30.00	CY	$69,813.11
Sod (laid)	13962.6	$3.25	SY	$45,378.52
Site Utilities / Irrigation Allowance	125663.6	$0.25	SF	$31,415.90
Field Lighting	4.0	$15,000.00	Pole	$60,000.00
Chainlink Perimeter Fence	1428.3	$12.00	LF	$17,139.82
Chainlink Backstop Fence	1.0	$5,000.00	LS	$5,000.00
Chainlink Dug-out Enclosures	1.0	$4,000.00	LS	$4,000.00
Infield Sand - 6" Imported and Spread	275.0	$20.00	CY	$5,500.00
Aluminum Grand Stands for 250 People	1.0	$15,000.00	LS	$15,000.00
Electronic Scoreboard	1.0	$5,000.00	LS	$5,000.00
Athletic Equipment, bases, field markers	1.0	$1,000.00	LS	$1,000.00
Subtotal Baseball Field	2.0	$277,957.26	EA	$555,914.53

Football Field and Track (170' x 370')				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Rough Grading to acheive level area	1560.9	$6.00	CY	$9,365.11
Place 6" Imported Topsoil on Playing Field	1164.8	$30.00	CY	$34,944.44
Sod (laid)	6988.9	$3.25	SY	$22,713.69
Site Utilities / Irrigation Allowance	62900.0	$0.25	SF	$15,725.00
Field Lighting	4.0	$15,000.00	Pole	$60,000.00
Chainlink Perimeter Fence	1500.0	$12.00	LF	$18,000.00
6" Flex Base for Track	2022.0	$13.00	TON	$26,286.00
2" Cinder Track Surface for 8 Lane Track	5467.0	$7.25	SY	$39,635.75
Upgrade to Atrificial Track Surface	1.0	$40,000.00	LS	$40,000.00
6" x 18" Concrete Curb around Track	3000.0	$8.50	LF	$25,500.00
Aluminum Grand Stands for 1000 People	1.0	$60,000.00	LS	$60,000.00
Press Box	1.0	$8,000.00	LS	$8,000.00
Electronic Scoreboard	1.0	$10,000.00	LS	$10,000.00
Athletic Equipment, goal posts, field markers	1.0	$4,000.00	LS	$4,000.00
Subtotal Football Field and Track	1.0	$374,170.19	EA	$374,170.19

Southwest Williamson County Regional Park - Phase I Cost Estimate

Soccer Field (225' x 360')				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Rough Grading to acheive level area	2010.0	$6.00	CY	$12,060.00
Place 6" Imported Topsoil on Playing Field	1500.0	$30.00	CY	$45,000.00
Sod (laid)	9000.0	$3.25	SY	$29,250.00
Site Utilities / Irrigation Allowance	81000.0	$0.25	SF	$20,250.00
Aluminum Grand Stands for 100 People	1.0	$10,000.00	LS	$10,000.00
Field Lighting	4.0	$15,000.00	Pole	$60,000.00
Athletic Equipment, goal posts, field markers	1.0	$4,000.00	LS	$4,000.00
Subtotal Soccer Field	10.0	$180,560.00	EA	$1,805,600.00

Children Playground				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Adventure Series playstructure (no roof)	2.0	$7,750.00	EA	$15,500.00
Single Post 2 bay swing set	2.0	$1,450.00	EA	$2,900.00
Two Set Bouncers	2.0	$1,650.00	EA	$3,300.00
Canopy Shade Cover 21' x 18'	1.0	$2,200.00	EA	$2,200.00
Canopy Shade Cover 36' x 18'	1.0	$2,675.00	EA	$2,675.00
Bow, Little Crown Series	2.0	$425.00	EA	$850.00
Little Daisy, Little Crown Series	2.0	$430.00	EA	$860.00
Twin Toadstool, Little Crown Series	1.0	$570.00	EA	$570.00
Daffodil, Little Crown Series	1.0	$725.00	EA	$725.00
Tick-Tock, Little Crown Series	1.0	$705.00	EA	$705.00
Engineered Wood Fiber Fall Surface	15625.0	$1.75	SF	$27,343.75
4' Chainlink Fence around Perimeter	500.0	$12.00	LF	$6,000.00
Subtotal Children Playground	1.0	$63,628.75	EA	$63,628.75

Parking Spaces (18.5' x 9')				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Clear and Grub for Pavement Area	166.5	$0.08	SF	$13.32
Strip 4" Loose Material for Paving	2.0	$2.00	CY	$4.07
6" Flex Base for Asphalt Parking Area	6.7	$13.00	TON	$86.58
1.5" Asphalt for Parking Areas	18.5	$2.90	SY	$53.65
Standard Curb and Gutter	9.0	$6.75	LF	$60.75
Parking Lot Striping	*18.5*	*$0.50*	LF	$9.25
6" Topsoil Spread Around Parking Area	0.8	$20.00	CY	$16.67
Subtotal Parking Spaces	1066.0	$244.29	EA	$260,409.59

Median Roadway (2 - 24' lanes)				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Clear and Grub for Pavement Area	68.0	$0.08	SF	$5.44
Strip 4" Loose Material for Paving	0.6	$2.00	CY	$1.17
Subgrade Treatment	5.3	$1.00	SY	$5.33
8" Flex Base	2.6	$13.00	TON	$34.32
2" Asphalt	5.3	$3.85	SY	$20.53
Concrete Ribbon Curbing	4.0	$4.00	LF	$16.00
Signage and Striping	2.0	$2.00	LF	$4.00
Drainage	*1.0*	*15% of Road*	LS	$13.02
6" Topsoil Spread Around Median Area	0.7	$20.00	CY	$14.81
Subtotal Median Roadway	1215.3	$114.63	LF	$139,315.69

Roadway (30' wide)				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Clear and Grub for Pavement Area	30.0	$0.08	SF	$2.40
Strip 4" Loose Material for Paving	0.4	$2.00	CY	$0.73
Subgrade Treatment	3.3	$1.00	SY	$3.33
8" Flex Base	1.7	$13.00	TON	$21.45
2" Asphalt	3.3	$3.85	SY	$12.83
Concrete Ribbon Curbing	2.0	$4.00	LF	$8.00
Signage and Striping	3.0	$2.00	LF	$6.00
Drainage	*1.0*	*15% of Road*	LS	$8.21
Subtotal 30' Roadway	7102.0	$62.96	LF	$447,159.68

Southwest Williamson County Regional Park - Phase I Cost Estimate

Parking Roadway (26' wide)				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Clear and Grub for Pavement Area	26.0	$0.08	SF	$2.08
Strip 4" Loose Material for Paving	0.3	$2.00	CY	$0.64
Subgrade Treatment	2.9	$1.00	SY	$2.89
8" Flex Base	1.4	$13.00	TON	$18.59
2" Asphalt	2.9	$3.85	SY	$11.12
Standard Curb and Gutter	1.0	$6.75	LF	$6.75
Signage and Striping	1.0	$0.50	LF	$0.50
Drainage	1.0	15% of Road	LS	$6.38
Subtotal Parking Roadway	9027.6	$48.95	LF	$441,916.07

Jogging Trail (10' wide)				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Clear and Grub for Trail Area	10.0	$0.08	SF	$0.80
Strip 4" Loose Material for Trail	0.1	$2.00	CY	$0.24
Subgrade Treatment	1.1	$1.00	SY	$1.11
2" Crushed Granite	10.0	$4.50	SF	$45.00
Signage	1.0	$0.25	LF	$0.25
Drainage	1.0	2% of Trail	LS	$0.95
Subtotal Jogging Trail	9241.0	$48.35	LF	$446,836.23

Miscellaneous				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Water Wells	2.0	$30,000.00	EA	$60,000.00
Water Distribution	17344.9	$25.00	LF	$433,622.50
Off-Site Water Extension	0.0	$64.51	LF	$0.00
Off-Site Wastewater Extension	0.0	$97.05	LF	$0.00
Internal Centralized Wastewater System	0.0	$549,985.00	EA	$0.00
Tennis Pro Shop	0.0	$125.00	SF	$0.00
Restroom Buildings (3) 40' x 40'	4800.0	$100.00	SF	$480,000.00
Concession Stand Buildings (3) 20' x 20'	1200.0	$100.00	SF	$120,000.00
Open Air Shelter (3) 30' x 30'	2700.0	$75.00	SF	$202,500.00
Trees	800.0	$225.00	EA	$180,000.00
Shrubs	1600.0	$25.00	EA	$40,000.00
Irrigation Allowance	360000.0	$0.25	SF	$90,000.00
Concrete Sidewalks	123180.0	$3.50	SF	$431,130.00
Entry Fencing	4375.0	$35.00	LF	$153,125.00
Entry Signage	1.0	$25,000.00	EA	$25,000.00
Monument	1.0	$50,000.00	EA	$50,000.00
Flagpoles	6.0	$2,200.00	EA	$13,200.00
Silt Fencing	26585.9	$1.35	LF	$35,890.97
Rock Berm	1329.3	$25.00	LF	$33,232.38
Revegetation	242000.0	$0.50	SY	$121,000.00
Water Quality Structure	1066.0	$175.00	SPACE	$186,550.00
Subtotal Miscellaneous	1.0	$2,655,250.84	LS	$2,655,250.84

Park Phase I (Sports Fields) Development				
Parameter / Item of Work	Quantity	$/Unit	Unit	Total
Subtotal Basketball Court	6	$72,747.73	EA	$436,486.40
Subtotal Tennis Court	8	$49,247.20	EA	$393,977.60
Subtotal Baseball Field	2	$277,957.26	EA	$555,914.53
Subtotal Football Field and Track	1	$374,170.19	EA	$374,170.19
Subtotal Soccer Field	10	$180,560.00	EA	$1,805,600.00
Subtotal Children Playground	1	$63,628.75	EA	$63,628.75
Subtotal Parking Spaces	1066	$244.29	EA	$260,409.59
Subtotal Median Roadway	1215.3	$114.63	LF	$139,315.69
Subtotal 30' Roadway	7102	$62.96	LF	$447,159.68
Subtotal Parking Roadway	9027.6	$48.95	LF	$441,916.07
Subtotal Jogging Trail	9241	$48.35	LF	$446,836.23
Subtotal Miscellaneous	1	$2,655,250.84	LS	$2,655,250.84
Total Park Phase I (Sports Fields) Development				$8,020,665.56

94	Total Acreage within Limits of Construction
6	Total Number of Basketball Courts
8	Total Number of Tennis Courts
2	Total Number of Baseball Fields
1	Total Number of Football/Track Stadiums
10	Total Number of Soccer Fields
1	Total Number of Children Playgrounds
1090	Total Number of Parking Spaces
2413	Total Linear Footage of Median Roadways
7194	Total Linear Footage of Bicycle Roadways
10506	Total Linear Footage of Parking Roadways
22440	Total Linear Footage of Jogging Trails

100	Total Acreage within Limits of Construction
6	Total Number of Basketball Courts
8	Total Number of Tennis Courts
2	Total Number of Baseball Fields
1	Total Number of Football/Track Stadiums
10	Total Number of Soccer Fields
1	Total Number of Children Playgrounds
1058	Total Number of Parking Spaces
1096	Total Linear Footage of Median Roadways
7079	Total Linear Footage of Bicycle Roadways
9027.6	Total Linear Footage of Parking Roadways
9241	Total Linear Footage of Jogging Trails

Basketball Court (70' X 114')	**Original Costs**				**Amended Costs**				**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area	198.0	$6.00	CY	$1,188.13	198.0	$6.00	CY	$1,188.13	$0.00
6" Flex Base for Court	319.2	$13.00	TON	$4,149.60	319.2	$13.00	TON	$4,149.60	$0.00
6" Concrete Pad for Court	7980.0	$4.50	SF	$35,910.00	7980.0	$4.50	SF	$35,910.00	$0.00
Field Lighting	2.0	$15,000.00	Pole	$30,000.00	1.0	$9,166.66	LS	$9,166.66	($20,833.34)
Athletic Equipment, backboards, field markers	1.0	$1,500.00	LS	$1,500.00	1.0	$2,000.00	LS	$2,000.00	$500.00
Subtotal Basketball Court	6.0	$72,747.73	EA	$436,486.40	6.0	$52,414.39	EA	$314,486.36	($122,000.04)

Tennis Court (60' X 54')	**Original Costs**				**Amended Costs (120' x 54')**				**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area	80.4	$6.00	CY	$482.40	160.8	$6.00	CY	$964.80	$482.40
6" Flex Base for Court	129.6	$13.00	TON	$1,684.80	259.2	$13.00	TON	$3,369.60	$1,684.80
6" Concrete Pad for Court	3240.0	$4.50	SF	$14,580.00	6480.0	$4.50	SF	$29,160.00	$14,580.00
Field Lighting	2.0	$15,000.00	Pole	$30,000.00	1.0	$10,625.00	LS	$10,625.00	($19,375.00)
Athletic Equipment, nets, field markers	1.0	$2,500.00	LS	$2,500.00	1.0	$2,500.00	LS	$2,500.00	$0.00
Chainlink Perimeter Fence					228.0	$20.00	LF	$4,560.00	$4,560.00
Wind Screening					228.0	$15.00	LF	$3,420.00	$3,420.00
Tennis Court All Inclusive					228.0	$15.00	LF	$3,420.00	$3,420.00
Subtotal Tennis Court	8.0	$49,247.20	EA	$393,977.60	8.0	$40,000.00	EA	$320,000.00	($73,977.60)

Baseball Field (400' Outfield)	**Original Costs**				**Amended Costs (275' Outfield for Softball)**				**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area	3118.3	$6.00	CY	$18,709.91	1473.9	$6.00	CY	$8,843.36	($9,866.56)
Place 6" Imported Topsoil on Playing Field	2327.1	$30.00	CY	$69,813.11	6599.5	$2.25	SY	$14,848.92	($54,964.19)
Sod (laid)	13962.6	$3.25	SY	$45,378.52	6599.5	$3.25	SY	$21,448.44	($23,930.08)
Site Utilities / Irrigation Allowance	13962.6	$2.25	SY	$31,415.90	0.0	$4.95	SY	$0.00	($31,415.90)
Field Lighting	4.0	$15,000.00	Pole	$60,000.00	1.0	$102,500.00	LS	$102,500.00	$42,500.00
Chainlink Perimeter Fence	1428.3	$12.00	LF	$17,139.82	982.0	$12.00	LF	$11,783.62	($5,356.19)
Chainlink Backstop Fence	1.0	$5,000.00	LS	$5,000.00	1.0	$5,000.00	LS	$5,000.00	$0.00
Chainlink Dug-out Enclosures	1.0	$4,000.00	LS	$4,000.00	1.0	$4,000.00	LS	$4,000.00	$0.00
Infield Sand - 6" Imported and Spread	275.0	$20.00	CY	$5,500.00	275.0	$20.00	CY	$5,500.00	$0.00
Aluminum Grand Stands for 250 People	1.0	$15,000.00	LS	$15,000.00	250.0	$65.00	SEAT	$16,250.00	$1,250.00
Concession Stand Building (1) 10' x 20'									
Foundations	200.0	$9.58	SF	$1,916.00					
Superstructure	200.0	$12.12	SF	$2,424.00					
Exterior Enclosure	200.0	$11.26	SF	$2,252.00					
Roofing	200.0	$2.87	SF	$574.00					
Interior Partitions and Doors	200.0	$3.66	SF	$732.00					
Wall Finishes	200.0	$2.13	SF	$426.00					
Floor Finishes	200.0	$2.29	SF	$458.00					
Ceiling Finishes	200.0	$1.65	SF	$330.00					
Specialties	200.0	$3.43	SF	$686.00					
Plumbing	200.0	$2.18	SF	$436.00					
HVAC	200.0	$9.00	SF	$1,800.00					
Electrical Distribution	200.0	$4.47	SF	$894.00					
Lighting and Power	200.0	$1.62	SF	$324.00					
Combined Restroom/Concession Building		$66.26	SF		610.0	$127.87	SF	$78,000.70	$64,748.70
Electronic Scoreboard	1.0	$5,000.00	LS	$5,000.00	1.0	$0.00	LS	$0.00	($5,000.00)
Athletic Equipment, bases, field markers	1.0	$1,000.00	LS	$1,000.00	1.0	$1,000.00	LS	$1,000.00	$0.00
Pressbox					1.0	$2,000.00	LS	$2,000.00	$2,000.00
Subtotal Baseball Field	2.0	$291,209.26	EA	$582,418.53	2.0	$271,175.04	EA	$542,350.09	($40,068.44)

Football Field and Track (170' x 370')	**Original Costs**				**Amended Costs**				**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area	1560.9	$6.00	CY	$9,365.11	2010.0	$6.00	CY	$12,060.00	$2,694.89
Place 6" Imported Topsoil on Playing Field	1164.8	$30.00	CY	$34,944.44	9000.0	$2.25	SY	$20,250.00	($14,694.44)
Sod (laid)	6988.9	$3.25	SY	$22,713.89	9000.0	$3.25	SY	$29,250.00	$6,536.11
Site Utilities / Irrigation Allowance	6988.9	$2.25	SY	$15,725.00	0.0	$4.95	SY	$0.00	($15,725.00)
Field Lighting	4.0	$15,000.00	Pole	$60,000.00	1.0	$110,000.00	LS	$110,000.00	$50,000.00
Chainlink Perimeter Fence	1500.0	$12.00	LF	$18,000.00	1500.0	$12.00	LF	$18,000.00	$0.00
6" Flex Base for Track	2022.0	$13.00	TON	$26,286.00	2022.0	$13.00	TON	$26,286.00	$0.00
2" Cinder Track Surface for 8 Lane Track	5467.0	$7.25	SY	$39,635.75	5467.0	$7.25	SY	$39,635.75	$0.00
Upgrade to Atrificial Track Surface	1.0	$40,000.00	LS	$40,000.00	1.0	$40,000.00	LS	$40,000.00	$0.00
6" x 18" Concrete Curb around Track	3000.0	$8.50	LF	$25,500.00	3000.0	$8.50	LF	$25,500.00	$0.00
Aluminum Grand Stands for 1000 People	1.0	$60,000.00	LS	$60,000.00	1000.0	$65.00	LS	$65,000.00	$5,000.00
Press Box	1.0	$8,000.00	LS	$8,000.00	1.0	$8,000.00	LS	$8,000.00	$0.00
Concession Stand Building (2) 10' x 20'									
Foundations	400.0	$9.58	SF	$3,832.00					
Superstructure	400.0	$12.12	SF	$4,848.00					
Exterior Enclosure	400.0	$11.26	SF	$4,504.00					
Roofing	400.0	$2.87	SF	$1,148.00					
Interior Partitions and Doors	400.0	$3.66	SF	$1,464.00					
Wall Finishes	400.0	$2.13	SF	$852.00					
Floor Finishes	400.0	$2.29	SF	$916.00					
Ceiling Finishes	400.0	$1.65	SF	$660.00					
Specialties	400.0	$3.43	SF	$1,372.00					
Plumbing	400.0	$2.18	SF	$872.00					
HVAC	400.0	$9.00	SF	$3,600.00					
Electrical Distribution	400.0	$4.47	SF	$1,788.00					
Lighting and Power	400.0	$1.62	SF	$648.00					
Combined Restroom/Concession Building		$66.26	SF		1220.0	$127.87	SF	$156,001.40	$129,497.40
Electronic Scoreboard	1.0	$10,000.00	LS	$10,000.00	1.0	$0.00	LS	$0.00	($10,000.00)
Athletic Equipment, goal posts, field markers	1.0	$4,000.00	LS	$4,000.00	1.0	$8,000.00	LS	$8,000.00	$4,000.00
Subtotal Football Field and Track	1.0	$400,674.19	EA	$400,674.19	1.0	$557,983.15	EA	$557,983.15	$157,308.96

Soccer Field (225' x 360')	**Original Costs**				**Amended Costs**				**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area	2010.0	$6.00	CY	$12,060.00	2010.0	$6.00	CY	$12,060.00	$0.00
Place 6" Imported Topsoil on Playing Field	1500.0	$30.00	CY	$45,000.00	9000.0	$2.25	SY	$20,250.00	($24,750.00)
Sod (laid)	9000.0	$3.25	SY	$29,250.00	9000.0	$3.25	SY	$29,250.00	$0.00
Site Utilities / Irrigation Allowance	9000.0	$2.25	SY	$20,250.00	0.0	$4.95	SY	$0.00	($20,250.00)
Aluminum Grand Stands for 100 People	1.0	$10,000.00	LS	$10,000.00	0.0	$10,000.00	LS	$0.00	($10,000.00)
Field Lighting	4.0	$15,000.00	Pole	$60,000.00	1.0	$28,500.00	LS	$28,500.00	($31,500.00)
Athletic Equipment, goal posts, field markers	1.0	$4,000.00	LS	$4,000.00	1.0	$8,000.00	LS	$8,000.00	$4,000.00
Subtotal Soccer Field	10.0	$180,560.00	EA	$1,805,600.00	10.0	$98,060.00	EA	$980,600.00	($825,000.00)

Children Playground	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Adventure Series playstructure (no roof)	2.0	$7,750.00	EA	$15,500.00	2.0	$7,750.00	EA	$15,500.00	$0.00
Single Post 2 bay swing set	2.0	$1,450.00	EA	$2,900.00	2.0	$1,450.00	EA	$2,900.00	$0.00
Two Set Bouncers	2.0	$1,650.00	EA	$3,300.00	2.0	$1,650.00	EA	$3,300.00	$0.00
Canopy Shade Cover 21' x 18'	1.0	$2,200.00	EA	$2,200.00	0.0	$2,200.00	EA	$0.00	($2,200.00)
Canopy Shade Cover 36' x 18'	1.0	$2,675.00	EA	$2,675.00	0.0	$2,675.00	EA	$0.00	($2,675.00)
Bow, Little Crown Series	2.0	$425.00	EA	$850.00	2.0	$425.00	EA	$850.00	$0.00
Little Daisy, Little Crown Series	2.0	$430.00	EA	$860.00	2.0	$430.00	EA	$860.00	$0.00
Twin Toadstool, Little Crown Series	1.0	$570.00	EA	$570.00	1.0	$570.00	EA	$570.00	$0.00
Daffodil, Little Crown Series	1.0	$725.00	EA	$725.00	1.0	$725.00	EA	$725.00	$0.00
Tick-Tock, Little Crown Series	1.0	$705.00	EA	$705.00	1.0	$705.00	EA	$705.00	$0.00
Engineered Wood Fiber Fall Surface	15625.0	$1.75	SF	$27,343.75	15625.0	$1.75	SF	$27,343.75	$0.00
4' Chainlink Fence around Perimeter	500.0	$12.00	LF	$6,000.00	500.0	$12.00	LF	$6,000.00	$0.00
Subtotal Children Playground	1.0	$63,628.75	EA	$63,628.75	1.0	$58,753.75	EA	$58,753.75	($4,875.00)

Parking Spaces (18.5' x 9')	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Clear and Grub for Pavement Area	166.5	$0.08	SF	$13.32	166.5	$0.08	SF	$13.32	
Strip 4" Loose Material for Paving	2.0	$2.00	CY	$4.07	2.0	$2.00	CY	$4.07	
6" Flex Base for Asphalt Parking Area	6.7	$13.00	TON	$86.58	6.7	$13.00	TON	$86.58	
1.5" Asphalt for Parking Areas	18.5	$2.90	SY	$53.65	18.5	$2.90	SY	$53.65	
Standard Curb and Gutter	9.0	$6.75	LF	$60.75	9.0	$0.00	LF	$0.00	
Parking Lot Striping	18.5	$0.50	LF	$9.25	18.5	$0.50	LF	$9.25	
6" Topsoil Spread Around Parking Area	0.8	$20.00	CY	$16.67	0.0	$20.00	CY	$0.00	
Concrete Ribbon Curbing					9.0	$4.00	LF	$36.00	
Subtotal Parking Spaces	1090.0	$244.29	EA	$266,272.47	1058.0	$202.87	EA	$214,636.46	
Parking Roadway (26' wide)									**Difference**
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Clear and Grub for Pavement Area	26.0	$0.08	SF	$2.08	26.0	$0.08	SF	$2.08	
Strip 4" Loose Material for Paving	0.3	$2.00	CY	$0.64	0.3	$2.00	CY	$0.64	
Subgrade Treatment	2.9	$1.00	SY	$2.89	2.9	$1.00	SY	$2.89	
8" Flex Base	1.4	$13.00	TON	$18.59	1.4	$13.00	TON	$18.59	
2" Asphalt	2.9	$3.85	SY	$11.12	2.9	$3.85	SY	$11.12	
Standard Curb and Gutter	1.0	$6.75	LF	$6.75	0.0	$6.75	LF	$0.00	
Signage and Striping	1.0	$0.50	LF	$0.50	1.0	$0.50	LF	$0.50	
Drainage	1.0	15% of Road	LS	$6.38	1.0	15% of Road	LS	$5.37	
Concrete Ribbon Curbing					1.0	$4.00	LF	$4.00	
Subtotal Parking Roadway	10506.0	$48.95	LF	$514,286.21	9027.6	$45.19	LF	$407,949.72	
Subgrade Preparation					46387.0	$5.00	SY	$231,935.00	
8" Base Material (Avg.)					46387.0	$5.50	SY	$255,128.50	
1.5" H.M.A.C.					46387.0	$3.85	SY	$178,589.95	
Ribbon Curb					16740.0	$8.00	LF	$133,920.00	
Light Pole Foundations					18.0	$1,050.00	EA	$18,900.00	
Light Pole Fixtures					18.0	$3,000.00	EA	$54,000.00	
Total Parking Lots and Misc. Driveways	1090.0	$716.11	EA	$780,558.68	1058.0	$824.64	EA	$872,473.45	$91,914.77

Median Roadway (2 - 20' lanes)	Original Costs				Amended Costs (2 - 24' lanes)				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Clear and Grub for Pavement Area	60.0	$0.08	SF	$4.80	60.0	$0.08	SF	$4.80	$0.00
Strip 4" Loose Material for Paving	0.5	$2.00	CY	$0.98	0.5	$2.00	CY	$0.98	$0.00
Subgrade Treatment	4.4	$1.00	SY	$4.44	4.4	$1.00	SY	$4.44	$0.00
8" Flex Base	2.2	$13.00	TON	$28.60	2.2	$13.00	TON	$28.60	$0.00
2" Asphalt	4.4	$3.85	SY	$17.11	4.4	$3.85	SY	$17.11	$0.00
Concrete Ribbon Curbing	4.0	$4.00	LF	$16.00	4.0	$4.00	LF	$16.00	$0.00
Signage and Striping	2.0	$2.00	LF	$4.00	2.0	$2.00	LF	$4.00	$0.00
Drainage	1.0	15% of Road	LS	$11.39	1.0	15% of Road	LS	$11.39	$0.00
6" Topsoil Spread Around Median Area	0.7	$20.00	CY	$14.81	0.0	$20.00	CY	$0.00	($14.81)
Subgrade Preparation					6820.0	$5.00	SY	$34,100.00	
10" Base Material (Avg.)					6820.0	$7.35	SY	$50,127.00	
2" H.M.A.C.					5845.0	$5.00	SY	$29,225.00	
Ribbon Curb					4384.0	$8.00	LF	$35,072.00	
Light Pole Foundations					7.0	$1,050.00	EA	$7,350.00	
Light Pole Fixtures					7.0	$3,000.00	EA	$21,000.00	
Subtotal Median Roadway	2413.0	$102.14	LF	$246,459.35	1096.0	$161.38	LF	$176,874.00	($69,585.35)

Bicycle Roadway (37' wide)	Original Costs				Amended Costs (30' wide)				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Clear and Grub for Pavement Area	37.0	$0.08	SF	$2.96	30.0	$0.08	SF	$2.40	($0.56)
Strip 4" Loose Material for Paving	0.5	$2.00	CY	$0.90	0.4	$2.00	CY	$0.73	($0.17)
Subgrade Treatment	4.1	$1.00	SY	$4.11	3.3	$1.00	SY	$3.33	($0.78)
8" Flex Base	2.0	$13.00	TON	$26.46	1.7	$13.00	TON	$21.45	($5.01)
2" Asphalt	4.1	$3.85	SY	$15.83	3.3	$3.85	SY	$12.83	($2.99)
Concrete Ribbon Curbing	2.0	$4.00	LF	$8.00	2.0	$4.00	LF	$8.00	$0.00
Signage and Striping	3.0	$2.00	LF	$6.00	3.0	$2.00	LF	$6.00	$0.00
Drainage	1.0	15% of Road	LS	$9.64	1.0	15% of Road	LS	$8.21	($1.43)
Subgrade Preparation					26743.0	$5.00	SY	$133,715.00	
10" Base Material (Avg.)					26743.0	$7.35	SY	$196,561.05	
2" H.M.A.C.					23597.0	$5.00	SY	$117,985.00	
Ribbon Curb					14158.0	$8.00	LF	$113,264.00	
Light Pole Foundations					39.0	$1,050.00	EA	$40,950.00	
Light Pole Fixtures					39.0	$3,000.00	EA	$117,000.00	
Subtotal Bicycle Roadway	7194.0	$73.90	LF	$531,615.62	7079.0	$101.64	LF	$719,475.05	$187,859.43

Jogging Trail (10' wide)	*Original Costs*				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Clear and Grub for Trail Area	10.0	$0.08	SF	$0.80	10.0	$0.08	SF	$0.80	$0.00
Strip 4" Loose Material for Trail	0.1	$2.00	CY	$0.24	0.1	$2.00	CY	$0.24	$0.00
Subgrade Treatment	1.1	$1.00	SY	$1.11	1.1	$1.00	SY	$1.11	$0.00
2" Crushed Granite	10.0	$4.50	SF	$45.00	10.0	$3.58	SF	$35.80	($9.20)
Signage	1.0	$0.25	LF	$0.25	1.0	$0.25	LF	$0.25	$0.00
Drainage	1.0	2% of Trail	LS	$0.95	1.0	2% of Trail	LS	$0.76	($0.18)
Subtotal Jogging Trail	22440.0	$48.35	LF	$1,085,056.28	9241.0	$38.97	LF	$360,118.69	($724,937.59)

Miscellaneous	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Water Wells	4.0	$30,000.00	EA	$120,000.00	1.0	$96,558.00	EA	$96,558.00	($23,442.00)
Water Distribution	20113.0	$25.00	LF	$502,825.00	1.0	$341,528.72	LS	$341,528.72	($161,296.28)
Innovative Septic System	4.0	$50,000.00	EA	$200,000.00	0.0	$50,000.00	EA	$0.00	($200,000.00)
12 Month Port-O-Let Usage					0.0	$65.00	EA	$0.00	$0.00
Onsite Wastewater Improvements					1.0	$248,904.00	LS	$248,904.00	$248,904.00
Restroom Building (1) 40' x 40'									
Foundations	1600.0	$9.58	SF	$15,328.00					
Superstructure	1600.0	$12.12	SF	$19,392.00					
Exterior Enclosure	1600.0	$11.26	SF	$18,016.00					
Roofing	1600.0	$2.87	SF	$4,592.00					
Interior Partitions and Doors	1600.0	$3.66	SF	$5,856.00					
Wall Finishes	1600.0	$2.13	SF	$3,408.00					
Floor Finishes	1600.0	$2.29	SF	$3,664.00					
Ceiling Finishes	1600.0	$1.65	SF	$2,640.00					
Specialties	1600.0	$3.43	SF	$5,488.00					
Plumbing	1600.0	$2.18	SF	$3,488.00					
HVAC	1600.0	$9.00	SF	$14,400.00					
Electrical Distribution	1600.0	$4.47	SF	$7,152.00					
Lighting and Power	1600.0	$1.62	SF	$2,592.00					
		$66.26	SF		1220.0	$102.46	SF	$125,001.20	$18,985.20
Concession Stand Building (2) 10' x 20'									
Foundations	400.0	$9.58	SF	$3,832.00					
Superstructure	400.0	$12.12	SF	$4,848.00					
Exterior Enclosure	400.0	$11.26	SF	$4,504.00					
Roofing	400.0	$2.87	SF	$1,148.00					
Interior Partitions and Doors	400.0	$3.66	SF	$1,464.00					
Wall Finishes	400.0	$2.13	SF	$852.00					
Floor Finishes	400.0	$2.29	SF	$916.00					
Ceiling Finishes	400.0	$1.65	SF	$660.00					
Specialties	400.0	$3.43	SF	$1,372.00					
Plumbing	400.0	$2.18	SF	$872.00					
HVAC	400.0	$9.00	SF	$3,600.00					
Electrical Distribution	400.0	$4.47	SF	$1,788.00					
Lighting and Power	400.0	$1.62	SF	$648.00					
		$66.26	SF		1220.0	$74.59	SF	$90,999.80	$64,495.80
Trees	800.0	$225.00	EA	$180,000.00	0.0	$225.00	EA	$0.00	($180,000.00)
Shrubs	1600.0	$25.00	EA	$40,000.00	0.0	$25.00	EA	$0.00	($40,000.00)
Irrigation Allowance	40000.0	$2.25	SY	$90,000.00	1.0	$536,900.00	LS	$536,900.00	$446,900.00
Entry Fencing	4375.0	$35.00	LF	$153,125.00	4375.0	$35.00	LF	$153,125.00	$0.00
Entry Signage	1.0	$25,000.00	EA	$25,000.00	1.0	$40,000.00	EA	$40,000.00	$15,000.00
Monument	1.0	$50,000.00	EA	$50,000.00	1.0	$75,000.00	EA	$75,000.00	$25,000.00
Flagpoles	6.0	$2,200.00	EA	$13,200.00	3.0	$2,200.00	EA	$6,600.00	($6,600.00)
Silt Fencing	42553.0	$1.35	LF	$57,446.55	26443.6	$1.80	LF	$47,598.48	($9,848.07)
Rock Berm	2127.7	$25.00	LF	$53,191.25	1322.2	$15.32	LF	$20,255.80	($32,935.45)
Revegetation	227480.0	$0.50	SY	$113,740.00	413508.0	$0.08	SF	$33,080.64	($80,659.36)
Water Quality Structures	1090.0	$175.00	SPACE	$190,750.00	1.0	$282,900.00	LS	$282,900.00	$92,150.00
Clear and Grub for Mulch Trail					27.6	$4,000.00	AC	$110,388.52	$110,388.52
Concrete Sidewalks					102268.0	$3.50	SF	$357,938.00	$357,938.00
Trash Dumpsters w/ Enclosures					3.0	$7,500.00	EA	$22,500.00	$22,500.00
Grills					8.0	$217.00	EA	$1,736.00	$1,736.00
Bicycle Racks					18.0	$471.00	EA	$8,478.00	$8,478.00
Picnic Tables					16.0	$918.00	EA	$14,688.00	$14,688.00
Trash Receptacles					52.0	$411.00	EA	$21,372.00	$21,372.00
Benches					17.0	$487.00	EA	$8,279.00	$8,279.00
Water Fountains					1.0	$1,882.00	EA	$1,882.00	$1,882.00
Concrete Pedestrian Crossing (Box Culvert)					1.0	$45,000.00	LS	$45,000.00	$45,000.00
Open Shelter at Playground					1220.0	$49.18	SF	$59,999.60	$59,999.60
Open Shelter at Soccer Field					1220.0	$49.18	SF	$59,999.60	$59,999.60
Subtotal Miscellaneous	1.0	$1,921,797.80	LS	$1,921,797.80	1.0	$2,810,712.36	LS	$2,810,712.36	$888,914.56

Central Commons	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Rough Grading to acheive level area					4478.9	$6.00	CY	$26,873.40	$26,873.40
Place 6" Imported Topsoil on Playing Field					20054.8	$2.25	SY	$45,123.25	$45,123.25
Revegetation					20054.8	$0.72	SY	$14,439.44	$14,439.44
Site Utilities / Irrigation Allowance					0.0	$4.95	SY	$0.00	$0.00
Power for Future Poles					1.0	$20,000.00	LS	$20,000.00	$20,000.00
Subtotal Central Commons					1.0	$106,436.09	EA	$106,436.09	$106,436.09

Landscape	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total	Quantity	$/Unit	Unit	Total	
Canopy Trees (2" Cal.)					180.0	$200.00	EA	$36,000.00	$36,000.00
Canopy Trees (3" Cal.)					42.0	$350.00	EA	$14,700.00	$14,700.00
Ornamental Trees (2" Cal.)					253.0	$225.00	EA	$56,925.00	$56,925.00
Shrubs (1 Gal.)					1317.0	$12.00	EA	$15,804.00	$15,804.00
Shrubs (5 Gal.)					500.0	$30.00	EA	$15,000.00	$15,000.00
Native Grass / Wildflower Mix					0.0	$0.65	SY	$0.00	$0.00
Bermuda Grass Sod					5750.0	$3.25	SY	$18,687.50	$18,687.50
Groundcover					31980.0	$1.50	SF	$47,970.00	$47,970.00
4" Top Soil					8200.0	$22.00	CY	$180,400.00	$180,400.00
Mulch					575.0	$40.00	CY	$23,000.00	$23,000.00
Tree Stakes					590.0	$4.25	EA	$2,507.50	$2,507.50
Miscellaneous Lighting/Power					1.0	$30,000.00	LS	$30,000.00	$30,000.00
Subtotal Landscaping					1.0	$440,994.00	LS	$440,994.00	$440,994.00

Add Alternates	Original Costs				Amended Costs				Difference
1. Tennis Court Lighting					1.0	$75,000.00	LS	$75,000.00	$75,000.00
2. Tennis Courts and Tennis Court Lighting					8.0	$59,599.40	LS	$476,795.20	$476,795.20
3a. Light Pole Fixtures for Parking Lots P6/P7					6.0	$3,000.00	LS	$18,000.00	$18,000.00
3b. Light Pole Foundations for Parking Lots P6/P7					6.0	$1,050.00	LS	$6,300.00	$6,300.00
4. Pavers					9343.0	$14.50	SF	$135,473.50	$135,473.50
ALLOWANCE									
5. Tennis Pro Shop					3200.0	$118.75	SF	$380,000.00	$380,000.00
OFF-SITE INFORMATION									
* Offsite Wastewater LUE's from MUD No. 9					64.0	$500.00	LUE	$32,000.00	$32,000.00
** Offsite MUD No. 9 Wastewater Upgrades					1.0	$75,000.00	LS	$75,000.00	$75,000.00
*** Onsite Wastewater Conveyance System to MUD					1.0	$473,171.00	LS	$473,171.00	$473,171.00
**** Offsite Connection to COG Water Distribution					1.0	$1,187,500.00	LS	$1,187,500.00	$1,187,500.00
Subtotal Add Alternates					1.0	$2,859,239.70	LS	$2,859,239.70	$2,859,239.70

Park Phase I (Sports Fields) Development	Original Costs				Amended Costs				Difference
Parameter / Item of Work	Quantity	$/Unit	Unit	Total					
Subtotal Basketball Court	6	$72,747.73	EA	$436,486.40	6	$52,414.39	EA	$314,486.36	($122,000.04)
Subtotal Tennis Court	8	$49,247.20	EA	$393,977.60	8	$40,000.00	EA	$320,000.00	($73,977.60)
Subtotal Baseball Field	2	$291,209.26	EA	$582,418.53	2	$271,175.04	EA	$542,350.09	($40,068.44)
Subtotal Football Field and Track	1	$400,674.19	EA	$400,674.19	1	$557,983.15	EA	$557,983.15	$157,308.96
Subtotal Soccer Field	10	$180,560.00	EA	$1,805,600.00	10	$98,060.00	EA	$980,600.00	($825,000.00)
Subtotal Children Playground	1	$63,628.75	EA	$63,628.75	1	$58,753.75	EA	$58,753.75	($4,875.00)
Total Parking Lots and Misc. Driveways	1090	$716.11	EA	$780,558.68	1058	$824.64	EA	$872,473.45	$91,914.77
Subtotal Median Roadway	2413	$102.14	LF	$246,459.35	1096	$161.38	LF	$176,874.00	($69,585.35)
Subtotal Bicycle Roadway	7194	$73.90	LF	$531,615.62	7079	$101.64	LF	$719,475.05	$187,859.43
Subtotal Jogging Trail	22440	$48.35	LF	$1,085,056.28	9241	$38.97	LF	$360,118.69	($724,937.59)
Subtotal Miscellaneous	1	$1,921,797.80	LS	$1,921,797.80	1	$2,810,712.36	LS	$2,810,712.36	$888,914.56
Subtotal Central Commons					1	$106,436.09	EA	$106,436.09	$106,436.09
Subtotal Landscaping					1	$440,994.00	LS	$440,994.00	$440,994.00
Subtotal Add Alternates					1	$2,859,239.70	LS	$2,859,239.70	$2,859,239.70
Total Park Phase I (Sports Fields) Development				$8,248,273.20				$11,120,496.69	$2,872,223.49
								as of	28-Jan-02
									$12,983.79

AGENDA ITEM 27

Discuss and take appropriate action on securing a water source for Williamson County Regional Park.

Moved: **Commissioner Limmer**
Seconded: **Commissioner Hays**
Motion: That the County install its own water line, pay for it, and come to an agreement with the City of Georgetown for a dollar amount on the price for the County to pay for water for the park, and on a surcharge for hookups to the line that will be used to repay the County for installation of the water line, relying on the wells that are being drilled to supply water to the sports fields.
Vote: **5 – 0**

Amended Motion: Commissioner Limmer
Amended Second: Commissioner Hays
Amended Motion: Motion: That the County install its own water line, pay for it, and come to an agreement with the City of Georgetown for a dollar amount on the price for the County to pay for water for the park, and on a surcharge for hookups to the line that will be used to repay the County for installation of the water line, relying on the wells that are being drilled to supply water to the sports fields; ***and to authorize Charlie Crossfield to negotiate with the City of Georgetown on a rate for the surcharge on the water line.***
Vote: **5 – 0**

AGENDA ITEM 28

Consider approving additional professional service authorization for Land Strategies, Inc. on Williamson County Regional Park.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To approve additional professional service authorization for Land Stategies, Inc., on Williamson County Regional Park for reimbursable expenses in the amount of $14,690.00.
Vote: **5 – 0**

< Attachment >

LAND STRATEGIES INC.

PAUL LINEHAN & ASSOCIATES

January 28, 2002

The Honorable Judge John Doerfler
Williamson County Commissioner's Court
Williamson County Courthouse
710 Main Street, 2nd Floor
Georgetown, Texas 78626

Re: Williamson County Regional Park
Proposal for Professional Development Consulting Services (LSI# 830)

Dear Judge Doerfler,

Land Strategies, Inc. (LSI) is excited about the possibility of continuing the working relationship with you for the above referenced project. In addition to the previously contracted development services, LSI is requesting this contract for the additional fees needed to process the project through Texas Natural Resource Conservation Commission and receive approval from Texas Department of Licensing and Regulation.

The estimated fee limit will not exceed without authorization by the client. If changes or additional effort brought on by review agencies, the client, or other unforeseen circumstances warrant additional fees, then LSI reserves the right to contact the client and explain the pertinent information for renegotiation.

Water Pollution Abatement Plan Submittal.....$ 5,000.00

Sewage Collection System Submittal.....$ 3,025.00

Texas Accessibility Standards Submittal.....$ 1,165.00

Estimated reproduction costs for packets and plans.....$ 5,500.00

We anticipate the opportunity to discuss the following Proposal for Professional Development Consulting Services with you. Should you have any questions or require additional information, please contact me at your earliest convenience.

LAND STRATEGIES, INC.

1/28/02

Paul W. Linehan, ASLA Date
President

ACCEPTED:

John C. Doerfler 1-29-02

Honorable Judge John Doerfler Date
Williamson County Commissioner's Court

PWL:rko
V:\ADMIN\PROPOSAL\Misc\Williamson County Additional Costs.wpd

COMMISSIONERS' COURT RECESSED AT 1:00 P.M. ON TUESDAY, JANUARY 29, 2002.

COMMISSIONERS' COURT RECOVENED AT 1:07 P.M. ON TUESDAY, JANUARY 29, 2002.

AGENDA ITEM 29

Consider approving interlocal agreement with Fern Bluff MUD concerning trails.

Moved: **Commissioner Hays**
Seconded: **Commissioner Heiligenstein**
Motion: To approve an interlocal agreement with Fern Bluff MUD for construction of hike and bike trails within the Fern Bluff MUD in the amount of $350,000.00, to be allocated from Certificates of Obligation funds.
Vote: **5 - 0**

< Attachment >

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into effective this 29 day of JANUARY, 2002, by and between WILLIAMSON COUNTY (the "County") and FERN BLUFF MUNICIPAL UTILITY DISTRICT (the "District).

WITNESSETH:

WHEREAS, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions and for the joint use of facilities or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

WHEREAS, each of the parties hereto desire to provide for the construction of hike and bike trails within the Fern Bluff Municipal Utilities District; and

NOW, THEREFORE, *in consideration of the mutual covenants and agreements* herein contained, the undersigned parties agree as follows:

I.
TERMS AND CONDITIONS

1. The District hereby agrees to construct and maintain hike and bike trails within the Fern Bluff Municipal Utilities District.

2. As consideration for the above, Williamson County will transfer Three Hundred and Fifty Thousand and No/100 Dollars ($350,000) to the District within 45 days after the signing of this agreement.

II.
MISCELLANEOUS

1. The parties agree that in the event any provision of this Agreement is held by a court of competent jurisdiction to be in contradiction of any laws of the State or the United States, the parties will immediately rectify the offending portions of this Agreement. The remainder of the Agreement shall be in full force and effect.

2. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all their oral and written negotiations, agreements and understandings of every kind. The parties understand, agree and declare that no promise, warranty, statement or representation of any kind whatsoever, which is not expressly stated in this Agreement, has been made by any party hereto or its officers, employees or other agents to induce execution of this Agreement.

3. This Agreement shall be performable in Williamson County, Texas.

John C. Doerfler 1-29-02
JOHN DOERFLER
County Judge
Williamson County, Texas

Jean I Cochran
JEAN COCHRAN
President, Board of Directors
Fern Bluff Municipal Utility District

ATTEST:

Theresa M Thompson
Theresa Thompson
Assistant Secretary/Treasurer
Board of Directors

AGENDA ITEM 30

Consider approving additional funds for Sebesta and Associates.

Moved: **Commissioner Hays**
Seconded: **Judge Doerfler**
Motion: To approve additional funds to Sebesta and Associates for reimbursable expenses for copy work, **not** to include reimbursement for any additional time worked on the project.
Vote: **3 – 1 –1. Commissioner Boatright voted against the motion. Commissioner Limmer abstained from the vote.**

SEBESTA AND ASSOCIATES

Grants, Landscape Design, and Planning

MEMORANDUM

TO: Judge John Doerfler
FROM: Doyle and Carla Sebesta
RE: Final Invoice for Park Plan
DATE: January 11, 2002

The final invoice for the park plan is attached. According to our records, there is $659.21 remaining of the $80,000 approved for our contract. The invoice is $4,261.51 above this amount.

The last month of preparing the plan required more of our time than we had anticipated. This included the presentation to Commissioners Court and production of the final document for the County and for Texas Parks and Wildlife. The final cost from the printer (Accugraphics) was also higher than their original quote.

We would appreciate your consideration of approving the additional funds to cover our expenses. We feel that the plan will serve the County well in its future park development and grant-seeking activities. We were also pleased that the plan received Parks and Wildlife approval with no revisions.

Twenty copies of the final plan were delivered to Annette Todd at the Round Rock office. Our understanding is that she will distribute the plans to you and the Commissioners.

Feel free to contact us at 819-9675 if you have any questions about the invoice. Again, thank you for your help.

P.O. Box 124 Georgetown, Texas 78627-0124 Phone (512) 819-9675; Fax (512) 868-2642

SEBESTA AND ASSOCIATES
Grants, Landscape Design, and Planning

INVOICE

January 11, 2002

Judge John Doerfler
2nd Floor
Williamson County Courthouse
Georgetown, Texas 78626

RE: Preparation of Narrative, Exhibits, and Mapping;
Presentation to County Commissioners, Consultation
With Staff, and Texas Parks And Wildlife Dept. Staff
For County Comprehensive Park Plan
Per Contract Approved 10/5/99
FINAL INVOICE

57 hours @ $70 per hour	$3,990.00
Meals: (Receipts attached)	42.19
Photography: (Receipts attached)	129.77
Postage (Receipt attached)	3.90
Printing (includes production of final document - receipts attached)	754.86
TOTAL DUE	$4,920.72

only

approved 1-29-02
John C. Doerfler

Thank you.

P.O. Box 124 Georgetown, Texas 78627-0124 Phone (512) 819-9675; Fax (512) 868-2642

AGENDA ITEM 31

Consider authorizing advertising and setting date to receive bids for Williamson County Regional Park, Phase 1-A.

Moved: **Commissioner Hays**
Seconded: **Commissioner Boatright**
Motion: To authorize advertising and settting a date of March 12, 2002 at 2:00 p.m., in the Commissioners' Courtroom, to receive bids for the Williamson County Regional Park, Phase 1.
Vote: **5 - 0**

AGENDA ITEM 32

Discuss and take appropriate action on jail/courthouse annex expansion.

Judge Doerfler noted that Landmark has put up fences around the jail expansion site, and that dirt work would begin soon.

Charly Skaggs reported that work on the new Juvenile Facility is moving along rapidly.

No action was taken on this agenda item.

AGENDA ITEM 33

Consider awarding, rejecting, or extending bids received for moving dirt to the Sheriff's office pistol range.

Moved: **Judge Doerfler**
Seconded: **Commissioner Hays**
Motion: To reject the bids received for moving dirt to the Sheriff's office pistol range, as recommended by the Auditor's office and the Sheriff's Department.
Vote: **5 - 0**

< Attachment >

MEMORANDUM

Williamson County Sheriff's Office

Administration

TO: Bob Space, Purchasing Agent
FROM: Lt. David McGarah
DATE: January 15, 2002
SUBJECT: Agenda Request

I respectfully request to have the following item placed on the Commissioners' Court Agenda:

Due to the change in the requirements and specifications for dirt moving in the construction of the new Gun Range, I request to Not award the bid for dirt moving as submitted.

all bids rejected - 1-29-02
John C. Doerfler

AGENDA ITEM 34

Discuss and take appropriate action on agreement between Frederick & Hornsby, Inc. and Williamson County to perform appraisal services.

Moved: **Commissioner Limmer**
Seconded: **Judge Doerfler**
Motion: To approve an agreement with Frederick & Hornsby, Inc., to perform appraisal services.
Vote: **4 - 0 - 1. Commissioner Hays abstained from the vote.**

< Attachment >

Frederick & Hornsby, Inc.

Real Estate Appraisers / Consultants
Investment Analysis / Counseling

Real Estate Appraisal Services Agreement
Between
Frederick & Hornsby, Inc.
and
Williamson County

From time to time Williamson County will engage Frederick & Hornsby, Inc. to undertake real estate appraisal services on its behalf. It is hereby agreed that:

• All appraisals performed by Frederick & Hornsby, Inc. will be undertaken, and all reports will be prepared in conformity with and subject to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation and the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

• The fee for each assignment is payable upon the completion of the appraisal and delivery of the report. The fee will be based on our standard charges taking into consideration the complexity of the appraisal and length of time to complete the assignment. In no event shall the fee exceed $10,000 without mutual agreement of Williamson County and Frederick & Hornsby, Inc.

Paul Hornsby

Frederick & Hornsby, Inc.
By: Paul Hornsby, President

John C. Doerfler 1-29-02

Williamson County

AGENDA ITEM 35

Consider one time blading of Rieger Road.

Moved: **Commissioner Limmer**
Seconded: **Commissioner Hays**
Motion: To approve one time blading of Rieger Road.
Vote: **5 - 0**

< Attachment >

January 7, 2002

Commissioner Frankie Limmer
Williamson County Commissioner, Precinct 4
412 Vance
Taylor, TX 78574

Re: Rieger Road Improvements

Dear Commissioner Limmer:

This letter is to request your assistance in helping us maintain Rieger Road. This road is the only service to seven property owners and a cemetery. It is a delivery route for the U. S. Mail and several newspaper services. Any assistance you can give us will be most appreciated.

Sincerely,
Property Owners along Rieger Road

approved 1-29-02
John C. Doerfler

Sam & Margaret Jones

Ronnie & Patti Rieger

Jodie & Bonnie Wolf

Janet & Lanier Bohls

Wayne & Rita Kelm

Millie Rieger

Allen Mathews

Margaret Brewer
Gary Lee Brewer

AGENDA ITEM 36

Consider approving 2 continuation grant applications for Juvenile Services:

1.) Justice of the Peace/JPO (Taylor Annex/JP Court).
2.) Juvenile Accountability Incentive Block Grant (JAIBG).

Moved: **Commissioner Heiligenstein**
Seconded: **Commissioner Hays**
Motion: To approve 2 continuation grant applications for Juvenile Services:

1.) Justice of the Peace/JPO (Taylor Annex/JP Court).
2.) Juvenile Accountability Incentive Block Grant (JAIBG).

Vote: **5 - 0**

< Attachment >

GRANT APPLICATION COVER SHEET

1. Legal name of organization applying.
Williamson County, Texas

2. Division or unit within the applicant organization to administer the project.
Juvenile Services Department

3. Official applicant organization mailing address.
2423 Williams Drive, Suite E

4. Choose up to five of the following that best describe the project:
- ☐ Alternative education program
- ☐ Child abuse
- ☐ Community policing
- ☐ Community-based prevention
- ■ Courts
- ■ Crime prevention
- ☐ Diversion
- ☐ Driving While Intoxicated
- ☐ Family and domestic violence
- ■ Intervention (w/offenders)
- ☐ Investigative
- ☐ Law enforcement
- ☐ Law enforcement training
- ☐ Narcotics task force
- ☐ Parole
- ■ Probation
- ☐ Prosecution
- ☐ Purchase of Juvenile Services (probation)
- ☐ Renovation and retrofitting (juvenile detention beds)
- ■ School-based prevention
- ☐ Sexual assault
- ☐ Substance abuse treatment
- ☐ Technology Improvement
- ☐ Training conferences
- ☐ Victim assistance

5. Person who CJD should contact to answer specific questions about the application.

Name: **Robyn Murray**
Title: **Business Manager**
Address: **2423 Williams Drive**
Suite E
Georgetown, Texas 78628
Telephone number: **(512) 930 - 3333**
Fax number: **(512) 930 - 3329**
e-mail address: **rmurray@wilco.org**

6. Agency's State Payee Identification Number:
1-74-6000978-4000

7. Is the applicant organization delinquent on any state or federal debt?
☐ Yes (If "Yes", attach an explanation.) ☒ No

8. Requested Funds	Amount of CJD Funds Requested	Grantee Total Match
FY2003 request	7,413.00	29,654.00
FY2004 request (if applicable)		
FY2005 request (if applicable)		

To the best of my knowledge, all information in this application is true and correct. The application has been duly authorized by the governing body of the applicant and agrees to comply with all CJD rules, including the attached assurances, if awarded.

Typed Name of Authorized Official:
Judge John C. Doerfler

Signature of Authorized Official:
John C. Doerfler

Date Signed:
January 29, 2002

9. Title of Project
Justice of the Peace/JPO

10. Application for (check on/y one):
- ☐ Criminal Justice Planning Fund (state)
- ☐ Juvenile Justice and Delinquency Prevention Act Fund (federal) CFDA-16.540
- ☐ Safe and Drug-Free Schools and Communities Act Fund (federal) CfDA-84.186

11. County where headquarters are based:
Williamson

12. Population of the county where the headquarters are based.
230,000

13. All cities and counties in the service area of the project and the population of each.
Williamson County, Texas

14. Grant Start Date:
December 1, 2002

15. Is this an application for first-year funding?
☐ Yes ☒ No
If "No", complete the following
Year of Funding for this application (check one):
☐ Year2 ☐ Year3 ☒ Year4 ☐ Year5 ☐ Year___
Current Grant #: **JA-01-J20-14848-03**

16. Date and city of application workshop attended:

17. If a local application, COG to which application is submitted:
#12 CAPCO - Austin, Texas
Is this application in response to a local/regional Request for Applications?
○ Yes ○ No

18. If project is statewide, on what date was a copy of the application submitted for TRACS Review?

Is this application in response to a statewide Request for Applications?
☒ Yes ○ No

FOR COG USE ONLY

Is this application shared with another COG?
Yes ☐ No ☐

CPT N#: Region #:

Priority #:

COG Application Identifier:

DESIGNATION OF GRANT OFFICIALS

LEGAL NAME OF AGENCY: Williamson County Juvenile Services Department

PROJECT TITLE: Justice of the Peace/Juvenile Probation Officer

■ Mr.
□ Ms.

Charles M. Skaggs
Project Director Name (Type or Print)

Juvenile Services Chief
Title and Agency

2423 Williams Drive, Suite E, Georetown, Texas 78628
Official Agency Mailing Address | City | Zip

(512) 930 - 3333 | (512) 930 - 3329
Daytime Telephone Number | Fax Number

cskaggs@wilco.org
E-Mail Address

■ Mr.
□ Ms.

David U. Flores
Financial Officer Name (Type or Print)

Williamson County Auditor
Title and Agency

710 Main Street, 3rd Floor, Georgetown, Texas 78626
Official Agency Mailing Address | City | Zip

(512) 943 - 1500 | (512) 943 - 1567
Daytime Telephone Number | Fax Number

dflores@wilco.org
E-Mail Address

■ Mr.
□ Ms.

Judge John C. Doerfler
Authorized Official Name (Type or Print)

Williamson County Judge
Title and Agency

710 Main Street, Suite 201, Georgetown, Texas 78626
Official Agency Mailing Address | City | Zip

(512) 943 - 1550 | (512) (512) 943 - 1662
Daytime Telephone Number | Fax Number

jdoerfler@wilco.org
E-Mail Address

COMPREHENSIVE CERTIFICATION

(page 1 of 2)

This certification is a material representation of fact upon which reliance was placed with the agency determined to award the grant. If it is later determined that the grantee knowingly rendered an erroneous certification, the agency, in addition to an y other remedies available to the federal government, may take available action.

If this application is for federal funds in excess of $100,000, I certify to the best of my knowledge and belief:

1. no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an offi cer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the e ntering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract , grant, loan, or cooperative agreement;
2. if any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer o employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall check here ____ and contact CJD or yo ur local council of governments for the "Disclosure Form to Report Lobbying," and
3. the undersigned shall require that the language of this certification be included in the award documents for all sub-awards a ll tiers and that all sub-recipients shall certify accordingly.

If this application is for federal funds, I certify that to the best of my knowledge and belief:

I. The applicant certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a *controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against* employees for violation of such prohibition.

B. Establishing a drug-free awareness program to inform employees about:

1. the dangers of drug abuse in the workplace;
2. the applicant's policy of maintaining a drug-free workplace;
3. any available drug counseling, rehabilitation, and employee assistance programs; and
4. the penalties that may be imposed upon employees for drug abuse violations.

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (A).

D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, *the employee will:*

1. abide by the terms of the statement; and
2. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

E. Notifying the agency within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction.

F. Taking one of the following actions with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination; or
2. requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

G. *Making a good faith effort to continue to maintain a drug-free workplace through the implementation of paragraphs* (A), (B), (C), (D), (E), and (F).

CJDAPPLICATION KIT

COMPREHENSIVE CERTIFICATION

(This form must be resubmitted each year.)
(page 2 of 2)

Please read carefully; initial in appropriate spaces ___.

AUDIT CERTIFICATION- ANNUAL REPORTING REQUIREMENT

Federal

If this application is for federal funds, I certify (initial the appropriate choice):

_____ The applicant agency currently expends combined federal funding of $300,000 or more and, therefore, is required to submit an annual single audit by an independent auditor made in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133.

JCD XX The applicant agency currently expends combined federal funding of less than $300,000 and therefore is exempt from the Single Audit Act and cannot charge audit costs to a CJD grant. I understand, however, that CJD may require a limited scope audit as defined in OMB Circular A-133.

State

If this application is for state funds, I certify (initial the appropriate choice):

_____ The applicant agency currently expends combined state funding of $300,000 or more and, therefore is required to submit an annual single audit by an independent auditor made in accordance with the Uniform Grant Management Standards (UGMS).

_____ The applicant agency currently expends combined state funding of less than $300,000 and therefore is exempt from the Single Audit Act and cannot charge audit costs to a CJD grant. I understand, however, that CJD may require a limited scope audit as defined in OMB Circular A-133, adopted by reference in Texas Administrative Code section 3.19 (see also UGMS State Single Audit).

EQUAL OPPORTUNITY PLAN (EEOP) CERTIFICATION- ANNUAL REPORTING REQUIREMENT

Definitions:

- **Type I Entity**
  Educational/medical/non-profit institution/Native American Tribe—certification required (initial below); EEOP NO ___ T required;
- **Type II Entity**
  All other recipients receiving more than $25,000, but not more than $500,000—certification required (initial below); organizations must maintain EEOP on file for possible audit if the organization has more than 50 employees; and
- **Type III Entity** For-profit entities and state and local governments receiving $500,000 or more—certification required (initial below); the organization must submit an EEOP to Office for Civil Rights (OCR) for approval.

If your organization is a Type I, II, or III entity, please initial one of the following: _____

_____ **I certify this organization is a Type I Entity.** This entity will comply with the prohibitions against discrimination in any program or activity (28 CFR §42.203), is not required to maintain an Equal Employment Opportunity Plan, but will comply with equal employment opportunity program guidelines of the Department of Health and Human Services (28 CFR 42.302).

_____ **I certify this organization is a Type II Entity that employs less than 50 people** . This entity will comply with the prohibitions against discrimination in any program or activity (28 CFR §42.203), but is not required to maintain an Equal Employment Opportunity Plan (28 CFR 42.301 *et seq*).

JCD XX **I certify this organization is a Type II Entity that employs 50 or more people.** This entity will comply with the prohibitions against discrimination in any program or activity (28 CFR §42.203), and has formulated an equal employment opportunity program (28 CFR 42.301 *et seq*), that is on file in the office of Human Resources Department

_____ **I certify this organization is a Type III Entity.** This entity will comply with the prohibitions against discrimination in any program or activity (28 CFR §42.203), and has formulated an equal employment opportunity program (28 CFR 42.301 *et seq*), that will be submitted to the Office for Civil Rights, Office of Justice Programs, Department of Justice, for approval upon award of a grant.

DEBARMENT CERTIFICATION- ANNUAL REPORTING REQUIREMENT

If this application is for federal funds in excess of $25,000, I certify that (initial the appropriate choice):

JCD XX By submission of this proposal, that neither the applicant agency nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. If I am unable to certify:

_____ I am unable to certify the above statement and have attached an explanation to this application.

Williamson County, Texas	Justice of the Peace/JPO
Applicant's Organization	Project Title
Judge John C. Doerfler	John C. Doerfler 1/29/02
Printed Name and Title of Authorized Official	Signature of Authorized Official / Date

CERTIFIED ASSURANCES

(PAGE 1 OF 2)

Applicants must complete this form before they will receive state and/or federal funds. Recipients of state and/or federal fund s must fully understand and comply with these requirements. Failure to comply may result in the withholding of funds, termination of the awa rd, or other sanctions.

FEDERAL ASSURANCES

The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirem ents, including OMB Circulars No. A-21, A-110, A-122, A-128, A-87; Office of Justice Programs (OJP) Financial Regulations; Education Department Gen eral Admin-istrative Regulations (EDGAR); E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements—28 CF R, Part 66, Common Rule, that govern the application, acceptance and use of Federal funds for this project. Also, the Applicant assures and certifies that:

1. **LEGAL AUTHORITY**—It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including al l under-standings and assurances contained therein, and directing and authorizing the person identified as the official representative of the app licant to act in connection with the application and to provide such additional information as may be required.
2. **DISPLACED PERSONS**—It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions (42 USC §§ 4601-4655) which provides for fair and equitable treatment of persons displaced as a result of Federa l and Federally-assisted programs.
3. **POLITICAL ACTIVITY**—It will comply with provisions of Federal law which limit certain political activities of employees of a State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal g rants. (5 USC §1501, et seq.)
4. **FAIR LABOR ST ANDARDS ACT**—It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 USC §§ 201-219) if applicable.
5. **CONFLICT OF INTEREST**— It will establish safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
6. **EXAMINATION OF RECORDS**— It will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. **COMPLIANCE WITH REQ UIREMENTS**—It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.
8. **EPA VIOLATING F ACILITIES**—It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed in the Environmental Protection Agency's (EPA's) list of Violating Facilities, and that it will *notify the Federal grant or agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.*
9. **FLOOD INSURANCE**— It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act (Ch. 50 USC §4001). This section requires, on and after March 2, 1975, the purchase of flood insurance in com munities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that had been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsi dy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
10. **HISTORIC PRESER VATION**—It will assist the federal grant or agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC §470), Executive Order 11593, and the Archeological and Historical Preservation A ct of 1966, *(16 USC §569a-1, et seq.) by (a) consulting with the State Historic Preservation Officer (SHPO) on the conduct of investigatio ns, as necessary,* to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grant or agency of the existence of any such properties, and by (b) compl ying with all *requirements established by the Federal grant or agency to avoid or mitigate adverse effects upon such properties.*
11. **COMPLIANCE WITH LA WS AND GUIDES**—It will comply, and assure the compliance of all its subgrantees and contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justic e and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M 7100.1; and all other applicable Federal laws, orders, circulars, or r egulations.
12. **COMPLIANCE WITH CODE OF FEDERAL REGULATIONS**—It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; P art 22, *Confidentiality of Identifiable Research and Statistical Information;* Part 23, *Criminal Intelligence Systems Operating Policies* ; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportu-nity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain M anagement and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.

CJD APPLICATION KIT

CERTIFIED ASSURANCES

(PAGE 1 OF 2)

13. **NONDISCRIMINATION**—
   A. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (42 USC §3789(d)), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans With Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
   B. *In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the* grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.
   C. It will *provide an Equal Employment Opportunity Program (EEOP) if required to maintain one, where the application is for $500,000 or more.*
14. **COASTAL BARRIERS**— It will comply with the provisions of the Coastal Barrier Resources Act (16 USC §3501, et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
15. **SUPPLANTING PROHIBITION**— *It will use funds to supplement existing funds for program activities and may not replace (supplant) non-Federal* funds that have been appropriated for the same purpose. The Applicant understands that potential supplanting will be the subject of monitoring and audit. Violations can result in a range of penalties, including suspension of future funds under this Program, suspension or debarment from Federal grants, recoupment of monies provided under this grant, and civil and/or criminal penalties.

STATE ASSURANCES

The applicant hereby assures and certifies compliance with all state statutes, regulations, policies, guidelines, and requirements including the Title 1, Chapter 3, of the Texas Administrative Code, and the Uniform Grant Management Standards (UGMS), as they relate to the application, acceptance and use of funds for this project. Also, the applicant assures and certifies that:

1. **LEGAL AUTHORITY**— It possesses legal authority in the State of Texas to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances *contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application* and to provide such additional information as may be required.
2. **CONFLICT OF INTEREST**— It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
3. **NONDISCRIMINATION**— It will comply with all State and Federal statutes relating to nondiscrimination.
4. **TAXES**— It will comply with all State and Federal tax laws and are solely responsible for filing all required State and Federal tax forms.
5. **GRANT ADMINISTRATION**— It will maintain an appropriate grant administration system to ensure that all terms, conditions and specifications of the grant, including these standard assurances, are met.
6. **EXAMINATION OF RECORDS**— It will give the sponsoring agency or the Office of the Governor, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. **PUBLIC INFORMATION**— It will ensure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.
8. **CHILD SUPPORT PAYMENTS**— It will comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
9. **SUSPECTED CHILD ABUSE**— It will comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Grantees shall also ensure that all program personnel are properly trained and aware of this requirement.
10. **RELATIVES**— It will comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractors shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
11. **OPEN MEETINGS**— If the applicant is a governmental entity, It will comply with Texas Government Code, Chapter 551, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
12. ***HEALTH, HUMAN SERVICES, PUBLIC SAFETY OR LAW ENFORCEMENT AGENCY***— If the applicant is a health and human services agency or public safety or law enforcement agency, it will not contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
13. **LAW ENFORCEMENT AGENCY**— If the applicant is a law enforcement agency regulated by Texas Government Code, Chapter 415, it will comply with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Texas Government Code, Chapter 415, or it must provide the Criminal Justice Division with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.

Williamson County, Texas	Justice of the Peace/JPO
Applicant's Organization	Project Title
Judge John C. Doerfler	John C. Doerfler 1/29/02
Printed Name and Title of Authorized Official	Signature of Authorized Official Date

JUSTICE OF THE PEACE JUVENILE PROBATION OFFICER BUDGET SUMMARY FY 2002 - 2003

CATEGORIES

	CJD	*Grantee*	*In-Kind*	*Total*
Personnel	*7,413.00*	*29,654.00*		*37,067.00*
Professional & Contractual	*0*	*0*	*0*	*0*
Travel & Training	*0*	*0*	*0*	*0*
Equipment	*0*	*0*	*0*	*0*
Supplies	*0*	*0*	*0*	*0*
Total Direct Charges	*7,413.00*	*29,654.00*	*0*	*37,067.00*
Indirect Charges	*0*	*0*	*0*	*0*
TOTAL	*7,413.00*	*29,654.00*	*0*	*37,067.00*

ESTIMATED PROGRAM INCOME

TOTAL PROGRAM INCOME: $0
The project does not anticipate earning any program income.

PERSONNEL

TOTAL PERSONNEL: $37,067.00

Salaries: $30,291.00
Justice of the Peace Juvenile Probation Officer *$31,828.00 x 100% of time = $30,291.00*

This full-time position will provide the following services: This officer will be assigned to the Justice Court and will act s a case manager for all cases coming before the Court with special emphasis placed on repeat offenders, those at risk of being transferred to the Juvenile Court and those at risk of having contempt charges filed. The officer will educate youth of the consequences of truancy, failure to attend, penal code violations of the grade of Class C Misdemeanor and contempt.

Fringe Benefits: $8,413.00

Retirement @ .1011	*$3,063.00*
FICA @ .0765	*$2,317.00*
Health Insurance @ 230/month	*$3,600.00*
Total	*$8,980.00*

The annual fringe difference of $2,204.00 for this full-time officer will be covered as an in-kind cost within the Williamson County Juvenile Services Department 2002 – 2003 fiscal year general fund budget.

PROFESSIONAL AND CONTRACTUAL SERVICES

TOTAL PROFESSIONAL AND CONTRACTUAL SERVICES: $0
The project does not anticipate providing any professional or contractual services.

JUSTICE OF THE PEACE JUVENILE PROBATION OFFICER
BUDGET SUMMARY CONTINUED

TRAVEL AND TRAINING

TOTAL TRAVEL AND TRAINING: $0

Local Mileage: $0

Cost of local mileage reimbursement will be provided as an in-kind cost within the Williamson County Juvenile Services Department 2002 – 2003 fiscal year general fund budget.

In-State Training: $0

Costs for training will be provided as an in-kind contribution within the Williamson County Juvenile Services Department 2002 - 2003 fiscal year general fund budget.

Costs will be used to send project staff to training conferences within Texas that will teach skills related to juvenile services and truancy issues and laws effecting both Juvenile and Justice Courts under the Criminal Justice System. Costs will be expended using agency travel policy, which includes $28.00 per diem over-night, $14.00 per diem day trip and 32.5 cents per mile for personal car usage.

Out of State Mileage/Training – 0

EQUIPMENT

TOTAL EQUIPMENT: $0
The project does not anticipate having any equipment purchases.

SUPPLIES

TOTAL SUPPLIES: $0
The project does not anticipate having any supply purchases.

Office Supplies	*$0*
Furniture	*$0*
Project Supplies	*$0*
Vehicle Operating Costs	*$0*
Costs for Space	*$0*
Communication Costs	*$0*
Services and Other Costs	*$0*

INDIRECT COSTS

TOTAL INDIRECT COSTS: $0
No amount requested for indirect costs.

Additionally, the Williamson County Juvenile Services Department will provide office space, utilities, telephone, computer, postage, office supplies and office furniture for this position.

PROJECT NARRATIVE

Problem statement:
Experience has taught us that youth who commit Class-C offenses, such as truancy, are at a considerably greater risk of entering the juvenile justice system if they are not introduced to supervision programs at the time of their offending.

Goal statement:
By providing a probation officer to supervise the youth referred to the Justice Court, we intend to reduce the number of youth who violate the Justice Orders of Sanctions, thus positively affecting the attendance rate and juvenile services referral rate.

Target Group:
School age youth in seven school districts in precinct four will receive the prevention services by way of classroom presentation. Approximately 4,800 students will be educated regarding the consequences of choosing not to attend school, or committing class-C offenses. Each youth who is referred to the Justice Court will receive a six-month supervision program. The last reporting period reflected that 52 youth received the supervision program. 227 youth received supervision services since the inception of the program in 1998/99.

Project Activities:

- Coordinate collaboration between local schools, resource agencies, law enforcement, and the Justice Court in an effort to efficiently and effectively utilize resources while at the same time providing quality services to at-risk youth.

- Provide age appropriate classroom presentations discussing consequences of making choices both positive and negative.

- Provide a monitoring/supervision program to those youth referred to the Justice Court who are at risk of continued truancy, eventual drop out, and further penetration into the juvenile justice system.

Project Objectives:
Output Measures:

- Present prevention information in the form of 190 individual presentations to individual classes of 25 students.

- Provide monitoring/ supervision to a caseload of at least 25 youth who have been placed on an order of sanctions by the justice court for a period not to exceed six months. We expect at least 50 youth to be served per year.

- Organize and coordinate collaboration with local agencies to prepare awareness presentations at specific times of the year regarding specific issues, ie: working with schools, TABC, local law enforcement and Justice Court to raise awareness regarding school prom and alcohol abuse.

- Approximately six special events will be organized per year.
- Weekly contact with youth and their parents while they are on supervision.
- Conduct routine attendance checks on youth.
- Conduct urinalysis on youth.
- Refer to resources issue specific, ie: counseling, Child Protective Services, Alcoholics Anonymous, Narcotics Anonymous, Mental Health Mental Retardation.

Outcome Measures:

- Reduce the number of referrals to the justice court for offenses such as failure to attend school and other class C misdemeanors by 40%. Since the beginning of this program in 1998/99 the number of referrals has dropped from 91 to 52 in 2000/2001.
- Reduce the number of referrals to the juvenile court for failure to meet the obligations of the orders of sanctions. We expect an 85% success rate. In 2000 our success rate was 86.7%.
- Increase the average daily attendance of the youth on sanctions. The average number of absences prior to the implementation of this program was 25. We intend to decrease that number to an average of two absences per youth.
- Increase the grade point average of those youth on sanctions. We have recorded an average increase of 17 points on those youth who we have monitored under sanctions. We intend to record an average increase of 20 points in this upcoming reporting period.

Project Summary:

The Justice of the Peace Probation Program consists of an officer assigned to the Precinct Four Justice of the Peace. This precinct has seven rural independent school districts which the probation officer serves. It has been documented in the past that youth who were truant or found guilty of other class C misdemeanors in the justice court were given sanctions as consequences for their actions. It was further documented that many of the youth did not comply with the sanctions and were found in contempt and transferred to the juvenile court further penetrating into the juvenile justice system. As we began to look at some of the causes, we found that these youth would be placed on sanctions and then return to court months later to show how well they had followed them. We found that these youth had not followed up with improved attendance or higher grades, nor had they followed curfews or refrained from substance abuse. We believed that if we monitored them weekly and provided them with direction, immediate consequences, and a case management plan, they would be successful in completing their order of sanctions.

As an accessory to this program we developed a prevention and education program that provides age appropriate materials to address issues experienced by youth at various stages of their growth and development while focusing on both positive and negative consequences of their actions. This program reviews the Student School Code of Conduct and discusses the youth's responsibilities in their educational community. The focus then shifts to an explanation of the possible social and legal consequences of truancy, substance abuse and running away from home. The program concludes by tying the Education Code, Student Code of Conduct, Penal Code and the Family Code together to set a guideline for expected behaviors.

We believe that the combination of the two programs outlined above has helped to reduce the number of overall more serious referrals to the Juvenile Court in Williamson County. We further believe that this combination of programs has assisted us in early detection of at risk youth who are beginning to spiral out of control.

In conclusion, we believe that the prevention education component allows many of the youth to reflect on cause and effect, thus diverting them from the possible negative consequences that may result from acting without the knowledge that not only do we care about their quality of life, but why they should also care.

RESOLUTION

STATE OF TEXAS

COUNTY OF WILLIAMSON

WHEREAS, The Williamson County Commissioners Court finds it in the best interest of the citizens of Williamson County, that the Justice of the Peace Juvenile Probation Officer Program be operated for the 4th year; and

WHEREAS, Williamson County Commissioners Court has considered the proposed application for State and Federal Assistance for said project, in the amount of $7,413.00 to be submitted to the Office of the Governor, Criminal Justice Division, Fund JJDP Program; and

WHEREAS, The Williamson County Commissioners Court has agreed to provide matching moneys for the said project in the amount of $29,654.00, or an amount equal to one-fourth of the total project cost, as required by the grant application; and

WHEREAS, The Williamson County Commissioners Court has agreed that in the event of loss or misuse of the Criminal Justice Division funds, Williamson County Commissioners Court assures that the funds will be returned to the Criminal Justice Division in full.

NOW THEREFORE, BE IT RESOLVED that the Williamson County Commissioners Court approves submission of the grant application for the Justice of the Peace Juvenile Probation Officer Program in the amount of $37,067.00.

Signed by the County Judge John C. Doerfler 1-29-02
John C. Doerfler

Passed and Approved on this the 29 day of JANUARY, 2002.

Attest: Signed by the County Clerk Nancy E. Rister
Nancy Rister

Juvenile Accountability Incentive Block Grant Fund

GRANT APPLICATION COVER SHEET

1. Legal name of organization applying.
Williamson County, Texas

2. Division or unit within the applicant organization to administer the project.
Juvenile Services Department

3. Official applicant organization mailing address.
2423 Williams Dr., Suite E, Geotwn 78628

4. *Choose up to five of the following that best describe the project:*

- ☐ Alternative education program
- ☐ Child abuse
- ☐ Community policing
- ☐ Community-based prevention
- ☐ Courts
- ☐ Crime prevention
- ☐ Diversion
- ☐ Driving While Intoxicated (DWI)
- ☐ Family and domestic violence
- ■ Intervention (w/offenders)
- ☐ Investigative
- ☐ Law enforcement
- ☐ Law enforcement training
- ☐ Narcotics task enforcement
- ☐ Parole
- ■ Probation
- ☐ Prosecution
- ■ Purchase of juvenile services (probation)
- ☐ Renovation and retrofitting (juvenile detentionbeds)
- ☐ Sexual assault
- ■ Substance abuse treatment
- ☐ Technology improvement
- ☐ Training conferences
- ☐ Victim assistance

5. Person CJD should contact to answer specific questions about the application.

Name: Charles M. Skaggs
Title: Chief Executive Officer
Address: 2423 Williams Drive
Suite E
Georgetown, Texas 78628
Telephone number: (512) 930-3333
Fax number: (512) 930-3329
e-mail address: cskaggs@wilco.org

6. Agency's State Payee Identification Number:
74-6000978-4000

7. *Is the applicant organization delinquent on any state or federal debt?*
☐ Yes (If "Yes", attach an explanation.) ☐ No

8. Amount of CJD Funds Requested	Allocation	Cash Match
FY 2002	$44,164.00	$4,907.00
Waived from other jurisdictions (please provide a list to CJD)		
TOTAL	$44,164.00	$4,907.00

To the best of my knowledge, all information in this application is true and correct. The application has been duly authorized by the governing body of the applicant and agrees to comply with all CJD rules, including the attached assurances, if awarded.

Typed Name of Authorized Official:
Judge John C. Doerfler

Signature of Authorized Official:
John C. Doerfler

Date Signed:
January 29, 2002

9. Title of Project
Substance Abuse "PROUD" Program

10. Application for:
Juvenile Accountability Incentive Block Grant
CFDA 16.523

11. County where headquarters are based:
Williamson County, Texas

12. Population of the county where the headquarters are based.
235,000

13. All cities and counties in the service area of the project and the population of each.
Williamson County, Texas

14. Grant Period:
August 1, 2002 - July 31, 2003

15. Is this an application for first-year funding?
☐ Yes ☒ No
If "No", complete the following
Year of Funding for this application (check one):
☐ Year 2 ☒ Year 3 ☐ Year 4 ☐ Year 5 ☐ Year ____
Current Grant #: JB-2000-J20-13308-03

16. Date and city of application workshop attended:

17. If a local application, COG to which application is submitted.
CAPCO - Austin, Texas

FOR COG USE ONLY
Is this application shared with another COG?
CPTN #: | Region #:
Priority #:
COG Application Identifier:

DESIGNATION OF GRANT OFFICIALS

LEGAL NAME OF AGENCY: Williamson County Juvenile Services Department

PROJECT TITLE: Substance Abuse "PROUD" Program

■ Mr.
❑ Ms.

Charles M. Skaggs
Project Director Name (Type or Print)

Chief Executive Officer - Williamson County Juvenile Services
Title and Agency

2423 Williams Drive, Suite E, Georgetown, Texas 78628
Official Agency Mailing Address City Zip

(512) 930-3333 (512) 930-3329
Daytime Telephone Number Fax Number

cskaggs@wilco.org
E-Mail Address

■ Mr.
❑ Ms.

David U. Flores
Financial Officer Name (Type or Print)

County Auditor - Williamson County, Texas
Title and Agency

710 South Main Street, Georgetown, Texas 78626
Official Agency Mailing Address City Zip

(512) 943-1500 (512) 943-1567
Daytime Telephone Number Fax Number

dflores@wilco.org
E-Mail Address

■ Mr.
❑ Ms.

John C. Doerfler
Authorized Official Name (Type or Print)

County Judge - Williamson County, Texas
Title and Agency

710 South Main Street, Georgetown, Texas 78626
Official Agency Mailing Address City Zip

(512) 943-1550 (512) 943-1662
Daytime Telephone Number Fax Number

jdoerfler@wilco.org
E-Mail Address

Juvenile Accountability Incentive Block Grant Fund
Office of the Governor
Criminal Justice Division
P.O. Box 12428
Austin, Texas 78711
512/463-1919
Fax: 512/475-2042
www.governor.state.tx.us

COMPREHENSIVE CERTIFICATION

(page 1 of 2)

This certification is a material representation of fact upon which reliance was placed with the agency determined to award the grant. If it is later determined that the grantee knowingly rendered an erroneous certification, the agency, in addition to any other remedies available to the federal government, may take available action.

If this application is for federal funds in excess of $100,000, I certify to the best of my knowledge and belief:

1. no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
2. if any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, shall **check here** ☐ and the undersigned shall contact CJD or your local council of governments for the "Disclosure Form to Report Lobbying," and
3. the undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify accordingly.

If this application is for federal funds, I certify that to the best of my knowledge and belief:

1. The applicant certifies that it will provide a drug-free workplace by:
   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
   B. Establishing a drug-free awareness program to inform employees about:
      1. the dangers of drug abuse in the workplace;
      2. the applicant's policy of maintaining a drug-free workplace;
      3. any available drug counseling, rehabilitation, and employee assistance programs; and
      4. the penalties that may be imposed upon employees for drug abuse violations.
   C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (A).
   D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:
      1. abide by the terms of the statement, and
      2. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
   E. Notifying the agency within ten days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction.
   F. Taking one of the following actions with respect to any employee who is so convicted:
      1. taking appropriate personnel action against such an employee, up to and including termination; or
      2. requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
   G. Making a good faith effort to continue to maintain a drug-free workplace through the implementation of paragraphs (A), (B), (C), (D), (E), and (F)

JuvenileAccountabilityIncentiveBlockGrantFund

COMPREHENSIVE CERTIFICATION

(This form must be submitted each year)

(page 2 of 2)

Please read carefully and place initials in appropriate spaces below

PART I: AUDIT CERTIFICATION - ANNUAL REPORTING REQUIREMENT

❖ **NOTE: Make only one selection under either "Federal" or "State".**

Federal

If this application is for federal funds, I certify (initial one only):

_____ The applicant agency currently expends combined federal funding of $300,000 or more and, therefore, is required to submit an annual single audit by an independent auditor made in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133.

JCD XX The applicant agency currently expends combined federal funding of less than $300,000 and therefore is exempt from the Single Audit Act and cannot charge audit costs to a CJD grant. I understand, however, that CJD may require a limited scope audit as defined in OMB Circular A-133.

OR

State

If this application is for state funds, I certify (initial one only):

_____ The applicant agency currently expends combined state funding of $300,000 or more and, therefore is required to submit an annual single audit by an independent auditor made in accordance with the Uniform Grant Management Standards (UGMS).

_____ The applicant agency currently expends combined state funding of less than $300,000 and, therefore, is exempt from the Single Audit Act and cannot charge audit costs to a CJD grant. I understand, however, that CJD may require a limited scope audit as defined in OMB Circular A-133, adopted by reference in Texas Administrative Code section 3.19 (see also UGMS State Single Audit).

PART II: EQUAL OPPORTUNITY PLAN (EEOP) CERTIFICATION - ANNUAL REPORTING REQUIREMENT

To identify your type of organization, please initial one of the following:

Type I Entity: Educational/medical/non-profit institution/Native American Tribe — certification required (initial below); EEOP NOT required.

_____ **I certify this organization is a Type I Entity.** This entity will comply with the prohibitions against discrimination in any program or activity (28 CFR § 42.203), is not required to maintain an Equal Employment Opportunity program guidelines of the Department of Health and Human Services (28 CFR 42.302).

OR

_____ **I am unable to certify the above statement and have attached an ex**

Type II Entity: *All other recipients receiving less than $25,000 — certification requi*

_____ **I certify this organization is a Type II Entity** . This entity will comply (28 CFR § 42.203), but is not required to maintain an Equal Employment Opportunity Pl

Type III Entity: All other recipients receiving more than $25,000, but not more than maintain EEOP on file for possible audit if the organization has more than 50 employees

_____ ***I certify this organization is a Type III Entity that employs less than*** against discrimination in any program or activity (28 CFR § 42.203), but is not required t 42.301 *et seq.*);

OR

JCD XX **I certify this organization is a Type III Entity that employs 50 or mor** discrimination in any program or activity (28 CFR § 42.203), and has formulated an equa that is on file in the office of ***(insert organization name here)*** Human R

Type IV Entity: For-profit entities and state and local governments receiving $500 must submit an EEOP to Office for Civil Rights (OCR) for approval.

_____ **I certify this organization is a Type IV Entity.** This entity will comply w activity (28 CFR § 42.203), and has formulated an equal employment opportunity progra for Civil Rights, Office of Justice Programs, Department of Justice, for approval upon award of a grant.

Please initial these XX's. -Thx!

PART III: DEBARMENT CERTIFICATION - ANNUAL REPORTING REQUIREMENT

If this application is for federal funds in excess of $25,000, I certify that (initial one only):

JCD XX By submission of this proposal, that neither the applicant agency nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

_____ I am unable to certify the above statement and have attached an explanation to this application.

PART IV: SIGNATURE PAGE

Applicants must complete this form and submit it to CJD before they will receive state and/or federal funds. Recipients of state and/or federal funds must fully understand and comply with the requirements listed on pages 1 and 2 of this document. Failure to comply may result in the withholding of funds, termination of the award, or other sanctions.

Williamson County, Texas	JAIBG Substance Abuse Program
Applicant's Organization	Project Title
Judge John C. Doerfler	John C. Doerfler 1-29-02
Printed Name and Title of Authorized Official	Signature of the Authorized Official — Date

CERTIFIED ASSURANCES

(page 1 of 3)

Office of the Governor
Criminal Justice Division
P.O. Box 12428
Austin, Texas 78711
512/463-1919
Fax: 512/475-2042
www.governor.state.tx.us

This certification is a material representation of fact upon which reliance was placed with the agency determined to award the grant. If it is later determined that the grantee knowingly rendered an erroneous certification, the agency, in addition to any other remedies available to the federal government, may take available action.

The applicant hereby assures and certifies compliance with all federal and state statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-110, A-122, A-128, A-87, A-133; Office of Justice Programs (OJP) Financial Regulations; Education Department General Administrative Regulations (EDGAR); E.O. 12372 Uniform Administrative Requirements for Grants and Cooperative Agreements—28 CFR, Part 66, Common Rule, and Title 1, Part 1, Chapter 3 of the Texas Administrative Code, that govern the application, acceptance and use of Federal and State funds for this project. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

PART I: FEDERAL & STATE ASSURANCES

The applicant assures and certifies that:

1. **CONFLICT OF INTEREST**—It will establish safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom the y have family, business, or other ties.
2. **EXAMINATION OF RECORDS**— It will give the sponsoring agency, the Office of the Governor, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to t he grant.
3. **TAXES**—*It will comply with all State and Federal tax laws and are solely responsible for filing all required State and Federal tax* forms.
4. **SUPPLANTING PROHIBITION**— It will use funds to supplement existing funds for program activities and may not replace (supplant) non-Federal funds that have been appropriated for the same purpose. The applicant understands that potential suppla nting will be the subject of monitoring and audit. Violations can result in a range of penalties, including suspension of future fund s under this Program, suspension or debarment from Federal grants, recoupment of monies provided under this grant, and civil and/or criminal penalties.
5. **NONDISCRIMINATION**—
   A. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (42 USC §3789(d)), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans With Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; *Department of Justice Non-Discrimination Regulations*, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
   B. In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights.
   C. It will provide an Equal Employment Opportunity Program (EEOP) if required to maintain one, where the application is for $500,000 or more.

PART II: FEDERAL ASSURANCES

The applicant assures and certifies that:

1. **LEGAL AUTHORITY**—It possesses legal authority to apply for the grant; a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application (including all l under- standings and assurances contained therein), and directing and authorizing the person identified as the official representative , or their designee of the organization to act in connection with the application and to provide such additional information as may be req uired.
2. **DISPLACED PERSONS**—It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions (42 USC §§4601-4655) which provide for fair and equitable treatment of persons displaced as a result o f Federal and Federally assisted programs.
3. **POLITICAL ACTIVITY**— *It will comply with provisions of Federal law which limit certain political activities of employees of a* State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants. (5 USC §1501, et seq.)
4. **FAIR LABOR STANDARDS ACT**— It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 USC §§201-219) if applicable.

CERTIFIED ASSURANCES

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5. COMPLIANCEWITHREQUIREMENTS— *ItwillcomplywithallrequirementsimposedbytheFederalsponsoringagency* concerningspecialrequirementsoflaw,programrequirements,andotheradministrativerequirements.

6. EPAVIOLATINGFACILITIES—Itwillinsurethatthefacilitiesunderitsownership,leaseorsupervision,whichshallbeutilized intheaccomplishmentoftheproject,arenotlistedintheEnvironmentalProtectionAgency's(EPAs)listofViolatingFaciliti es,andthat itwillnotifytheFederalgrantoragencyofthereceiptofanycommunicationfromtheDirectoroftheEPAOfficeofFederalAc tivities indicatingthatafacilitytobeusedintheprojectisunderconsiderationforlistingbytheEPA.

7. FLOODINSURANCE— Itwillcomplywiththefloodinsurancepurchaserequirementsofsection102(a)oftheFloodDisaster ProtectionAct(50USC§4001),whichstatesthat,onorafterMarch2,1975,communitiesmustpurchasefloodinsurance,where such insuranceisavailableinthosecommunities.Thisrequirementisaconditionforthereceiptofany Federalfinancialassistan cefor constructionoracquisitionpurposesforuseinanyareathathadbeenidentifiedbytheSecretaryoftheDepartmentofHousing and UrbanDevelopmentasanareahavingspecialfloodhazards.Thephrase"Federalfinancialassistance"includesanyformofloan, grant, guaranty,insurancepayment,rebate,subsidy,disasterassistanceloanorgrant,oranyotherformofdirectorindirectFedera lassis- tance.

8. HISTORICPRESERVATION—Itwillassistthefederalgrantoragencyinitscompliancewithsection106oftheNationalHistoric PreservationActof1966,asamended(16USC§470),ExecutiveOrder11593,andtheArcheologicalandHistoricalPreservationA ctof 1974,asamended,(16USC§

469a-1, et seq.) by (a) consulting with the State Historic Preservation Officer (SHPO) on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

9. COMPLIANCEWITHLAWSANDGUIDES —Itwillcomply,andassurethecomplianceofallitssubgranteesandcontractors, withtheapplicableprovisionsofTitleIoftheOmnibusCrimeControlandSafeStreetsActof1968,asamended,theJuvenileJ ustice andDelinquencyPreventionAct,ortheVictimsofCrimeAct,asappropriate;theprovisionsofthecurrenteditionoftheOffic eof JusticeProgramsFinancialandAdministrativeGuideforGrants,M7100.1;andallotherapplicableFederallaws,orders,circula rs,or regulations.

10. COMPLIANCEWITHCODEOFFEDERALREGULATIONS— Itwillcomplywiththeprovisionsof28CFRapplicabletogrants andcooperativeagreementsincludingPart18,AdministrativeReviewProcedure;Part20,CriminalJusticeInformationSystems;P art22, ConfidentialityofIdentifiableResearchandStatisticalInformation;Part23,CriminalIntelligenceSystemsOperatingPolicies;Part30, IntergovernmentalReviewofDepartmentofJusticeProgramsandActivities;Part42,Nondiscrimination/EqualEmploymentOpportu- nityPoliciesandProcedures;Part61,ProceduresforImplementingtheNationalEnvironmentalPolicyAct;Part63,FloodplainM anage- mentandWetlandProtectionProcedures;andFederallawsorregulationsapplicabletoFederalAssistancePrograms.

11. COASTALBARRIERS—Itwillcomplywiththeprovisionsofthecoastalbarrierresourcesact(16USC§3501,etseq.)which prohibitstheexpenditureofmostnewFederalfundswithintheunitsofthecoastalbarrierResourcesSystem.

PARTIII:STATEASSURANCES

Theapplicantassuresandcertifiesthat:

1. LEGALAUTHORITY—Itpossesseslegalauthorityinthestateoftexastoapplyforthegrant;aresolution,motionorsimilar actionhasbeendulyadoptedorpassedasanofficialactoftheapplicant'sgoverningbody,authorizingthefilingoftheappl ication (includingallunderstandingsandassurancescontainedtherein),anddirectingandauthorizingthepersonidentifiedastheoff icial representative,ortheirdesigneeoftheorganizationtoactinconnectionwiththeapplicationandtoprovidesuchadditional informa- tionasmayberequired.

2. GRANTADMINISTRATION—Itwillmaintainanappropriategrantadministrationsystemtoensurethatallterms,conditionsand specificationsofthegrant,includingthesestandardassurances,aremet.

3. PUBLICINFORMATION—Itwillensurethatallinformationcollected,assembledormaintainedbytheapplicantrelativetoa projectwillbeavailabletothepublicduringnormalbusinesshoursincompliancewithTexasGovernmentCode,Chapter552,unl ess otherwiseexpresslyprohibitedbylaw.

4. CHILDSUPPORTPAYMENTS-Itwillcomplywithsection231.006oftheTexasFamilyCode,whichprohibitspaymentstoa personwhoisinarrearsonchildsupportpayments.

5. SUSPECTEDCHILDABUSE -Itwillcomplywithsection261.101oftheTexasFamilyCode,whichrequiresreportingofall suspectedcasesofchildabusetolocallawenforcementauthoritiesandtotheTexasDepartmentofChildProtectiveandRegulat ory Services.Granteesshallalsoensurethatallprogrampersonnelareproperlytrainedandawareofthisrequirement.

CERTIFIED ASSURANCES

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6. **RELATIVES**-ItwillcomplywithTexasGovernmentCode,Chapter573,byensuringthatnoofficer,employee,ormemberofthe applicant'sgoverningbodyorofthe applicant'scontractorshallvoteorconfirmtheemploymentofanypersonrelatedwithint he seconddegreeofaffinityorthethirddegreeofconsanguinitytoanymemberofthegoverningbody,ortoanyotherofficeror em- ployeeauthorizedtoemployorsupervisesuchperson.Thisprohibitionshallnotprohibitttheemploymentofapersonwhoshall have beencontinuouslyemployedforaperiodoftwoyears,orsuchotherperiodstipulatedbylocallaw,priortotheelectionorap pointment oftheofficer,employee,orgoverningbodymemberrelatedtosuchpersonintheprohibiteddegree.

7. **OPENMEETINGS**—Iftheapplicantisagovernmentalentity,itwillcomplywithTexasGovernmentCode,Chapter551,which requiresallregular,specialorcalledmeetingofgovernmentalbodiestobeopentothepublic,exceptasotherwiseprovidedb ylawor specificallyexcludedintheTexasConstitution.

8. **HEALTHHUMANSER VICESPUBLICSAFETYORLA WENFORCEMENTAGENCY**— Iftheapplicantishealthandhuman servicesagencyorpublicsafetyorlawenforcementagency,itwillnotcontractwithorissuealicense,certificateorpermit totheowner, operatororadministratorofafacilityifthelicense,permitorcertificatehasbeenrevokedbyanotherhealthandhumanserv icesagency orpublicsafetyorlawenforcementagency.

9. **LAWENFORCEMENTAGENCY**—Iftheapplicantisalawenforcementagencyregulatedby TexasGovernmentCode,Chapter 415,itwillcomplywithallrulesadoptedbytheTexasCommissiononLawEnforcementOfficerStandardsandEducationpursuant to TexasGovernmentCode,Chapter415,oritmustprovidetheCriminalJusticeDivisionwithacertificationfromtheTexasCommissionon LawEnforcementOfficerStandardsandEducationstatingthattheagencyisintheprocessofachievingcompliancewithsuchrul es.

Pleasereadcarefullyandcompletethesignatureblock

PARTIII:S IGNATUREP AGE

Applicantsmustcompletethisformandsubmitit toCJDbeforetheywillreceivestateand/orfederalfunds.Recipientsofstateand/or federalfundsmustfullyunderstandandcomplywiththerequirementslistedforFederalandStateAssurances.Failuretocomply mayresultinthewithholdingoffunds,terminationoftheaward,orothersanctions.

Williamson County, Texas	JAIBG Substance Abuse Program
Applicant'sOrganization	ProjectTitle
Judge John C. Doerfler	John C. Doerfler 1-29-02
PrintedNameandTitleofAuthorizedOfficial	SignatureoftheAuthorizedOfficial Date

JAIBG
Program Information

1. *List the cities, counties, or parts thereof covered by the Coordinated Enforcement Plan for Reducing Juvenile Crime.*

Williamson County, Texas

2. *List the members of Juvenile Crime Enforcement Coalition and their position titles.*

Stan Simpson-Captain, Round Rock Police Department
John Maspero-Sheriff, Williamson County
Gene Taylor-County Attorney, Williamson County
Donna Gafford- Juvenile Prosecutor, Williamson County
Charly Skaggs-Director of Juvenile Services, Williamson County
Judge Burt Carnes-Chairman of the Williamson County Juvenile Board
Frances Lesak-Secondary Staffing Student Services, LISD
Linda Taylor-JJAEP Administrator
Doak Fling-Edward D. Jones Investment Consultant
Robert Wood-Physical Therapist
Leslie Hill-Administrator, Texas Utilities
Dean Higginbotham-Coordinator of Religious Program Volunteers, Juvenile Detention
Robbie Fuller-Director of Services to At Risk and Runaway Youth
Scott Matthew-Manager of Don't Choose Crime Program
Anita Anderson-Gang Officer, Williamson County Juvenile Services
Linda Bloomquist-JPO Supervisor

This group has representation from police, sheriff, prosecutors, local probation, the juvenile court, schools, business, religion, social service, crime prevention and gang prevention.

3. *Explain which of the 12 purpose areas your Coordinated Enforcement Plan will address and why.*

The purpose areas where funds will be allocated are Purpose Area 2, 35% for juvenile accountability based sanctions and Purpose Area 3, 65% for the continued employment of a Juvenile Probation Officer.

With growth in population exploding in Williamson County, the need for a specialized substance abuse program is immediate. Purpose Area 2 funds will be utilized in the area of juvenile accountability based sanctions. Caseload probationers will be held accountable for their actions and success and out of county residential placement will be the last sanction sought by the Officer. An out of county residential therapeutic placement of a juvenile for substance abuse related offenses at a Level V for a minimum of 160 days or successful completion of the program.

The remaining 65% of allocated funds will address the need for a Juvenile Probation Officer. As the correlation between drug use and crime becomes more apparent, it makes sense that this JPO must be specialized in working with this targeted population. This JPO caseload will consist primarily of youth who have drug issues and have been placed on formal probation by a Juvenile Court. This JPO will lead groups that focus on the drug offender. By having a JPO who is specialized in drug issues, we hope to reduce offenders by focusing on their drug use. This JPO will work with those youth who have severe issues as well as regular caseload youth who require education and intervention.

List of Members of the Juvenile Crime Enforcement Coalition

POLICE:
Stan Simpson Captain, Round Rock Police Department

SHERIFF:
John Maspero Sheriff, Williamson County

PROSECUTOR:
Gene Taylor County Attorney, Williamson County
Donna Gafford Juvenile Prosecutor, Williamson County

LOCAL PROBATION:
Charly Skaggs Director of Juvenile Services, Williamson County

JUVENILE COURT:
Judge Burt Carnes, Chairman of the Williamson County Juvenile Board

SCHOOL:
Frances Lesak Secondary Staffing Student Services, LISD
Linda Taylor JJAEP Administrator

BUSINESS:
Doak Fling Edward D. Jones Investment Consultant
Robert Wood Physical Therapist
Leslie Hill Administrator, Texas Utilities

RELIGIOUS:
Dean Higginbotham, Coordinator of Religious Program Volunteers, Juvenile Detention

SOCIAL SERVICE:
Robbie Fuller Director of Services to At Risk and Runaway Youth

CRIME PREVENTION:
Scott Matthew Manager of Don't Chose Crime Program

GANG PREVENTION:
Anita Anderson Gang Officer, Williamson County Juvenile Services

PROBATION
Linda Bloomquist, JPO Supervisor

J A I B G

CERTIFICATIONS FOR

PROGRAM P URPOSE A REAS

The applicant hereby assures and certifies that the project will comply with the regulations, policies, guidelines, and requirements; including OMB Circulars A-87, Cost Principles for State, Local and Indian Tribal Governments, A-102, Grants and Cooperative Agreements with State and Local Governments; and A-133, Audits of States, Local Governments and Non-Profit Organizations; as they may relate to the application, acceptance and use of funds for this project.

Check the applicable box:

r In accordance with federal law, the grantee assures that not less than 45% of the funds received under this grant will be expended for purpose areas three through nine stated below and not less than 35% will be expended for purpose areas one, two, and ten. The remaining 20% will be spent on any combination of the remaining purpose areas.

r In accordance with federal law, the grantee certifies that the interest of public safety and juvenile crime control would be better served by expending funds in a proportion other than the 45% and 35% minimums. Please provide justification concerning the availability of existing structures or initiatives to meet local needs in federally-prescribed purpose areas. State the reasons for the alternative use of funds.

ProgramPurposeAreas

1. Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including training of correctional personnel.
2. Developing and administering accountability-based sanctions for juvenile offenders.
3. Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pretrial services for juveniles to ensure the smooth and expeditious administration of the juvenile justice system.
4. Hiring additional prosecutors so that more cases involving violent juvenile offenders can be prosecuted.
5. Providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively.
6. Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders.
7. Providing funding to enable juvenile courts and juvenile probation departments to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism.
8. The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders.
9. The establishment of drug court programs for juveniles as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services.
10. Establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social service agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts.
11. Establishing and maintaining accountability-based programs that work with juvenile offenders who are referral by law enforcement agencies, or which are designed in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence.
12. Implementing a policy of controlled substance abuse testing for appropriate categories of juveniles within the juvenile justice system.

John C. Daeffler — 1-29-02

Signature of Authorized Official — Date

JAIBG Purpose Area Allocation Sheet

Purpose Area #2: 35%

Developing and administering accountability based sanctions for juvenile offenders.

Purpose Area #3: 65%

Hiring additional juvenile judges, probation officers, and court appointed defenders, and funding pre-trail services for juveniles to ensure the smooth and expeditious administration of the juvenile justice system.

JAIBG Substance Abuse "PROUD" Program
BUDGET SUMMARY

CATEGORIES

	CJD	Grantee	In-Kind	Total
Personnel	28,706.00	3,190.00		31,896.00
Professional & Contractual	15,458.00	1,717.00		17,175.00
Travel & Training				
Equipment				
Supplies				
Total Direct Charges	44,164.00	4,907.00		49,071.00
TOTAL	$44,164.00	$4,907.00		$49,071.00

ESTIMATED PROGRAM INCOME

The project does not anticipate earning any program income.

PERSONNEL

Salaries: $30,291.00

Substance Abuse Juvenile Probation Officer x 100% of time = $30,291.00

Fringe Benefits: $8,008.00

Retirement @ .1011	$3,063.00
FICA @ .0765	$2,317.00
Health Insurance @ 300/month	$3,600.00
Total	$8,980.00

Salary and fringe benefits amounts funded through the JAIBG in the amount of $31,896.00. The salary difference of $7,375.00 will be an in-kind contribution funded through the Williamson County Juvenile Probation Department's General Fund Budget.

This full-time position will provide the following services: working with adjudicated juveniles who have been placed on formal probation for substance abuse related offenses or any formal probation juvenile who tests positive while on probation, working with the juvenile and their families to educate in the areas of health, prevention training, and education concerning the nature and quality of communication and relationships between family members and the juvenile.

PROFESSIONAL AND CONTRACTUAL SERVICES

Drug Education Class: $600.00
30 youth at $20.00/session

This program is a one time only class. The class is 8 hours on one Saturday in which the youth will be educated about Drug Use. Each youth will be assigned to attend this class after being assigned to the Substance Abuse Juvenile Probation Officer. Each class is usually $40.00 per session, but we are requesting that each youth be responsible for half the cost of the class with the remainder being paid for by JAIBG. It is estimated that thirty youth will be assigned to this class by the Substance Abuse Juvenile Probation Officer at $20.00 paid for by the JAIBG for a total of $600.00.

JAIBG Substance Abuse "PROUD" Program
BUDGET SUMMARY CONTINUED

PROFESSIONAL AND CONTRACTUAL SERVICES COSTS CONTINUED

Intensive Outpatient Drug Program: $3,500.00
10 youth at $350.00/program

This program is a 6 - week program in which the youth will attend 10 hours per week in session. The youth will meet 5 times per week for approximately 2 hours a session for 6 weeks. The program usually costs $750.00 per youth and we are requesting that each youth be responsible for $400.00 of the program and the JAIBG will pay the remainder per youth in the amount of $350.00 for each program for 10 youth for a total of $3,500.00.

Out Patient Substance Abuse Counseling: $8,660.00
16 youth at $35.00/group session - $3,360.00

This is a program that is a Drug Therapy Group in which the youth will attend the program one time per week for one and a half hours for approximately 6 – weeks. Each session cost is $35.00 in which 16 youth will attend the group 6 times for a total of $3,360.00 that the JAIBG would be responsible.

8 youth at $75.00/individual session - $1,200.00
This is a program in which some of the youth that attend the Group Sessions may be asked to attend up to two individual sessions as well. This is a 1 - hour session with the Therapist and the youth one on one discussing drug abuse issues. The sessions cost $75.00 each and it is estimated that 8 youth will be required to attend 2 sessions for a cost of $1,200.0 that the JAIBG would be responsible.

Out of County Residential Placement: $4,415.00
A juvenile placed on probation with the Substance Abuse Officer will attend the Drug Education class, Drug Therapy, Intensive Outpatient and if needed the juvenile will be placed in residential drug treatment program. The JAIBG will be responsible for $4,415.00 of the total cost for one juvenile.

TRAVEL AND TRAINING

Local Mileage: $0

Local mileage reimbursement of Substance Abuse Officer as related to performing duties and responsibilities as assigned in project narrative providing proper documentation is submitted will be provided by the Williamson County Juvenile Probation Department as an in-kind contribution funded through the General Fund Budget.

EQUIPMENT

The project does not anticipate having any equipment purchases.

SUPPLIES

Urinalysis Drug Testing Kits: $0

The cost of monthly urinalysis drug testing kits to be utilized by the "PROUD" officer in conducting on-site random testing of juveniles under the "PROUD" Program will be provided by the Williamson County Juvenile Probation Department as an in-kind contribution funded through the General Fund Budget.

Additionally, the Williamson County Juvenile Services Department will provide office space, utilities, computer, telephone, postage, and office furniture for this position.

SECTION ONE: PROBLEM STATEMENT AND DATA:

Problem Statement:

Drug related offenses represent a significant percentage of referrals to Williamson County Juvenile Services. Juveniles on probation who violate by using drugs require intensive support, education and/or sanctions to reduce the probability of moving deeper into the justice system.

Data:

In 2000, as published in the Williamson County Juvenile Services Annual Report, **10.2% of all referrals** made to Williamson County Juvenile Services were for drug related offenses (*1613 total referrals /164 drug related offenses*).

In 2000, according to the Williamson County Business Office, the number of juveniles *removed from their home and placed in residential drug treatment programs equaled* **20%** of court ordered placements outside of Williamson County. In 2001, thus far, the percentage is **15%.** (**Note:** This statistic does not count court ordered placements into the Williamson County Academy residential program).

On December 21, 2001, a survey was conducted of all field juvenile probation officers in Williamson County. The findings of this survey revealed that **33%** of all adjudicated juveniles currently on formal probation (court ordered) have tested positive for drug usage. (192 formal probation juveniles currently being supervised /65 produced at least one positive urinalysis drug test on current term of probation).

# of positive drug tests produced on current probation term:	1	2	3	4	5	6+	TOTAL
# OF JUVENILES:	33	12	4	4	3	9	65

A total of **163 positive drug screens** have been produced by the current formal juvenile probation caseload in Williamson County.

With the "PROUD" *("Personal Responsibility Over Using Drugs')* program currently in place, **35 of the 65 juveniles** have been served by it.

SECTION TWO: GOAL STATEMENT:

To provide structured support for juveniles on probation for drug offenses and/or those with a history of drug use. Juveniles shall be held accountable for their drug usage and provided with an organized program of support, guidance, and sanctions.

ORDERS MEMORANDUM
... parts of the text on this page was not ...arly legible for satisfactory recordation.

SECTION THREE: TARGET GROUP:

The target group of this program shall be:

- Any juvenile (10 -16 years of age) placed on probation by the Williamson County Juvenile Court or Juvenile Services, **and**
- Currently resides in Williamson County and is being supervised by a Williamson County field probation officer, **and**
- Has shown some type of drug use/abuse in the past or is on probation for a drug offense.

SECTION FOUR: PROJECT ACTIVITIES:

Under the proposed PROUD program, when a youth is placed on probation, the PROUD officer will take the following actions with the youth:

- If a S.A.S.S.I. assessment has not been conducted on the juvenile, the juvenile shall be referred to a qualified and trained person to conduct the assessment. Note: If the PROUD officer has not already been trained in conducting and interpreting the S.A.S.S.I. instrument, they shall receive the necessary training to do so within the scope of their employment.

In addition to all standard conditions of probation, the PROUD officer shall hold the juvenile probationer accountable in the following areas:

- Juveniles may be required to attend the Drug Awareness/Education Class given by the designated agency.
- If there is a determined need, the juvenile may be required to attend a weekly Drug Therapeutic Group given by the designated agency.
- If there is a determined need, the juvenile may be required to attend and successfully complete an Intensive Outpatient Drug Program.
- If there is a determined need, the juvenile may be required to seek admittance into a Residential Drug Treatment Program.

The PROUD officer may hold the **juvenile's parent(s) accountable** in the following areas:

- The PROUD officer will suggest that parents incorporate positive, structured, family/child centered activities within the home of no less than two (2) thirty (30) minute period each week.
- If the juvenile does not possess a valid diver's license, parents may be required to provide, facilitate or arrange transportation for their juvenile to drug classes or drug counseling meetings as needed.

- Parents may be requested to attend counseling with their child.

The **PROUD program officer qualifications and experience** shall include, but not be limited to:

- The PROUD officer shall possess a bachelor's degree and meet the essential criteria to be certified as a Juvenile Probation Officer in the state of Texas.
- The PROUD officer shall be familiar with and have work experience within the realm of substance abuse treatment as well as knowledge and familiarity with the recognized treatment modalities of dealing with addiction and substance abuse.
- The PROUD officer will be knowledgeable of local AA/NA resources and meetings in which to refer juveniles. The PROUD officer shall monitor required attendance at the Drug Classes, Drug Therapy or IOP of juveniles they are working with.
- The PROUD officer shall be available 24/7 as needed via digital pager.
- The PROUD officer shall be familiar with basic group dynamics concepts and have experience in facilitating group discussions.
- The PROUD officer shall be knowledgeable of local substance abuse outpatient & in-patient treatment providers. These providers may be called upon or utilized by the PROUD officer if under the PROUD program the juvenile continues to use drugs/test positive.

SECTION FIVE: PROJECT OBJECTIVES:

1. **Decrease of probationer drug usage:** The primary objective of the PROUD program shall be to deal directly with juveniles that continue to use drugs while on formal probation; specifically to reduce the number of juveniles who have more than one positive drug test. To date, as of the active formal probation caseload on 12/26/01, of the 65 juveniles who have tested positive for drugs on probation, **52 %** *(26 juveniles)* have tested positive more than one time. The objective will be to see a **50 % reduction** (13 juveniles) of this percentage *(more than one positive U.A.)* at the end of one year.
2. **Decrease in % of probationers placed in residential drug treatment programs:** After one year of operation, it is anticipated that the program will reduce the percentage of juveniles being removed from their home and placed in residential drug treatment programs **by 25 %,** (3 Juveniles).
3. **Improved family communication & relationships:** The PROUD officer will maintain monthly contact with the parents in order to monitor family activities and involvement in the juvenile's progress. If the juvenile is required to attend the Intensive Outpatient Drug Program, the parents may be required to attend a limited number of hours per week in the program.
4. **Availability and resources made to at-risk youth and families:** In addition to directly supervising and managing the outlined aspects of the PROUD Program, the officer shall be utilized as a primary resource/information person for Williamson County Juvenile Services., parents, and any other community citizens needing information on AA/NA resources, intervention approaches, warning signals of drug usage, etc. The PROUD officer will

document all intervention contacts in line with this objective that would otherwise not be available.

PLAN SUMMARY:

Through the PROUD program, Williamson County Juvenile Services will have an intensive, organized, and consistent intervention to deal with and respond to juveniles on probation that test positive for drugs and/or are on probation for a drug offense. The need for this program is evident by the significant percentage of referrals made to Williamson County Juvenile Services in 2000 that were drug related, as well as, the significant percentage of juveniles testing positive for drug use while on probation.

The PROUD program will emphasize the critical need for juveniles to be personally responsible for their choice to use drugs. The juveniles will be closely monitored and shall be required to attend and successfully compete a Drug Education Class. If the juvenile continues to use drugs the juvenile may be required to attend, complete and apply techniques used in a Drug Therapy Group, Intensive Outpatient Drug Program and possibly Residential Drug Treatment. Parents may also be held accountable and responsible for providing necessary transportation for their child, establishing a pattern of positive, family based activities with their child, attending scheduled meetings.

The anticipated outcomes of the program will be to see a 50 % (13 Juveniles) reduction in the number of juveniles that test positive for drugs more than once while on probation; to see a 25 % reduction in the percentage of juveniles being removed from their home and placed into residential drug treatment programs; to see a marked improvement in the juvenile's family in communication and personal relationships; and to have available a specific person to offer intervention and information to parents and community members that are concerned about at risk behavior of their youth which may involve drug usage.

BudgetAllocationForm

ThepurposeoftheJAIBGProgramistoprovidefundstodevelopprogramstopromote greateraccountabilityinthejuvenilejusticesystem.Fundsareavailableforthe following12programpurposeareas.Federalrulesrequirethat45%ofthetotalgrant fundsbeexpendedforpurposeareas(3)through(9)and35%forpurposeareas(1),(2), and(10).Additionally,theremaining20%maybeusedforanycombinationofthe12 purposeareas.

PurposeArea	Percentageof totalprojectbudgetused thisreportingperiod
PurposeArea1:ConstructionofFacilities. Building, expanding,renovating,oroperatingtemporaryorpermanentjuvenile correctionordetentionfacilities,includingtrainingofcorrectional personnel.	%
PurposeArea2:Accountability-BasedSanctions. Developingandadministeringaccountability-basedsanctionsfor juvenileoffenders.	% 35
PurposeArea3:HiringJudges/ProbationOfficers. Hiringadditionaljuvenilejudges,probationofficers,andcourt-appointeddefenders,andfundingpre-trailservicesforjuveniles,to ensurethesmoothandexpeditiousadministrationofthejuvenile justicesystem.	% 65
PurposeArea4:HiringProsecutors .Hiringadditional prosecutorssothatmorecasesinvolvingviolentjuvenileoffenders canbeprosecutedandbacklogsreduced.	%
PurposeArea5:ProsecutionofDrugs/Gangs/Violence. Providingfundingtoenableprosecutorstoaddressdrug,gang,and youthviolenceproblemsmoreeffectively.	%
PurposeArea6:Technology/TrainingforProsecutors. Providingfundingfortechnology,equipment,andtrainingtoassist prosecutorsinidentifyingandexpeditingtheprosecutionofviolent juvenileoffenders.	%
PurposeArea7:CourtsandProbation. Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducingrecidivism	%
PurposeArea8:GunCourts .Theestablishmentofcourt-basedjuvenilejusticeprogramsthattargetyoungfirearmsoffenders throughtheestablishmentofjuvenileguncourtsfortheadjudication andprosecutionofjuvenilefirearmsoffenders.	%

PurposeArea9:DrugCourts. Theestablishmentofdrug courtprogramsforjuvenilessoastoprovidecontinuingjudicial supervisionoverjuvenileoffenderswithsubstanceabuseproblems andtoprovidetheintegratedadministrationofothersanctionsand services.	%
PurposeArea10:Information-SharingSystem. Establishingandmaintaininginteragencyinformation-sharing programsthatenablethejuvenileandcriminaljusticesystem,schools, andsocialservicesagenciestomakemoreinformeddecisions regardingtheearlyidentification,control,supervision,andtreatment ofjuvenileswhorepeatedlycommitseriousdelinquentorcriminal acts.	%
PurposeArea11:LawEnforcement/Student/School. Establishingandmaintainingaccountability-basedprogramsthat workwithjuvenileoffenderswhoarereferredbylawenforcement agencies,orwhicharedesigned,incooperationwithlawenforcement officials,toprotectstudentsandschoolpersonnelfromdrug,gang, andyouthviolence.	%
PurposeArea12:ControlledSubstanceTesting. Implementingapolicyofcontrolledsubstancetestingforappropriate categoriesofjuvenileswithinthejusticesystem.	%
Administration	%

WaiverofPurposeAreas –Ifthelocalunitofgovernmentcancertifythattheinterestof publicsafetyandjuvenilecrimecontrolwouldbebetterservedbyexpendingitsfundsin aproportionotherthanthe45%and35%minimums,writtenjustificationmustbe providedtoCJD.

IfanyofyourJAIBGfundshavebeenwaivedtoanotherjurisdiction,pleaseprovidethe followinginformation:

NameofJurisdiction	
AmountWaived	$
NameofJurisdiction	
AmountWaived	$

RESOLUTION

STATE OF TEXAS

COUNTY OF WILLIAMSON

WHEREAS, The Williamson County Commissioners Court finds it in the best interest of the citizens of Williamson County, that the JAIBG Substance Abuse "PROUD" Program be operated for the 4th year; and

WHEREAS, Williamson County Commissioners Court has considered the proposed application for State and Federal Assistance for said project, in the amount of $44.164.00 to be submitted to the Office of the Governor, Criminal Justice Division, Fund JJDP Program; and

WHEREAS, The Williamson County Commissioners Court has agreed to provide a ten - percent (10%) matching moneys for the said project in the amount of $4,907.00, or an amount equal to one-fourth of the total project cost, as required by the grant application; and

WHEREAS, The Williamson County Commissioners Court has agreed that in the event of loss or misuse of the Criminal Justice Division funds, Williamson County Commissioners Court assures that the funds will be returned to the Criminal Justice Division in full.

NOW THEREFORE, BE IT RESOLVED that the Williamson County Commissioners Court approves submission of the grant application for the JAIBG Substance Abuse "PROUD" Program in the amount of $49,071.00.

Signed by the County Judge John C. Doerfler 1-29-02
John C. Doerfler

Passed and Approved on this the 29 day of JANUARY, 2002.

Attest: Signed by the County Clerk Nancy E. Rister
Nancy Rister

AGENDA ITEM 37

Note in minutes the recognition of Mark Birchard and Carole Akers by Justice of the Peace & Constables Association of Central Texas.

Precinct 4 Constable Marty Ruble read resolutions in recognition of Mark Birchard and Carole Akers.

< Attachment >

Resolution

Whereas, Chief Deputy Constable Mark Birchard has served Williamson County citizens from 1992 to 1994 with Williamson County Sheriffs Office, the Office of Constable Precinct 3 from 1994 to 1997, and the Office of Constable Precinct 4 from 1997 to date, and

Whereas, Chief Deputy Constable Mark Birchard works with other law enforcement agencies such as: The Williamson County Sheriffs Office, Taylor; Hutto, Granger, Bartlett, Thrall, Pflugerville Police Departments, Attorney Generals Office, and numerous others, and

Whereas, Chief Deputy Constable Mark Birchard is active in the community of Williamson County by providing bicycle safety programs, and fire Safety training for school children, Taylor Rodeo Association, Taylor Jaycees Rattlesnake Roundup, and

Whereas, Chief Deputy Constable Mark Birchard holds the following certifications; Animal Cruelty Investigator, Advanced Animal Control Officer, Intermediate Peace Officer, Advanced Gang Investigator, TCLEOSE Basic Instructor, and TCLEOSE Firearms Instructor, and

Whereas, Chief Deputy Mark Birchard has served as Sergeant at Arms for the Central Texas Justices of the Peace and Constables association for the past two years, and is Currently on the faculty as an Instructor for the State of Texas Justices of The Peace and Constables Association, a first for Williamson County, and Recently graduated from the Constables Leadership Institute, one of the first for this 100 hour program,

Now, therefore, be it resolved that we, the Williamson County Commissioners Court, Do hereby recognize and congratulate Chief Deputy Mark Birchard on his being named Central Texas Justices of the Peace and Constables Association Deputy of the Year for 2001, and we commend him for his outstanding service to the citizens of Williamson County on this the 29th day of January 2002.

John C. Doerfler 1-29-02

John C. Doerfler
County Judge

Nancy E. Rister

Nancy Rister
County Clerk

Resolution

Whereas, Constable Clerk Carole Akers has served Williamson County citizens from 1995 to 1998 with Constable Precinct 3 and the citizens of Constable Precinct 4 since 1999; and

Whereas, Constable Clerk Carole Akers works with other law enforcement agencies Such as: The Williamson County Sheriffs Office, Taylor; Hutto, Granger, Bartlett, Thrall Police Departments, Attorney Generals Office, and Numerous others, and

Whereas, Constable Clerk Carole Akers has raised the professionalism in the Office of Constable Precinct 4 by consistently and accurately handling Civil process and warrants, keeping attorneys offices properly updated In reference to process served, and records required for audits and fees Of office, and

Whereas, Constable Clerk Carole Akers has recently been recognized by Constable Marty Ruble for Meritous achievement for helping collect over $40,000 In fine revenue, and over $8,000 in fees of office resulting in over 200 Warrants cleared since October 1st 2001.

Whereas, Constable Clerk Carole Akers has served as Editor in Chief of the Informer a quarterly publication for the Central Texas Justices of the Peace and Constables association,

Now, therefore, be it resolved that we, the Williamson County Commissioners Court, Do hereby recognize and congratulate Constable Clerk Carole Akers on her being named Central Texas Justices of the Peace and Constables Association Clerk of the Year for 2001, and we commend her for her outstanding service to the citizens of Williamson County on this the 29th day of January 2002.

John C. Doerfler 1-29-02
John C. Doerfler
County Judge

Nancy E. Rister
Nancy Rister
County Clerk

AGENDA ITEM 38

Note in minutes the recognition of A.C. Berry by the Juvenile Justice Association of Texas.

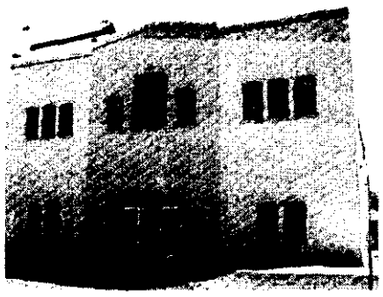
No action was taken on this agenda item, which will be added to the February 5, 2002 agenda.

AGENDA ITEM 39

Consider nominating someone to fill the vacancy on the Appraisal District Board of Directors.

Moved: **Commissioner Limmer**
Seconded: **Commissioner Hays**
Motion: To nominate Leslie Hill of Taylor to replace Don Nix on the Appraisal District Board of Directors.
Vote: **5 - 0**

< Attachment >



Williamson County Appraisal District

510 W. 9th Street
P. O. Box 1120
Georgetown, Texas 78627-1120
(512) 930-3787 – Austin Metro
(512) 352-8542 – Taylor Metro
(512) 930-0391 – Facsimile

Board of Directors
Ercel Brashear
Deborah Hunt
Don Paull
Robert Tagge

Bill Carroll, Chief Appraiser
wtc-wcad@texas.net

January 18, 2002

John Doerfler
County Judge
Williamson County Courthouse
710 Main Street #201
Georgetown, Texas 78626

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

Dear Judge Doerfler:

Unfortunately one of our recently elected board of director members, Don Nix, has unexpectedly moved out of town and will be unable to serve.

The procedures to replace that member are found in Section 6.03(l) of the Property Tax Code. We have enclosed a copy of that section for your review.

The code basically requires that if a vacancy occurs on the board of directors each taxing unit that is entitled to vote may nominate by resolution, adopted by its governing body, a candidate to fill the vacancy. The unit shall submit the name of its nominee to the chief appraiser within 10 days after notification from the board of directors of the existence of the vacancy. The chief appraiser shall prepare and deliver to the board of directors within the next 5 days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

We know that this is not a lot of notice but this is the procedure required in the law.

Since the selection is left up to us, it would be very helpful if you included a resume with your nomination.

If you have any questions please feel free to contact our chief appraiser, Bill Carroll.

Sincerely

Robert W. Tagge
Acting Chairman
Board of Directors
Williamson County Appraisal District

Leslie Hill
approved 1-29-02
John C. Doerfler

AGENDA ITEM 40

Consider approving Emergency Shelter Grant for WBCO.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To approve an Emergency Shelter Grant for WBCO.
Vote: **5 - 0**

< Attachment >

FFY 2002

Attachment B

CERTIFICATION OF LOCAL GOVERNMENT APPROVAL OF ESGP APPLICATION FOR PRIVATE NONPROFIT ORGANIZATION*

I, John Doerfler,
(Type Name and Title)

duly authorized to act on behalf of Williamson County,
(City or County)

hereby approve the Emergency Shelter Grants Program project application submitted

to the Texas Department of Housing and Community Affairs by:

Williamson-Burnet County Opportunities, Inc.
(Name Of Private Nonprofit Organization)

and certify that the application activities are to be located in the city or county named above.

John C Doerfler — 1-29-02
(Signature) (Date)

* The State of Texas will distribute ESGP funds to private nonprofit organizations only if the unit of general local government (any city or county) in which the proposed activities are to be located certifies that it approves the project.

COMMISSIONERS' COURT ADJOURNED TO EXECUTIVE SESSION AT 1:19 P.M. ON TUESDAY, JANUARY 29, 2002.

AGENDA ITEM 41

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.072 pertaining to real property.)

No action was taken in Executive Session.

AGENDA ITEM 42

Discuss pending litigation: Carol Collins VS. Williamson County and Eugene Taylor (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.074 pertaining to personnel.)

No action was taken in Executive Session.

COMMISSIONERS' COURT RECONVENED FROM EXECUTIVE SESSION AT 1:32 P.M. ON TUESDAY, JANUARY 29, 2002.

AGENDA ITEM 43

Discuss and take appropriate action on real estate.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To authorize the County Judge to sign a purchase agreement on the Hewlett lot.
Vote: **5 - 0**

Moved: **Commissioner Limmer**
Seconded: **Commissioner Hays**
Motion: To authorize the Couny Judge to sign a contract on two lots for the JP #4 office.
Vote: **5 – 0**

< Attachment >

TEXAS ASSOCIATION OF REALTORS® COPY

IMPROVED PROPERTY COMMERCIAL CONTRACT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 1999

1. **PARTIES:** Hewlett Holdings, Inc. (Seller) agrees to sell and convey to Williamson County of the State of Texas (Buyer) and Buyer agrees to buy from Seller the Property described below.

2. **PROPERTY:**

A. The property sold by this contract is called the "Property." The Property is that real property situated in Williamson County, Texas at 911 S. Main Street *(address)* that is legally described as follows: *(Identify exhibit if described by attachment.)*

Lots 1 - 8, Block 1, Glasscock Addition, City of Georgetown
and as further identified in Exhibit "B" attached.

B. The Property is sold together with:
(1) all buildings, improvements, and fixtures;
(2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
(3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
(4) Seller's interest in all licenses and permits related to the Property;
(5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
(6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
(7) the following personal property: _____.

(Describe any exceptions, reservations, or restrictions in Paragraph 11 or an addendum.)
(If the Property is a condominium, attach condominium addendum.)

3. **SALES PRICE:** At or before closing, Buyer will pay the following sales price for the Property:

A.	Cash portion payable by Buyer at closing	$ 725,000.00
B.	Sum of all financing described in Paragraph 4	$
C.	Sales price (sum of A and B)	$ 725,000.00

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3B as follows: *(Check all that apply.)*

☐ A. Third Party Financing: A third party note(s) in the total amount of $ _____. This contract:

☐ (1) is not contingent upon Buyer obtaining third party financing.

☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Financing Addendum.

☐ B. Assumption: In accordance with the attached Financing Addendum, Buyer will assume the unpaid principal balance of the first lien promissory note, which balance at closing will be $ _____.

☐ C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Financing Addendum in the amount of $ _____.

Initialed for Identification by Buyer JCD, _____ and Seller _____, _____

Brashear Properties, Ltd 2955 Dawn Drive, #B, Georgetown TX 78628
Phone: 512-930-5796 Fax: Brashear Properties

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Commercial Improved Contract Concerning 911 S. Main Street, Georgetown, TX 78628

5. **EARNEST MONEY:** Not later than 3 days after the effective date, Buyer must deposit $ 10,000.00 as earnest money with Alamo Title Company (escrow agent) at 3305 Northland Drive, #100, Austin, Texas (escrow agent's address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. **TITLE POLICY, SURVEY, AND UCC SEARCH:**

A. Title Policy:

(1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Alamo Title Company (the title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
(a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
(b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to area boundaries: *(Check (a) or (b) only.)*

☒ (a) will not be deleted from the title policy.

☐ (b) will be deleted from the title policy at the expense of ☐ Buyer ☐ Seller.

(3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6D.

(4) Within 21 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey:

(1) Within 45 days after the effective date: *(Check all that apply.)*

☐ (a) Buyer will obtain a survey of the Property at Buyer's expense.

☒ (b) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date.

☐ (c) Seller will deliver a true and correct copy of Seller's existing survey of the Property dated _____. Seller, at Seller's expense:

☐ (i) will have the existing survey recertified on a date not earlier than _____.

☐ (ii) will not have the existing survey recertified.

(2) The survey required under Paragraph 6B(1) must be made by a Registered Professional Land Surveyor acceptable to the title company. The survey must:
(a) identify the Property by metes and bounds or platted lot description;
(b) show that the survey was made and staked on the ground with corners permanently marked;
(c) set forth the dimensions and total area of the Property;
(d) show the location of all improvements, highways, streets, roads, railroads, rivers, creeks or other waterways, fences, easements, and rights-of-way on the Property with all easements and rights-of-way referenced to their recording information;
(e) show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property lying within the 100-year flood plain as shown on the current Federal Emergency Management Agency map; and
(f) contain the surveyor's certificate that the survey is true and correct.

C. UCC Search:

☒ (1) Within 14 days after the effective date, Seller, at Seller's expense, will furnish Buyer a Uniform Commercial Code (UCC) search prepared by a reporting service and dated after the effective date. The search must identify documents that are on file with the Texas Secretary of State and the county where the Property is located that relate to all personal property on the Property and show, as debtor, Seller and all other owners of the personal property in the last 5 years.

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☐ (2) Buyer does not require Seller to furnish a UCC search.

D. Buyer's Objections to the Commitment, Survey, and UCC Search:

(1) Within 15 days after Buyer receives all of the items required in Paragraphs 6A, 6B, and 6C (the commitment, copies of the documents evidencing title exceptions, survey, and UCC search), Buyer may object to matters disclosed in the items if:
(a) the matters disclosed constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or
(b) the items show that any part of the Property lies in a 100-year flood plain.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 20 days after Seller receives the objections. ~~The closing date will be extended as necessary to cure the objections.~~ If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph ~~7B(3)~~ 3(B) of the Addendum, will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6D is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. **PROPERTY CONDITION:** *(Check A or B only.)* Environmental study - Gas tanks?

☒ A. Present Condition: *(Check (1) or (2) only.)*

☒ (1) Buyer accepts the Property in its present "as-is" condition, subject to the requirements of Exhibit "A".

☐ (2) Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: Warranty - No in ground tanks on oil Repairs on wire. Clean

☐ B. Feasibility Period and Right to Terminate:

(1) Delivery of Property Information: Within _____ days after the effective date, Seller will deliver to Buyer the following items to the extent that the items are in Seller's possession or are readily available to Seller. Any item not delivered is deemed not to be in Seller's possession or readily available to Seller. The items Seller will deliver are:
(a) a current rent roll of all leases affecting the Property certified by Seller as true and correct;
(b) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
(c) a current inventory of all tangible personal property owned by Seller that is located on, attached to, and used in connection with the Property's operations;
(d) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
(e) copies of all current service, maintenance, and management agreements relating to the ownership and operation of the Property;
(f) copies of all current warranties and guaranties relating to all or part of the Property;
(g) copies of fire, hazard, liability, and other insurance policies that currently relate to the Property;
(h) copies of all leasing or commission agreements that currently relate to all or part of the Property;
(i) a copy of the "as-built" plans and specifications of the Property;
(j) copies of all invoices for utilities and repairs incurred by Seller for the Property in the 24 months immediately preceding the effective date;
(k) a copy of Seller's income and expense statement for the Property from _____ to _____;
(l) copies of all previous environmental assessments, studies, or analyses made on or relating to the Property;
(m) real and personal property tax statements for the Property for the previous 2 calendar years; and
(n) Survey

(2) Inspections, Studies, or Assessments:

(a) Within _____ days after the effective date, Buyer, at Buyer's expense, may complete or cause to be completed inspections, studies, or assessments of the Property, including all improvements and fixtures. Inspections, studies, or assessments may include, but are not limited to:

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(i) physical property inspections (for example, structural pest control, mechanical, structural, electrical, and plumbing inspections);
(ii) economic feasibility studies;
(iii) environmental assessments (for example, soil tests, air sampling, and paint sampling);
(iv) engineering studies; and
(v) compliance inspections (for example, compliance determination with zoning ordinances, restrictions, building codes, and statutes).

(b) Seller, at Seller's expense, will turn on all utilities necessary for Buyer to make inspections, studies, or assessments.

(c) In connection with Buyer's inspections, studies, and assessments, Buyer must:
(i) employ only trained and qualified inspectors and assessors;
(ii) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
(iii) abide by any reasonable entry rules or requirements that Seller may require;
(iv) not interfere with existing operations or occupants of the Property; and
(v) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(d) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph.

(3) Right to Terminate: Buyer may terminate this contract for any reason within _____ days after the effective date by providing Seller with written notice of termination. If Buyer terminates under this paragraph, the earnest money will be refunded to Buyer less $ _____ that Seller will retain as independent consideration for Buyer's right to terminate under this paragraph. The independent consideration is to be credited to the sales price only upon the closing of the sale. Buyer has tendered the independent consideration to Seller upon payment of the full amount specified in Paragraph 5 to the escrow agent. If Buyer does not terminate within the time required, Buyer accepts the Property in its present condition.

(4) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7B(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports (excluding economic feasibility studies) related to the Property that Buyer completed or caused to be completed. This Paragraph 7B(4) survives termination.

(5) Contracts Affecting Operations: After Buyer's right to terminate under Paragraph 7B(3) expires, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's prior written approval.

8. BROKERS:

A. The brokers to this sale are:

Ercel Brashear — 0229867 License No.
Listing Broker
Listing Broker:
☒ represents Seller.
☐ acts as an intermediary between Seller and Buyer.

n/a — License No.
Other Broker
Other Broker represents Buyer.

B. Fees: *(Check (1) or (2) only.)*

☐ (1) Seller will pay Listing Broker the fee specified by separate written commission agreement between Listing Broker and Seller. Listing Broker will pay Other Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.

☒ (2) At closing, Seller will pay:

Listing Broker a total cash fee of:
☒ 6.000 % of the sales price.
☐ _____.

Other Broker a total cash fee of:
☐ _____ % of the sales price.
☐ _____.

The cash fees will be paid in Williamson County, Texas. Seller authorizes escrow agent to pay the brokers from Sellers proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 8 without the written consent of the brokers affected by the amendment.

9. CLOSING:

A. The closing of the sale will be on or before See Addendum or within 7 days after objections to title have been cured, whichever date is later (the closing date). If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

B. At closing, Seller will deliver, at Seller's expense, a ☐ general ☒ special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property at closing:
(1) with no liens, assessments, or Uniform Commercial Code or other security interests against the Property which will not be satisfied out of the sales price unless securing loans Buyer assumes;
(2) without any assumed loans in default; and
(3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

C. At closing, Seller, at Seller's expense, will also deliver:
(1) tax statements showing no delinquent taxes on the Property;
(2) a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property defined as part of the Property in Paragraph 2 or sold under this contract;
(3) an assignment of all leases to or on the Property;
(4) to the extent that the following items are assignable, an assignment to Buyer of the following items as they relate to the Property or its operations:
(a) licenses and permits;
(b) maintenance, management, and other contracts; and
(c) warranties and guaranties;
(5) a rent roll current on the day of the closing certified by Seller as true and correct;
(6) evidence that the person executing this contract is legally capable and authorized to bind Seller; and
(7) any notices, statements, certificates, or other documents required by this contract or law necessary to convey the Property, all of which must be completed and executed by Seller as necessary.

D. At closing, Buyer will:
(1) pay the sales price in good funds acceptable to the escrow agent;
(2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
(3) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

~~E. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.~~

10. POSSESSION: Seller will deliver possession of the Property to Buyer on closing in its present or required repaired condition, ordinary wear and tear excepted. Until closing, Seller will operate the Property in the same manner as on the effective date and will not transfer or dispose of any of the personal property described in Paragraph 2B or sold under this contract. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

11. SPECIAL PROVISIONS: *(Identify exhibit if special provisions are contained in an attachment.)*

A. Exhibit "A" - Seller's Addendum - is attached hereto and made a part of this contract.

B. Taking Under Power of Eminent Domain. Seller and Purchaser acknowledge that Purchaser is acquiring the Property under the threat of Eminent Domain and Seller has entered into this contract in lieu of Purchaser's proceeding under its power of Eminent Domain to acquire the Property pursuant to the laws and Constitution of the United States.

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12. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following in cash at or before closing:
(1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
(2) release of Seller's loan liability, if applicable;
(3) tax statements or certificates;
(4) preparation of the deed and any bill of sale;
(5) one-half of any escrow fee;
(6) costs to record any documents to cure title objections that Seller must cure; and
(7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following in cash at or before closing:
(1) all loan fees or expenses (for example, application fees, origination fees, discount fees, appraisal fees, assumption fees, recording fees, tax service fees, mortgagee title policy expenses, credit report fees, document preparation fees, interest expense that Buyer's lender requires Buyer to pay at closing, and other fees required by Buyer's lender);
(2) preparation fees of any deed of trust;
(3) recording fees for the deed and any deed of trust;
(4) premiums for flood and hazard insurance as may be required by Buyer's lender;
(5) one-half of any escrow fee;
(6) copy and delivery fees for delivery of the title commitment and related documents; and
(7) other expenses that Buyer will pay under other provisions of this contract.

13. PRORATIONS, ROLLBACK TAXES, ESTOPPEL CERTIFICATES, RENT, AND DEPOSITS:

A. Prorations:
(1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
(2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 13A(2) survives closing.
(3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

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B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 13B survives closing.

C. Estoppel Certificates:
(1) Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property.
(2) The estoppel certificates must state:
(a) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
(b) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
(c) the amount of any security deposit;
(d) the amount of any offsets tenant is entitled against rent;
(e) the expiration date of the lease;
(f) a description of any renewal options; and
(g) _____.

~~D. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 13D survives closing.~~

14. CASUALTY LOSS AND CONDEMNATION:

A. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date, ~~Seller must~~ Seller shall have no obligation to restore the Property to its previous condition ~~as soon as reasonably possible and not later than the closing date. If, without fault, Seller is unable to do so,~~ and Buyer may:
(1) terminate this contract and the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), will be refunded to Buyer;
(2) extend the time for performance up to 15 days and the closing date will be extended as necessary; or
(3) accept the Property in its damaged condition and accept an assignment of any insurance proceeds Seller is entitled to receive.

B. If before closing, condemnation proceedings are commenced against the other any part of the Property, Buyer or Seller may:
(1) terminate this contract by providing written notice ~~to Seller~~ within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), will be refunded to Buyer; or
(2) appear and defend the condemnation proceedings and any award will, at Buyer's election, belong to:
(a) Seller and the sales price will be reduced by the same amount; or
(b) Buyer and the sales price will not be reduced.
If neither party elects to terminate, then Buyer shall

15. DEFAULT:

A. If Buyer fails to comply with this contract, Buyer is in default and Seller may: as Seller's sole remedy
~~(1) enforce specific performance, or seek other relief as may be provided by law, or both; or~~
(2) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract.

B. If, without fault, Seller is unable within the time allowed to deliver the ~~estoppel certificates~~ Survey or the commitment, Buyer may: as Buyer's sole remedy, either
(1) terminate this contract and receive the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), as the sole remedy; or
(2) extend the time for performance up to 15 days and the closing will be extended as necessary.

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
(1) enforce specific performance, ~~or seek such other relief as may be provided by law, or both;~~ or
(2) terminate this contract and receive the earnest money, less the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3), as liquidated damages, thereby releasing the parties from this contract.

16. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 16 survives closing.

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17. ESCROW:

A. At closing, the earnest money must be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.

B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.

C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 30 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.

D. Escrow agent will deduct the independent consideration paid for Buyer's right to terminate under Paragraph 7B(3) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.

E. If escrow agent complies with this Paragraph 17, each party hereby releases escrow agent from all claims related to the disbursal of the earnest money.

F. Notices under this Paragraph 17 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.

~~**18. MATERIAL FACTS:**~~

~~A. To the best of Seller's knowledge and belief: *(Check (1) or (2) only.)*~~

~~☐ (1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.~~

~~☐ (2) Seller is not aware of any of the following, except as described otherwise in this contract:~~
~~(a) any material physical defects to the Property;~~
~~(b) any pending or threatened litigation, condemnation, or assessment affecting the Property;~~
~~(c) any environmental hazards or conditions that affect the Property;~~
~~(d) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;~~
~~(e) whether radon, asbestos insulation or fireproofing, urea formaldehyde foam insulation, lead-based paint or other pollutants or contaminants of any nature now exist or have ever existed on the Property;~~
~~(f) whether wetlands, as defined by federal or state law or regulation, are on the Property; and~~
~~(g) whether threatened or endangered species or their habitat are on the Property.~~

~~*(Describe any exceptions to (a)-(g) in Paragraph 11 or an addendum.)*~~

~~B. Each written lease Seller is to furnish to Buyer under this contract must be in full force and effect according to its terms without amendment or modification that is not disclosed to Buyer in writing. Seller must disclose, in writing, to Buyer if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~
~~(1) any modifications, amendments, or default by landlord or tenant under the leases;~~
~~(2) any failure by Seller to comply with Seller's obligations under the leases;~~
~~(3) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;~~
~~(4) any non-occupancy of the leased premises by a tenant;~~
~~(5) any advance sums paid by a tenant under any lease;~~
~~(6) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
~~(7) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~

19. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to:

Buyer at 710 Main Street, Georgetown, TX 78626	Seller at PO Box 799, Georgetown, TX 78627
Phone (512)-943-1550	Phone (512)-681-3017
Fax (512)-943-1662	Fax (512)-930-5888

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20. **FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person" as defined by applicable law, or if Seller fails to deliver at closing an affidavit that Seller is not a foreign person, then Buyer will withhold from the sales proceeds at closing an amount sufficient to comply with applicable tax law and deliver the amount withheld to the Internal Revenue Service (IRS), together with appropriate tax forms. IRS regulations require filing written reports if cash in excess of specified amounts is received in the transaction.

21. **DISPUTE RESOLUTION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator.

22. **AGREEMENT OF THE PARTIES:**

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns.

B. This contract is to be construed in accordance with the laws of the State of Texas.

C. This contract contains the entire agreement of the parties and may not be changed except by written agreement.

D. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

E. Buyer ☐ may ☒ may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all of Buyer's obligations under this contract.

F. Addenda which are part of this contract are: *(Check all that apply.)*

☒ (1) Property Description Exhibit identified in Paragraph 2;
☐ (2) Condominium Addendum;
☐ (3) Financing Addendum;
☐ (4) Commercial Property Condition Statement;
☐ (5) Addendum for Seller's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards;
☐ (6) Notice to Purchaser of Real Property in a Water District;
☐ (7) Addendum for Coastal Area Property;
☐ (8) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; and
☒ (9) Seller's Addendum

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this contract.

D. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

E. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

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F. If any apartments or other residential units are part of the Property and those units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this contract.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers.

26. **CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts by 5:00 p.m., in the time zone in which the Property is located, on _____, the offer will lapse and become null and void.

This is a legally binding contract. READ IT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. CONSULT your attorney BEFORE signing.

Buyer's Attorney _____

Seller's Attorney _____

John C. Doeffler 1-29-02
Buyer
Williamson County of the State of Texas

Seller
Hewlett Holdings, Inc.

Buyer

Seller

AGREEMENT BETWEEN BROKERS

Listing Broker agrees to pay n/a (Other Broker) a fee of $ _____ or _____ % of the sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

n/a Other Broker	Ercel Brashear Listing Broker
License No.	0229867 License No.
By: _____	By: _____
Other Broker's Address	Listing Broker's Address
Phone Fax	Phone Fax

ESCROW RECEIPT

Escrow agent acknowledges receipt of:
☐ A. the contract on this day _____ (effective date);
☐ B. earnest money in the amount of $ _____ in the form of _____ on this day _____.

Escrow Agent
By: _____

Address: _____
Phone Fax

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EXHIBIT "A"

ADDENDUM TO THE CONTRACT FOR THE SALE OF 911 S. MAIN STREET, GEORGETOWN, TEXAS

In addition to the provisions of the contract, Seller and Buyer agree the following conditions shall apply to this transaction:

1. **"AS IS, WHERE IS":**

GENERAL. BUYER HEREBY EXPRESSLY ACKNOWLEDGES THAT IT HAS OR WILL HAVE, PRIOR TO THE END OF THE INSPECTION PERIOD (HEREINAFTER DEFINED), THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY THE BUYER IN ORDER TO ENABLE THE BUYER TO EVALUATE THE PURCHASE OF THE PROPERTY. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF LAND SUCH AS THE PROPERTY AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS, AND THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME, AND, UPON CLOSING, SHALL ACQUIRE THE PROPERTY SUBJECT TO THE RISK OF ANY ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, THAT MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OF SELLER EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS ACQUIRING THE PROPERTY ON AN AS IS, WHERE IS AND WITH ALL FAULTS BASIS, WITHOUT REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. BUYER HEREBY ACQUIRES THE PROPERTY SUBJECT TO ALL RISK AND LIABILITY (AND AGREES THAT SELLER SHALL NOT BE LIABLE TO BUYER OR ITS PRINCIPALS, AGENTS, CONTRACTORS, EMPLOYEES, SUCCESSORS OR ASSIGNS FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATING TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR, OR OPERATION OF THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS ARTICLE 1 WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE PURCHASE PRICE OF THE PROPERTY.

EXCLUDED TERMS. NOTWITHSTANDING ANY SEEMING CONTRADICTION, IT IS AGREED AND UNDERSTOOD THAT THE PROVISIONS OF THIS ARTICLE ARE LIMITED SO AS TO NOT BE CONSTRUED AS DIMINISHING OR NEGATING ANY WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

INCORPORATION INTO DEED. IT IS AGREED AND UNDERSTOOD THAT THE TERMS AND PROVISIONS OF THIS ARTICLE SHALL EXPRESSLY SURVIVE THE CLOSING AND NOT MERGE THEREIN AND SHALL BE INCORPORATED INTO THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

2. **SELLER'S OBLIGATIONS:** Within five (5) days of the date of the contract and if in Seller's possession, Seller shall deliver to Buyer copies of all environmental reports on the property so long as such delivery does not violate the terms of such report. Buyer shall keep all such information confidential and will not disclose the nature or conclusion in such reports to any third party other than Buyer's consultants, contractors, employees and/or others directly associated with Buyer's effort to purchase the property, unless compelled. Seller may enforce the terms of this confidentiality provision by all legal and equitable remedies available. Seller has no personal property owned or leased by Seller and used in conjunction with the operation and maintenance of the property. Seller has no service, maintenance, management and other contracts in existence pertaining to the property.

3. **FEASIBILITY PERIOD**. Buyer shall have a period of thirty (30) days from the Effective Date of the contract (the "Feasibility Period"), for the right of investigation and inspection of the Property to determine whether or not, in Buyer's sole judgment, the property is suitable for Buyer's intended use.

A. **Access and Indemnity**. Buyer and Buyer's agents shall have the right of access to the Property during normal business hours throughout the Feasibility Period upon reasonable notice to Seller for the purpose of conducting such investigation and inspection as deemed necessary by Buyer, including without limitation soils testing and/or environmental assessments. Buyer shall notcause or permit damage or injury to be done to the Property, and Buyer shall repair any damage or injury to the Property resulting from Buyer's investigation and inspection of the Property. Buyer shall indemnify and hold harmless Seller on account of any claims, causes of action, damages, costs and expenses (including attorney's fees) arising out of or relating to the acts of Buyer, its agents and employees under the provisions of this section. This indemnity shall survive the termination of this Contract.

B. **Termination by Buyer**. If, during the Feasibility Period, Buyer determines, in Buyer's sole judgment, that the property is not suitable for Buyer's intended use then Buyer shall, no later than the expiration of the Feasibility Period, give Seller and the Title Company written notification of Buyer's decision to terminate the contract and Buyer shall be entitled to the return of the earnest money, less the sum of one hundred dollars ($100.00) that Seller will retain as independent consideration, and after Buyer's compliance with the last sentence hereof. If Buyer does not provide written notice to Seller of Buyer's acceptance or rejection of the Property by the expiration of the Feasibility Period, then it shall be conclusively deemed that the Property is not suitable for Buyer's intended use, and the contract shall be terminated. If, for any reason, Buyer terminates the contract or fails to close this transaction, Buyer shall deliver to Seller all written soil, utility, environmental and feasibility reports prepared by or for Buyer related to the Property which are in possession or in control of Buyer, prior to the release of the earnest money by the Escrow Agent.

4. **CLOSING:** The closing of the sale of the property shall occur in the offices of the Title Company and shall be on or before thirty (30) days after the termination of the Feasibility Period.

5. **CONFLICTS:** In the event of a conflict between the provisions of this Seller's Addendum and the provisions of the contract to which this Addendum is attached, the provisions of this Addendum shall prevail.

Seller and Buyer acknowledge this Addendum to the Earnest Money Contract has been prepared as an aid in establishing the business details of the transaction as desired by the principals. It is the intent of the principals that this Addendum serves to conform the language of the promulgated contract to the terms of the agreement between the parties. Each party acknowledges that the Real Estate Broker has advised the principals to consult an attorney of their choice before executing this Addendum to the Earnest Money Contract.

BUYER: **Williamson County of the State of Texas**

By: John C. Doerfler
John Doerfler, County Judge

Date: 1-29-02

SELLER: **Hewlett Holdings, Ltd.**

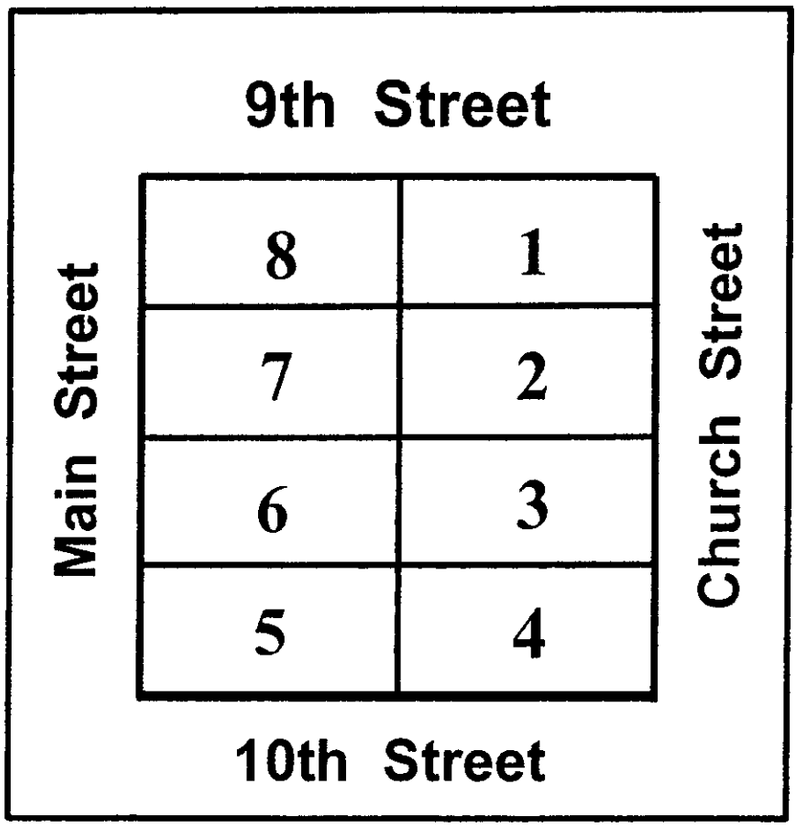
By: **Hewlett Group, Inc., a Texas Corporation, its General Partner**

By: _____
Lan L. Hewlett, III, President

Date: _____

Exhibit "B"

Lots 1-8, Block 1, Glasscock Addition, City of Georgetown, Williamson County, Texas.



EARNEST MONEY CONTRACT

This Earnest Money Contract ("Contract") is entered into as of the Effective Date (as hereinafter defined) by and between SCI Texas Funeral Services, Inc., a Texas corporation ("Seller") and Williamson County, ("Buyer");

WITNESSETH:

For and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, 13,500 square feet of land, more or less, more particularly described in Exhibit A attached hereto and made a part hereof (which description shall be modified to conform to the description set forth on the Survey (provided for in Section 4(c) hereof), together with all of Seller's right, title and interest in and to any easements, rights-of-way or other interests in, on or to the described land together with all improvements located thereon, all and singular, and the rights and appurtenances pertaining thereto (the land and other property and rights which are described in this paragraph and which are being conveyed to Buyer pursuant to this Contract are herein together referred to as the "Property") free and clear of all liens, claims, encumbrances, easements, rights-of-way, reservations, restrictions, outstanding mineral interests and other matters affecting the Property or the title thereto except for the Permitted Exceptions (as defined in Section 6(a) hereof), for the price and upon and subject to the terms, provisions and conditions hereinafter set forth. Seller's conveyance to Buyer shall be by Special Warranty Deed and shall be subject to the use restrictions (the "Use Restrictions") described in Exhibit B attached hereto.

1. **CONTRACT SALE PRICE:** The sales price (the "Sales Price") for the Property is Forty thousand and No/100 Dollars, ($40,000), all of which shall be due and payable to Seller in cash at Closing (as hereinafter defined).

2. **EARNEST MONEY:** Upon execution of this Contract by both parties, the Contract, together with Fifteen Hundred and No/100 Dollars ($1,500) in the form of a certified or cashier's check or wire transfer (the "Earnest Money") shall be delivered to Longhorn Title Company (the "Title Company"). The effective date (the "Effective Date") of this Contract shall be the date when the Earnest Money and a fully executed copy of this Contract is delivered to the Title Company. Earnest Money shall be invested by the Title Company in an interest bearing account with an institution reasonably acceptable to both Buyer and Seller. Any interest earned on the account shall become additional Earnest Money. At Closing, the Earnest Money shall be applied to the Sales Price.

3. **CLOSING:** (a) The closing of the sale ("Closing") shall take place at the offices of the Title Company on a mutually agreeable date within fifteen (15) days following the expiration of the Due Diligence Period (as hereinafter defined), unless such date is extended by Buyer as necessary to allow additional time to obtain

Governmental Approvals (as hereinafter provided for) but in no event later than 5:00 PM, April 12, 2002 (the actual date on which the closing occurs being herein referred to as the closing Date ("Closing Date").

(b) **SELLER'S CLOSING RESPONSIBILITIES:** At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, as the case may be, the following:

(i) A good and sufficient special warranty deed (the "Deed") granting and conveying to Buyer good and indefeasible title in fee simple to the Property subject only to the Permitted Exceptions as provided for in Section 6(a) of this Contract and the Use Restrictions set out in Exhibit B hereto;

(ii) An Owner's Title Insurance Policy in favor of Buyer dated as of the Closing Date showing fee simple title to the Property to be vested in Buyer subject only to the Permitted Exceptions;

(iii) Evidence of Seller's capacity and authority to close this Contract and the transactions provided for herein;

(iv) A non-foreign person affidavit pursuant to Section 1445 of the Internal Revenue Code, as amended;

(v) Payment of Seller's expenses as necessary to close this Contract;

(vi) Other documents duly executed reasonably necessary to close this transaction;

[(vii) 1031 Exchange documents as Seller shall elect;

(c) **BUYER'S CLOSING RESPONSIBILITIES:** At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Title Company, as the case may be, the following:

(i) Balance of the Sales Price;

(ii) Evidence of Buyer's capacity and authority to close this Contract and the transaction provided for herein;

(iii) Payment of Buyer's expenses as necessary to close this Contract;

(iv) Other documents duly executed reasonably necessary to close this transaction;

[(v) 1031 Exchange documents as Seller shall elect;

4. **CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS:** Each of the following are conditions precedent to Buyers obligation to purchase the Property pursuant to this Contract:

(a) **DUE DILIGENCE:** Buyer shall have sixty (60) days from the Effective Date (the "Due Diligence Period") to perform any reasonable and customary nondestructive feasibility studies, inspections, tests and environmental assessments of the Property that Buyer deems appropriate (herein referred to as "Due Diligence"). If during the Due Diligence Period, Buyer finds any information or condition(s) concerning the Property (other than matters affecting the title to the Property or matters reflected in the Survey of the Property) which information or conditions(s) are objectionable to Buyer within Buyer's sole discretion or, if Buyer elects for any or no reason not to proceed with the purchase of the Property, Buyer may terminate this Contract by written notice to Seller delivered prior to the end of such Due Diligence Period.

(b) **TITLE COMMITMENT:** Seller shall, within twenty (20) calendar days after the Effective Date, obtain from the Title Company and deliver to Buyer, at Seller's cost, a commitment for title insurance in the amount of the Sales Price (the "Commitment") for a standard owner's policy to be issued by the Title Company together with copies of all recorded instruments affecting the Property shown as exceptions in the Commitment provided that Buyer shall pay and is responsible for any additional premiums or other costs additional to the premium for standard coverage if Buyer elects to obtain extended coverage and/or title endorsements to the Title policy.

(c) **SURVEY:** Buyer may, at Buyers election, obtain within thirty (30) days following the Effective Date a current survey of the Property ("Survey") prepared by a surveyor ("Surveyor") licensed to do business in Texas, paid for by Buyer, which Survey shall be certified to Seller, Buyer and the Title Company and shall be sufficient to cause the Title Company to delete, at Buyers cost and expense, the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" ("Survey Exception") in the Owner's Title Policy to be delivered to Buyer at the Closing.

5. **BUYERS OBLIGATIONS:** (a) **GOVERNMENTAL APPROVALS; CLOSING DATE EXTENTION:** Buyer hereby acknowledges and agrees that Buyer shall be solely responsible for obtaining any and all necessary governmental approvals including development and building permits, appearances, subdivisions, plats (and re-subdivisions and re-plats), zoning or rezoning, site plans, traffic, utility and drainage approvals required by any governmental authority having jurisdiction over the Property, to enable Buyer to purchase and develop the

Property (the "Governmental Approvals"). Buyer agrees to use Buyer's diligent, good faith efforts without delay to obtain all such approvals and in that connection. Seller, at no cost and expense to Seller, shall cooperate with Buyer and join with Buyer in the signing of any documents necessary to obtain such approvals. Seller shall have the right but not the obligation to join with Buyer as a co-applicant on any filings or documents made or executed as a part of obtaining the Governmental Approvals; provided, however, that in no event shall Seller be obligated, prior to Closing, to sign or deliver any such documents which bind Seller or the Property or create easements or dedications on final plats in respect to the Property. If Seller joins Buyer as a co-applicant to secure any Governmental Approval, Buyer shall indemnify and hold harmless Seller from all liability arising as a result of Seller being an applicant for such approvals including liability for costs or fees, costs of preparing plans or other items to be submitted and costs to carry out any requirements of any governmental agency made as a part of such approval process or arising as a result of any application or submittal. In the event all such Governmental Approvals are not obtained within the Due Diligence Period, Buyer may terminate this Contract within the Due Diligence Period as herein above provided, or the Closing Date will automatically be extended to a date that is within 15 days after the receipt of all such Governmental Approvals (but in no event later than April 12, 2002, as provided in Section 3(a) above).

(b) **BUYER'S DUE DILIGENCE OBLIGATIONS:** Buyer agrees to perform all Due Diligence concerning the Property within the Due Diligence Period. In this regard, Buyer or his designated agents may enter upon the Property with prior notice to Jim Snyder of Condra Funeral Home (Phone: 512-352-3636) for purposes of performing such Due Diligence. Within five (5) days of receipt, Buyer shall furnish Seller with copies of all reports, *studies, analysis and development plans or requirements prepared by or for Buyer as a part of Buyer's Due* Diligence. In the event the transaction described in this Contract shall not close, Buyer shall restore the Property to its prior condition, if changed as a result of Buyer's Due Diligence. All Due Diligence shall be at Buyer's sole cost and expense. **Whether or not the transaction described in this Contract shall close, Buyer shall indemnify, defend and hold Seller harmless from and against all claims, actions, damages, liability, loss, costs, attorney's *fees and expenses related to or arising from the Due Diligence performed by Buyer, or at Buyer's direction,* even if such occurrence(s) were caused by the negligence of Seller to the extent, but no further, that Seller's negligence is based upon Seller's entry into this Contract, the grant of inspection and entry rights to Buyer or Seller's failure to monitor or supervise Buyer's, Buyer's agents', contractors', or employees' activities on the Property.**

6. **OTHER AGREEMENTS:** (a) **TITLE INSURANCE COSTS; TITLE APPROVAL; SURVEY APPROVAL:** Seller shall be responsible for the cost of the Owner's Title Insurance Policy. All other costs will be shared equally as is customary in the State of Texas and as further described in Section 6(e). If Buyer has an objection to items disclosed in the Commitment or the Survey provided for herein, Buyer shall within fourteen (14) days after receipt of both the Commitment and the Survey (the "Objection Period") make written objections to Seller concerning matters shown on the Commitment or Survey. If Buyer makes objections, Seller

agrees to use reasonable efforts to cure such objections within thirty (30) days from the receipt thereof (the "Cure Period") with the understanding and agreement that Seller is not obligated either to incur costs in excess of Five Thousand and No/100 Dollars ($5,000) or to institute litigation in pursuing any such efforts, but shall in all events be obligated to obtain the release of any liens against the Property voluntarily granted by Seller after the Effective Date. If the written objections are not cured or satisfied within the Cure Period, Buyer shall, as Buyer's sole and exclusive remedy, elect in writing delivered to Seller within ten (10) calendar days after the Cure Period either (a) to terminate this Contract and be entitled to the return of all deposits and interest thereon, or (b) to waive the unsatisfied objections and close the transaction with no reduction in the Sales Price. If Buyer fails to timely notify Seller in writing of any such objections during the Objection Period, it shall be deemed that Buyer has approved and found the Commitment, the Survey and all matters reflected on or in any of them to be acceptable and permitted hereunder and Buyer agrees to take title to the Property subject to such matters. Any items to which Buyer does not object in writing within the Objection Period or to which Buyer does object but subsequently waives (or is deemed to have waived) such objection shall be deemed to be a permitted exception(s) ("Permitted Exceptions").

(b) **PROPERTY CONDITION; AS IS, WHERE IS: Buyer acknowledges and agrees that Buyer *is experienced in the acquisition, development, ownership and operation of properties similar to the* Property and that prior to the Closing, Buyer will have performed Due Diligence to Buyer's satisfaction. Buyer acknowledges and agrees that Buyer is relying on Buyer's (or Buyer's representatives') Due Diligence of the Property and not upon any statements (oral or written) which may have been made or may be made by Seller or any of Seller's representatives. As a material part of the consideration for this Contract, Buyer hereby *agrees to accept the Property on the Closing Date in its "as is, where is" condition, with all faults, and* without representation(s) and/or warranty(ies) by Seller of any kind, express or implied, or any arising by operation of law, except only the title warranties set forth in the Deed delivered by Seller to Buyer at the Closing.**

(c) **BROKER'S FEE:** Buyer and Seller represent and warrant to each other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with the sale of the Property by Seller to Buyer.

(d) **POSSESSION:** Possession of the Property (subject to the rights of parties claiming under the Permitted Exceptions) [and the lease]shall be delivered to Buyer at Closing.

(e) **SALE EXPENSES:** The following sale expenses shall be allocated between the parties, as follows:

(i) SELLER'S EXPENSES: All costs of releasing existing liens and recording the releases; Owner's Title Policy premiums; 1/2 of any Closing escrow fee; preparation of the Deed; transfer tax; and other expenses stipulated to be paid by Seller under other provisions of this Contract.

(ii) BUYER'S EXPENSES: All expenses incident to any loan, Mortgagee's Title Policy premiums; cost of the Survey if required by Buyer, 1/2 of any Closing escrow fee; Due Diligence costs and expenses; all expenses incurred in obtaining the Governmental Approvals; and other expenses stipulated to be paid by Buyer under other provisions of this Contract.

(f) **PRORATIONS:** All water and other utility charges, assessments, current standby fees, and sales, ad valorem and any other taxes, fuels, prepaid service contracts, expenses and charges and any rents and maintenance fees shall be prorated to the Closing Date, and such proration shall be final. The real estate taxes shall be prorated to the Closing Date on the basis of 100% of the most recent annual ad valorem taxes and such proration shall be final.

(g) **USE OF PROPERTY:** If after the Closing or during the term of this Contract, Buyer, or Seller on behalf of Buyer, changes the use of the Property and the same results in the assessment of additional taxes for the current or any past year, or this sale results in the assessment of additional taxes for the current or any past year, such additional taxes shall be the obligation of the Buyer.

(h) **CONDEMNATION:** If any substantial part (i.e. more than twenty percent 20%) of the land area of the Property is condemned prior to the Closing Date, or written notice of such condemnation is delivered to Seller prior to the Closing Date, Seller shall promptly give Buyer written notice of such condemnation. In the event of a condemnation, Buyer shall have the option either (i) to apply the proceeds of any condemnation award actually received by Seller prior to the Closing to reduce the Sales Price provided herein (or, in the event such proceeds have not been so received, to accept at the Closing an assignment of Seller's rights therein and consummate the sale without reduction in the Sales Price), or (ii) to declare this Contract terminated by delivering written notice of termination to Seller within ten (10) days after Buyer receives written notice of the condemnation. If Buyer elects to terminate this Contract, all awards and compensation arising out of said condemnation shall be the property of the Seller.

(i) **OTHER CONSIDERATION:** None

7. **TERMINATION; DEFAULT OR BREACH:** (a) **TERMINATION:** If this Contract is terminated for any reason during the Due Diligence Period and if Buyer is not then in breach hereof, the Earnest Money shall be returned to Buyer and neither party hereto shall have any other or further rights, duties or liabilities

under this Contract. If this Contract is terminated after the Due Diligence Period for any reason other than default or breach of this Contract by either party, and if Buyer is not then in breach hereof, the then undistributed portion of the Earnest Money shall be returned to Buyer and neither party hereto shall have any other or further rights, duties or obligations under this Contract.

(b) **DEFAULT OR BREACH:** If Buyer defaults under or breaches this Contract for any reason other than Seller's default or breach hereunder, Seller may, as Seller's sole and exclusive remedy, terminate this Contract and receive the undistributed balance of the Earnest Money as liquidated damages. If Seller defaults under or breaches this Contract for any reason other than Buyer's default or breach under this Contract, Buyer may, as Buyer's sole and exclusive remedies and provided Buyer is not in breach or default hereof, either (i) terminate this Contract and receive the undistributed portion of the Earnest Money, thereby releasing Seller from this Contract, or (ii) enforce specific performance of this Contract. Under no circumstances shall Seller be liable to Buyer under this Contract for damages specifically including consequential damages.

8. **REPRESENTATIONS AND WARRANTIES OF SELLER:** (a) Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

(i) Seller is duly authorized and empowered to sell the Property.

(ii) Seller has paid during Seller's ownership, all standby fees, taxes, charges, debts and other assessments due by Seller with respect to the Property;

(iii) There will be no unrecorded liens or Uniform Commercial Code security interests against any of the Property which arose by the actions of Seller and which will not be satisfied out of the Sales Price;

(b) If any representation or warranty above is known by Buyer, prior to the Closing, to be untrue and is not remedied by Seller prior to the Closing, Buyer may, as Buyer's sole and exclusive remedy on account thereof, either (i) terminate this Contract, or (ii) waive Buyer's objections and close the transaction with no reduction in the Sales Price.

9. **MISCELLANEOUS:** (a) Any notice required or permitted to be delivered hereunder shall be deemed received when personally delivered or three (3) days following deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, or when delivered by a reputable overnight delivery service (such as Federal Express or Airborne), addressed to Seller or Buyer, as the case may be, at the address set forth below the signature of such party in this Contract.

(b) This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Harris County.

(c) This Contract shall be binding upon and inure to the benefit of the parties hereto and, subject to Section 10 hereof, their successors and assigns.

(d) In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal and unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(e) This Contract, including Exhibits A through C attached hereto and the other items delivered pursuant hereto, constitutes the complete agreement of the parties and supersedes all prior understandings or written or oral agreements between the parties respecting the within subject matter and cannot be changed amended or supplemented except by their written consent. This Contract as well as any amendments and/or supplements may be executed in counterparts, all of which shall be deemed to constitute one document.

(f) Time is of the essence in this Contract. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. As used herein, any reference to a number of days shall mean calendar days. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

(g) This Contract and all provisions contained herein are strictly confidential. Buyer and Seller are responsible for ensuring that this Contract and all provisions herein are kept confidential by their respective officers, agents, directors, employees, attorneys, brokers, contractors, affiliates, vendors and any other person retained in relation to this Contract.

10. **ASSIGNMENT:** As a part of the Closing, Buyer may assign this Contract without the prior written consent of Seller, but no such assignment shall relieve Buyer, from performing all of the obligations, covenants and agreements of Buyer hereunder, whether arising prior to or after the date of such assignment.

11. **LIKE-KIND EXCHANGE:** Seller may desire to consummate the sale of the Property as a like-kind exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, (the "1031 Election") and the regulations promulgated thereunder. Buyer agrees to cooperate with Seller in this regard and shall, at Seller's request, execute and deliver such documents, instruments, and agreements as may be necessary therefor or related thereto; provided, however, Buyer shall not be obligated to accept title to any other land or property other than the Property or to incur any additional costs or expenses associated with any such 1031 Election.

[12. **SELLER'S RIGHT TO TERMINATE:** Seller shall have the right to terminate this Contract in the event any of the following organizations are sued as a result of this Contract or the transaction provided for herein: SCI Texas Funeral Services, Inc., SCI Management L.P., Service Corporation International.]

13. **BOARD OF DIRECTORS APPROVAL:** This Contract is subject to the approval of the Executive Committee of the Board of Directors of Service Corporation International, the ultimate parent company of Seller, within thirty (30) days of the Effective Date. Seller will notify Buyer of approval or rejection. This Contract shall be void if a written approval is not delivered to Buyer within such thirty (30) day period.

EXECUTED in multiple originals on the dates set forth by each party's signature, but effective upon the Effective Date as set forth below.

SELLER:

SCI Texas Funeral Services, Inc.

By:_____

Name: Michael L. Decell

Title: Vice President

Date: _____, 2002

Seller's Address:
1929 Allen Parkway
Houston, Texas 77019
Attention: Dann Narveson
Real Estate Department
Phone No.: 713-525-7380

with copy to:
Service Corporation International
General Counsel
1929 Allen Parkway
Houston, Texas 77019

BUYER:

Williamson County

By: John C. Doerfler

Name: John C. Doerfler

Title: County Judge

Date: January 29, 2002

with copy to: Eugene Taylor
Co. Attorney
405 MLK Box 7
Georgetown 78626

EARNEST MONEY RECEIPT

The Title Company hereby acknowledges receipt of this fully executed Contract and the Earnest Money in the amount of _____ and No/100 Dollars ($_____) on the _____ day of _____ _____, 2002 (the "Effective Date").

Longhorn Title Company
309 N. Main
Taylor, Texas

By:_____
Name: _____
Title:_____

Exhibit A - Property Description
Exhibit B - Use Restrictions
Exhibit C – Seller's Retained Property

EXHIBIT A

LEGAL DESCRIPTION

(To be inserted by Seller upon receipt of the Survey and Title Commitment)

EXHIBIT B

USE RESTRICTIONS

The following is a list of the USE RESTRICTIONS affecting the Property that will be included in the Deed and run with the Property:

(i) Any warehousing, assembling, manufacturing, distilling, refining, smelting, agricultural or mining operations, except for cattle grazing or normal crop production;

(ii) Any "second hand" store, Army, Navy, or governmental "surplus" store;

(iii) Any mobile home or trailer court, labor camp, junkyard, stockyard, or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during the periods of construction, reconstruction, or maintenance);

(iv) Any fire or bankruptcy sale (unless pursuant to court order) or auction house operation;

(v) Any dry cleaning outlet (other than pick-up and drop-off facilities only), central laundry or Laundromat; provided, that, such facilities may be used on the Property in connection with laundry services provided solely to owners or occupants of the Property;

(vi) Any automobile, truck, trailer, heavy equipment, mobile home or recreational vehicle sales, leasing or display, including body repair facilities;

(vii) Any bowling alley or skating rink;

(viii) Any pet shop, pet quarters, or veterinary service within 250 feet of Seller's Retained Property;

(ix) Any mortuary, cemetery or location used to sell or solicit sales of pre-need agreements for cemetery or funeral merchandise or services;

(x) Any establishment selling or exhibiting pornographic materials;

(xi) Any gasoline, diesel or other fuel or automotive service stations, or any facility providing automotive repairs or services; provided, that, such facilities may be located on the Property so long as they are no closer than 250 feet to the western boundary of the Property and so long as they are part of an office development, are screened such that they cannot be seen from outside the boundary of the Property, and then only to the extent the same provide services to owners or occupants of the Property;

(xii) Any bar, tavern, or other establishment which sells alcoholic beverages for on or off premises consumption (a restaurant shall be deemed a bar or tavern if more than 50% of gross annual sales therefrom are attributable to the sale of alcoholic beverages);

(xiii) Any massage parlor, modeling studio or establishment where women or men are engaged in other salacious activities;

(xiv) Any public or private nuisance;

(xv) Any use which generates or causes to be generated any noise or sound that is objectional due to intermittence, beat, frequency, shrillness or loudness;

(xvi) Any use which generates or causes to be generated any obnoxious odor;

(xvii) Any use which generates or causes to be generated any noxious, toxic caustic, or corrosive fuel or gas; or any facility used primarily for the storage, use or disposal, whether temporary or permanent, of any Hazardous Substance. For the purposes of this subsection, "Hazardous Substance" means any substance which is (1) toxic, ignitable, reactive, corrosive, radioactive, flammable, explosive, or a human health or safety hazard, including but not limited to asbestos (friable or non-friable), petroleum products, by-products and wastes, polychlorobiphenyls ("PCB's"), (2) defined as "hazardous substances", "hazardous materials", "toxic substances" or "hazardous wastes" in the Environmental Laws, or (3) prohibited or regulated or which requires redemption under any of the Environmental Laws. "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Clean Air Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Williams-Steiger Occupational Safety and Health Act, and any other applicable statutes, laws, ordinances, rules and regulations of any federal, state or local governmental or quasi-governmental authority or body having jurisdiction over the property;

(xviii) Any use which generates or causes to be generated any dust, dirt, or fly ash in excessive quantities;

(xix) Any use which generates or causes to be generated any unusual fire, explosion, or other damaging or dangerous hazard including the storage, display or sale of explosives or fireworks;

(xx) Any dumping, disposal, incineration, reduction of garbage or refuse (exclusive of garbage containers properly screened); or

(xxi) Any use which involves the installation of any underground storage tanks.

EXHIBIT C

SELLER'S RETAINED PROPERTY

AGENDA ITEM 44

Discuss and take appropriate action on pending litigation: Carol Collins vs. Williamson County and Eugene Taylor.

No action was taken on this agenda item.

AGENDA ITEM 45

Comments from commissioners.

Commissioner Boatright reported that the County received $250,000.00 from Capital Metro for Cypress Creek Road.

COMMISSIONERS' COURT ADJOURNED AT 1:35 P.M. ON TUESDAY, JANUARY 29, 2002.

MINUTES

Of The

WILLIAMSON COUNTY ROAD DISTRICT MEETING

January 29, 2002

STATE OF TEXAS)(

COUNTY OF WILLIAMSON)(

BE IT REMEMBERED that at 1:35 p.m. on January 29, 2002, a REGULAR SESSION of the Commissioners Court of Williamson County, Texas, was held pursuant to V.A.C.S. art. 6702, acting as ex-officio road commissioners of their respective precincts, the following members being present, to-wit:

JOHN C. DOERFLER, County Judge
MICHAEL L. HEILIGENSTEIN, Commissioner, Precinct 1
GREGORY W. BOATRIGHT, Commissioner, Precinct 2
ABSENT DAVID HAYS, Commissioner, Precinct 3
FRANKIE LIMMER, Commissioner, Precinct 4
NANCY E. RISTER, County Clerk

I.

Read and approve the minutes of the last meeting.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To approve the minutes of the January 15, 2002 road district meeting.
Vote: **4 – 0**

II.

Discuss and take appropriate action on the Southeast Williamson County Road District #1, including, but not limited to payment of bills.

No action was taken on this agenda item.

III.

Discuss and take appropriate action on the Southwest Williamson County Road District #1, including, but not limited to payment of bills.

No action was taken on this agenda item.

IV.

Discuss and take appropriate action on the Northeast Round Rock Road District #1, including, but not limited to payment of bills.

No action was taken on this agenda item.

V.

Consideration and action with respect to "Order Authorizing the Issuance of Avery Ranch Road District No. 1 Unlimited Tax Road Bonds, Series 2002; Levying an Ad Valorem Tax in Support of the Bonds; Approving an Official Statement; Authorizing the Execution of a Paying Agent/Registar Agreement and a Bond Purchase Agreement; and Authorizing Other Matters Related to the Bonds."

Gary Kimball of First Southwest Co., addressed the court concerning the Avery Ranch road bonds, and answered questions from the court.

Moved: **Commissioner Boatright**
Seconded: **Commissioner Limmer**
Motion: To approve an "Order Authorizing the Issuance of Avery Ranch Road District No. 1 Unlimited Tax Road Bonds, Series 2002; Levying an Ad Valorem Tax in Support of the Bonds; Approving an Official Statement; Authorizing the Execution of a Paying Agent/Registar Agreement and a Bond Purchase Agreement; and Authorizing Other Matters Related to the Bonds."
Vote: **4 – 0**

< Attachment >

FIRST SOUTHWEST COMPANY

Presentation to:

Avery Ranch Road District No. 1

$6,425,000 Unlimited Tax Road Bonds, Series 2002

FINAL PRICING SUMMARY

January 29, 2002

OFFICIAL STATEMENT

Dated January 29, 2002

Non-Rated

NEW ISSUE – Book-Entry-Only

Delivery of the Bonds is subject to the opinion of Bond Counsel to the effect that interest on the Bonds will be excludable from gross income for federal income tax purposes under statutes, regulations, published rulings and court decisions existing on the date thereof, subject to the matters described under "TAX MATTERS" herein including the alternative minimum tax on corporations. SEE "TAX MATTERS."

THE DISTRICT EXPECTS TO DESIGNATE THE BONDS AS
"QUALIFIED TAX-EXEMPT OBLIGATIONS" FOR FINANCIAL INSTITUTIONS

$6,425,000
AVERY RANCH ROAD DISTRICT NO. 1
(A political subdivision of the State of Texas located within Williamson County)
UNLIMITED TAX ROAD BONDS, SERIES 2002

The bonds described above (the "Bonds") are general obligations of Avery Ranch Road District No. 1 (the "District") secured solely by ad valorem taxes levied on property within the District and are not obligations of the State of Texas, Williamson County or any entity other than the District.

Dated: February 1, 2002 **Due: August 15, as shown on the inside cover**

The $6,425,000 Avery Ranch Road District No. 1, Unlimited Tax Road Bonds, Series 2002 (the "Bonds") will be issued in fully registered form in denominations of $5,000 or any integral multiple thereof. Interest on the Bonds will accrue from February 1, 2002, and will be payable on August 15, 2002 and on each February 15 and August 15 thereafter ("Interest Payment Date"), until maturity or prior redemption and will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The District intends to utilize the Book-Entry-Only System of The Depository Trust Company ("DTC"), but reserves the right on its behalf *or on behalf of DTC to discontinue such system. Beneficial ownership of the Bonds may be acquired in denominations of $5,000 or integral* multiples thereof. **No physical delivery of the Bonds will be made to the beneficial owners thereof.** Principal of, premium, if any, and interest on the Bonds will be payable by the Paying Agent/Registrar to Cede & Co., as the nominee of DTC, which will make distribution of the amounts so paid to participating members of DTC for subsequent payment to the beneficial owners of the Bonds (see "THE BONDS – Book-Entry-Only System" herein). The initial Paying Agent/Registrar is JPMorgan Chase & Co, Houston, Texas.

MATURITY SCHEDULE
See Inside Cover Page

The Bonds, when issued, will constitute valid and legally binding obligations of the District and will be payable from the proceeds of an annual ad valorem tax, without legal limitation as to rate or amount, levied against all taxable property within the District.

THE BONDS ARE SUBJECT TO SPECIAL INVESTMENT CONSIDERATIONS DESCRIBED HEREIN. See "INVESTMENT CONSIDERATIONS".

The Bonds are offered, when, as and if issued by the District and accepted by the Underwriter, subject, among other things, to the approval of the initial Bonds by the Attorney General of the State of Texas and the approval of certain legal matters by McCall, Parkhurst & Horton L.L.P., Bond Counsel, Austin, Texas. Certain legal matters will be passed upon for the Underwriter by its counsel, Andrews & Kurth L.L.P., Austin, Texas. Delivery of the Bonds is expected through the facilities of DTC on or about February 14, 2002.

MORGAN KEEGAN & CO., INC.

Avery Ranch Road District No. 1

Unlimited Tax Road Bonds
Series 2002

SOURCES & USES

Dated 02/01/2002 Delivered 02/14/2002

SOURCES OF FUNDS	
Par Amount of Bonds	$6,425,000.00
Reoffering Premium	67,768.45
Accrued Interest from 02/01/2002 to 02/14/2002	12,627.60
TOTAL SOURCES	$6,505,396.05
USES OF FUNDS	
Original Issue Discount (OID)	68,016.00
Total Underwriter's Discount (1.790%)	115,000.00
Costs of Issuance	178,812.50
Deposit to Debt Service Fund	12,627.60
Deposit to Capitalized Interest (CIF) Fund	674,628.61
Deposit to Project Construction Fund	5,456,000.00
Rounding Amount	311.34
TOTAL USES	$6,505,396.05

Avery Ranch Road District No. 1

Unlimited Tax Road Bonds
Series 2002

PRICING SUMMARY

Maturity	Type	of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
8/15/2004	Serial	Coupon	5.250%	3.100%	205,000.00	105.139%	215,534.95
8/15/2005	Serial	Coupon	5.250%	3.650%	215,000.00	105.216%	226,214.40
8/15/2006	Serial	Coupon	5.250%	4.000%	225,000.00	105.104%	236,484.00
8/15/2007	Serial	Coupon	5.250%	4.350%	240,000.00	104.362%	250,468.80
8/15/2008	Serial	Coupon	5.250%	4.600%	250,000.00	103.617%	259,042.50
8/15/2009	Serial	Coupon	5.250%	4.750%	265,000.00	103.124%	273,278.60
8/15/2010	Serial	Coupon	5.250%	4.900%	280,000.00	102.409%	286,745.20
8/15/2011	Serial	Coupon	4.900%	5.000%	295,000.00	99.250%	292,787.50
8/15/2012	Serial	Coupon	5.000%	5.100%	305,000.00	99.194%	302,541.70
8/15/2013	Serial	Coupon	5.150%	5.250%	325,000.00	99.144%	322,218.00
8/15/2014	Serial	Coupon	5.300%	5.400%	340,000.00	99.099%	336,936.60
8/15/2015	Serial	Coupon	5.450%	5.550%	355,000.00	99.058%	351,655.90
8/15/2016	Serial	Coupon	5.550%	5.650%	375,000.00	99.018%	371,317.50
8/15/2019	Term 1	Coupon	5.650%	5.800%	1,260,000.00	98.364%	1,239,386.40
8/15/2022	Term 2	Coupon	5.750%	5.920%	1,490,000.00	97.996%	1,460,140.40
Total	-	-	-	-	6,425,000.00	-	6,424,752.45

BID INFORMATION

Par Amount of Bonds	$6,425,000.00
Reoffering Premium or (Discount)	(247.55)
Gross Production	$6,424,752.45
Total Underwriter's Discount (1.790%)	$(115,000.00)
Bid (98.206%)	6,309,752.45
Accrued Interest from 02/01/2002 to 02/14/2002	12,627.60
Total Purchase Price	$6,322,380.05
Bond Year Dollars	$84,012.36
Average Life	13.076 Years
True Interest Cost (TIC)	5.7113463%

Avery Ranch Road District No. 1

Unlimited Tax Road Bonds
Series 2002

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S
9/30/2002	-	-	188,442.71	188,442.71	(188,442.71)	-
9/30/2003	-	-	349,687.50	349,687.50	(349,687.50)	-
9/30/2004	205,000.00	5.250%	349,687.50	554,687.50	(174,843.75)	379,843.75
9/30/2005	215,000.00	5.250%	338,925.00	553,925.00	-	553,925.00
9/30/2006	225,000.00	5.250%	327,637.50	552,637.50	-	552,637.50
9/30/2007	240,000.00	5.250%	315,825.00	555,825.00	-	555,825.00
9/30/2008	250,000.00	5.250%	303,225.00	553,225.00	-	553,225.00
9/30/2009	265,000.00	5.250%	290,100.00	555,100.00	-	555,100.00
9/30/2010	280,000.00	5.250%	276,187.50	556,187.50	-	556,187.50
9/30/2011	295,000.00	4.900%	261,487.50	556,487.50	-	556,487.50
9/30/2012	305,000.00	5.000%	247,032.50	552,032.50	-	552,032.50
9/30/2013	325,000.00	5.150%	231,782.50	556,782.50	-	556,782.50
9/30/2014	340,000.00	5.300%	215,045.00	555,045.00	-	555,045.00
9/30/2015	355,000.00	5.450%	197,025.00	552,025.00	-	552,025.00
9/30/2016	375,000.00	5.550%	177,677.50	552,677.50	-	552,677.50
9/30/2017	395,000.00	5.650%	156,865.00	551,865.00	-	551,865.00
9/30/2018	420,000.00	5.650%	134,547.50	554,547.50	-	554,547.50
9/30/2019	445,000.00	5.650%	110,817.50	555,817.50	-	555,817.50
9/30/2020	470,000.00	5.750%	85,675.00	555,675.00	-	555,675.00
9/30/2021	495,000.00	5.750%	58,650.00	553,650.00	-	553,650.00
9/30/2022	525,000.00	5.750%	30,187.50	555,187.50	-	555,187.50
Total	6,425,000.00	-	4,646,510.21	11,071,510.21	(712,973.96)	10,358,536.25

Avery Ranch Road District No. 1

Unlimited Tax Road Bonds
Series 2002

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	FISCAL TOTAL
2/14/2002	-	-	-	-	-
8/15/2002	-	-	188,442.71	188,442.71	-
9/30/2002	-	-	-	-	188,442.71
2/15/2003	-	-	174,843.75	174,843.75	-
8/15/2003	-	-	174,843.75	174,843.75	-
9/30/2003	-	-	-	-	349,687.50
2/15/2004	-	-	174,843.75	174,843.75	-
8/15/2004	205,000.00	5.250%	174,843.75	379,843.75	-
9/30/2004	-	-	-	-	554,687.50
2/15/2005	-	-	169,462.50	169,462.50	-
8/15/2005	215,000.00	5.250%	169,462.50	384,462.50	-
9/30/2005	-	-	-	-	553,925.00
2/15/2006	-	-	163,818.75	163,818.75	-
8/15/2006	225,000.00	5.250%	163,818.75	388,818.75	-
9/30/2006	-	-	-	-	552,637.50
2/15/2007	-	-	157,912.50	157,912.50	-
8/15/2007	240,000.00	5.250%	157,912.50	397,912.50	-
9/30/2007	-	-	-	-	555,825.00
2/15/2008	-	-	151,612.50	151,612.50	-
8/15/2008	250,000.00	5.250%	151,612.50	401,612.50	-
9/30/2008	-	-	-	-	553,225.00
2/15/2009	-	-	145,050.00	145,050.00	-
8/15/2009	265,000.00	5.250%	145,050.00	410,050.00	-
9/30/2009	-	-	-	-	555,100.00
2/15/2010	-	-	138,093.75	138,093.75	-
8/15/2010	280,000.00	5.250%	138,093.75	418,093.75	-
9/30/2010	-	-	-	-	556,187.50
2/15/2011	-	-	130,743.75	130,743.75	-
8/15/2011	295,000.00	4.900%	130,743.75	425,743.75	-
9/30/2011	-	-	-	-	556,487.50
2/15/2012	-	-	123,516.25	123,516.25	-
8/15/2012	305,000.00	5.000%	123,516.25	428,516.25	-
9/30/2012	-	-	-	-	552,032.50
2/15/2013	-	-	115,891.25	115,891.25	-
8/15/2013	325,000.00	5.150%	115,891.25	440,891.25	-
9/30/2013	-	-	-	-	556,782.50
2/15/2014	-	-	107,522.50	107,522.50	-
8/15/2014	340,000.00	5.300%	107,522.50	447,522.50	-
9/30/2014	-	-	-	-	555,045.00
2/15/2015	-	-	98,512.50	98,512.50	-
8/15/2015	355,000.00	5.450%	98,512.50	453,512.50	-
9/30/2015	-	-	-	-	552,025.00
2/15/2016	-	-	88,838.75	88,838.75	-
8/15/2016	375,000.00	5.550%	88,838.75	463,838.75	-
9/30/2016	-	-	-	-	552,677.50
2/15/2017	-	-	78,432.50	78,432.50	-
8/15/2017	395,000.00	5.650%	78,432.50	473,432.50	-

Avery Ranch Road District No. 1

Unlimited Tax Road Bonds
Series 2002

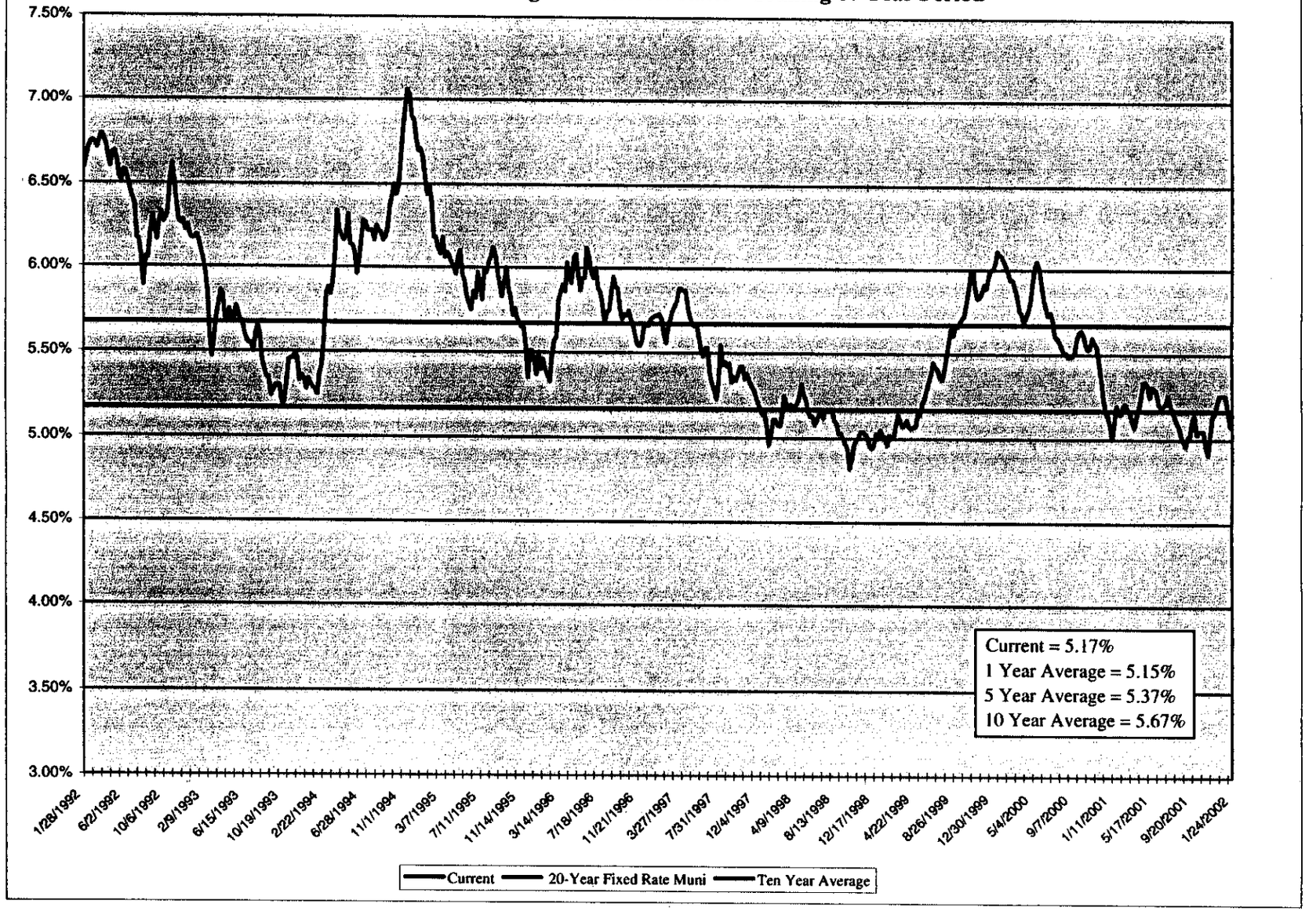
DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	FISCAL TOTAL
9/30/2017	-	-	-	-	551,865.00
2/15/2018	-	-	67,273.75	67,273.75	-
8/15/2018	420,000.00	5.650%	67,273.75	487,273.75	-
9/30/2018	-	-	-	-	554,547.50
2/15/2019	-	-	55,408.75	55,408.75	-
8/15/2019	445,000.00	5.650%	55,408.75	500,408.75	-
9/30/2019	-	-	-	-	555,817.50
2/15/2020	-	-	42,837.50	42,837.50	-
8/15/2020	470,000.00	5.750%	42,837.50	512,837.50	-
9/30/2020	-	-	-	-	555,675.00
2/15/2021	-	-	29,325.00	29,325.00	-
8/15/2021	495,000.00	5.750%	29,325.00	524,325.00	-
9/30/2021	-	-	-	-	553,650.00
2/15/2022	-	-	15,093.75	15,093.75	-
8/15/2022	525,000.00	5.750%	15,093.75	540,093.75	-
9/30/2022	-	-	-	-	555,187.50
Total	6,425,000.00	-	4,646,510.21	11,071,510.21	-

YIELD STATISTICS

Accrued Interest from 02/01/2002 to 02/14/2002	12,627.60
Bond Year Dollars	$84,012.36
Average Life	13.076 Years
True Interest Cost (TIC)	5.7113463%
Bond Yield for Arbitrage Purposes	5.5069332%

"Bond Buyer's" Index
Historical General Obligation Interest Rates - Trailing 10 Year Period



CERTIFICATE FOR ORDER

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §
AVERY RANCH ROAD DISTRICT NO. 1 §

We, the undersigned Commissioners Court, as the governing body of Avery Ranch Road District No. 1 (the "District"), hereby certify as follows:

1. The District convened in REGULAR MEETING ON THE 29TH DAY OF JANUARY, 2002, at the designated meeting place (the "Meeting"), and the roll was called of the duly constituted officers and members of the governing body, to wit:

John Doerfler - County Judge
Mike Heiligenstein - County Commissioner, Precinct 1
Greg Boatright - County Commissioner, Precinct 2
David Hays - County Commissioner, Precinct 3
Frankie Limmer - County Commissioner, Precinct 4

and all of said persons were present, except the following absentees: D. Hays, thus constituting a quorum. Whereupon, among other business, the following was transacted at the Meeting: a written

ORDER AUTHORIZING THE ISSUANCE OF $6,425,000 AVERY RANCH ROAD DISTRICT NO. 1 UNLIMITED TAX ROAD BONDS, SERIES 2002; LEVYING AN AD VALOREM TAX IN SUPPORT OF THE BONDS; APPROVING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A BOND PURCHASE AGREEMENT; AND AUTHORIZING OTHER MATTERS RELATED TO THE ISSUANCE OF THE BONDS

was duly introduced for consideration. It was then duly moved and seconded that the Order be passed; and, after due discussion, the motion, carrying with it the passage of the Order, prevailed and carried by the following vote:

AYES: 4

NOES: 0

2. A true, full and correct copy of the aforesaid Order passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that the Order has been duly recorded in the District's minutes of the Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from the District's minutes of the Meeting pertaining to the passage of the Order; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the governing body as indicated therein; that each of the officers and members of the governing body were duly and sufficiently notified officially and personally, in

advance, of the time, place and purpose of the aforesaid Meeting, and that the Order would be introduced and considered for passage at the Meeting, and each of the officers and members consented, in advance, to the holding of the Meeting for such purpose; that the Meeting was open to the public and public notice of the time, place and purpose of the Meeting was given, all as required by Chapter 551, Government Code, as amended.

SIGNED AND SEALED this January 29, 2002.

Nancy E. Rister
County Clerk

John C. Doerfler
County Judge

(SEAL)

ORDER AUTHORIZING THE ISSUANCE OF $6,425,000 AVERY RANCH ROAD DISTRICT NO. 1 UNLIMITED TAX ROAD BONDS, SERIES 2002; LEVYING AN AD VALOREM TAX IN SUPPORT OF THE BONDS; APPROVING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A BOND PURCHASE AGREEMENT; AND AUTHORIZING OTHER MATTERS RELATED TO THE ISSUANCE OF THE BONDS

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ORDER AUTHORIZING THE ISSUANCE OF $6,425,000 AVERY RANCH ROAD DISTRICT NO. 1 UNLIMITED TAX ROAD BONDS, SERIES 2002; LEVYING AN AD VALOREM TAX IN SUPPORT OF THE BONDS; APPROVING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A BOND PURCHASE AGREEMENT; AND AUTHORIZING OTHER MATTERS RELATED TO THE ISSUANCE OF THE BONDS

THE STATE OF TEXAS	§
COUNTY OF WILLIAMSON	§
AVERY RANCH ROAD DISTRICT NO. 1	§

WHEREAS, Avery Ranch Road District No. 1 (the "District") has been created and established pursuant to the Texas Constitution and laws of the State of Texas; and

WHEREAS, at an election held on May 5, 2001 (the "Bond Election"), the voter of the District authorized the issuance of bonds in the maximum amount of $17,000,000 in conformity with the Constitution and laws of the State of Texas, particularly Section 52 of Article III of the Constitution and laws enacted pursuant thereto, for the purpose of constructing, reimbursing for the costs of constructing, acquiring by purchase, maintaining and operating macadamized, graveled or paved roads and turnpikes and related bridges, drainage works and other similar facilities and carrying out other improvements that are necessary, convenient or related thereto or that are otherwise permitted to be done under applicable laws at the time of issuance of such bonds, both within and outside the boundaries of said District, or in aid of those purposes, and to refund any bonds or other evidences of indebtedness issued for any of the foregoing purposes in an amount not to exceed one and one-half times the amount of bonds or other evidences of indebtedness issued, such bonds to be issued in one or more series or issues, to mature serially or otherwise not more than thirty (30) years from their date and to bear interest at such rate or rates (not to exceed the maximum rate permitted by law at the time of issuance of the bonds); and

WHEREAS, the Commissioners Court has further determined that it is necessary and property that a $6,425,000 first series of such bonds be issued reserving the right to issue in the future the remaining $10,575,000 authorized but unissued bonds.

THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, TEXAS:

ARTICLE ONE

PREAMBLE

SECTION 1.01 INCORPORATION OF PREAMBLE. The Commissioners Court as the governing body of the Avery Ranch Road District No. 1 (the "District") hereby incorporates the recitals set forth in the preamble hereto as if set forth in full at this place and further finds and determines that the recitals are true and correct.

ARTICLE TWO

DEFINITIONS AND INTERPRETATIONS

SECTION 2.01. DEFINITIONS. When used in this Bond Order, except in Article Six, and in any resolution or order amendatory or supplemental hereto, the terms listed below shall have the meanings specified below, unless it is otherwise expressly provided or unless the context otherwise requires:

"Additional Bonds" means the additional bonds which the Commissioners Court expressly reserves the right to issue in Article Eleven of this Bond Order.

"Authorized Investments" means authorized obligations as permitted by the County Investment Policy and the Public Funds Investment Act, Chapter 2256, Texas Government Code as may be amended from time to time.

"Bonds" means the Bonds initially issued and delivered pursuant to this Bond Order and all substitute Bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term "Bond" shall mean any of the Bonds.

"Bond Election" means the May 5, 2001 election held within the District authorizing the issuance of $17,000,000 of bonds to construct, reimburse for the costs of construction, acquire by purchase, maintain and operate macadamized, graded or paved roads in the District.

"Bond Order" or "Order" means this Bond Order of the Board of Directors authorizing the issuance of the Bonds.

"County" means Williamson County, Texas.

"District" means Avery Ranch Road District No. 1 and any other public agency succeeding to the powers, rights, privileges, and functions of the District and, when appropriate, the Commissioners Court as the governing body of the District.

"Exchange Bonds" means Bonds registered, authenticated, and delivered by the Registrar, as provided in Section 4.01 of this Bond Order.

"Fiscal Year" means the twelve-month accounting period for the District, which presently is the twelve-month period beginning on October 1 of each year and ending on September 30 of the following year, but which may be changed from time to time by the Commissioners Court.

"Initial Bonds" means the Bonds authorized, issued, and initially delivered as provided in Sections 3.02 and 3.03 of this Bond Order.

"Interest Payment Date" means a date on which interest on the Bonds is due and payable. Interest on the Bonds is due and payable on August 15, 2002, and semi-annually on each February 15 and August 15 thereafter until the earlier of maturity or redemption.

"MSRB" means the Municipal Securities Rulemaking Board.

"NRMSIR" means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Record Date" means, with respect to an Interest Payment Date, the last day of the month next preceding each such date whether or not such date is a business day.

"Redemption Date" means a date fixed for redemption of any Bond pursuant to the terms of this Bond Order.

"Register" or "Registration Books" means the registry system maintained on behalf of the District by the Registrar in which are listed the names and addresses of the Registered Owners and the principal amount of Bonds registered in the name of each Registered Owner.

"Registered Owner" means any person or entity in whose name a Bond is registered.

"Registrar" or "Paying Agent/Registrar" means JPMorgan Chase Bank, or such other bank, trust company, financial institution, or other entity as may hereafter be designated by the District to act as paying agent and registrar for the Bonds in accordance with the terms of this Bond Order.

"Replacement Bonds" means the Bonds authorized by the District to be issued in substitution for lost, apparently destroyed, or wrongfully taken Bonds as provided in Section 4.02 of this Bond Order.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"SID" means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

SECTION 2.02. INTERPRETATIONS. The titles and headings of the articles and sections and the page numbers of this Bond Order have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Bond Order and all the terms and provisions hereof shall be liberally

construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and the validity of the taxes levied in payment thereof.

ARTICLE THREE

AUTHORIZATION, REGISTRATION, EXECUTION, AND AUTHENTICATION OF BONDS

SECTION 3.01. AMOUNT, NAME, PURPOSE, AND AUTHORIZATION. Each Bond issued pursuant to this Bond Order shall be known and designated as "Avery Ranch Road District No. 1 Unlimited Tax Road Bonds, Series 2002" and the Bonds shall be issued in the aggregate principal amount of $6,425,000 for the purpose of constructing, reimbursing for the costs of constructing, acquiring by purchase, maintaining and operating macadamized, graveled or paved roads and turnpikes and related bridges, drainage work and other similar facilities including particularly reimbursing the developers for the construction of a portion of a four lane divided road located within the District generally known as Avery Ranch Boulevard (the "Road"), funding approximately 24 months of capitalized interest and paying the costs of issuance.

SECTION 3.02. FORM, DATE, NUMBERS, AND DENOMINATION. The Bonds shall be issued and delivered in fully registered form without coupons, and may be transferred and exchanged after initial delivery as provided in Article Four of this Bond Order. The Bonds shall be dated February 1, 2002. There shall be Initial Bonds numbered consecutively in order of their maturity as specified in Section 3.03 below. Bonds registered and delivered by the Registrar subsequent to the Initial Bonds shall be numbered by the Registrar R-1 upward and no two Bonds shall be given the same number. The Bonds registered and delivered subsequent to the Initial Bonds shall be in principal denominations of $5,000 or any integral multiple thereof.

SECTION 3.03. INTEREST RATES AND MATURITIES. Bonds shall bear interest from February 1, 2002, at the rate or rates set forth in the following schedule on the basis of a 360 day year composed of twelve 30-day months, and shall mature and become payable, subject to prior redemption in accordance with the provisions of Article Five hereof. The Bonds shall mature on August 15 in each of the years and in the principal amounts set forth in the schedule below:

Initial Bond Number	Year of Maturity	Amount Maturing	Interest Rate
T-1	2004	$ 205,000	5.25%
T-2	2005	215,000	5.25
T-3	2006	225,000	5.25
T-4	2007	240,000	5.25
T-5	2008	250,000	5.25
T-6	2009	265,000	5.25
T-7	2010	280,000	5.25
T-8	2011	295,000	4.90
T-9	2012	305,000	5.00
T-10	2013	325,000	5.15
T-11	2014	340,000	5.30
T-12	2015	355,000	5.45
T-13	2016	375,000	5.55
T-14	2019	1,260,000	5.65
T-15	2022	1,490,000	5.75

SECTION 3.04. PAYMENT OF PRINCIPAL AND INTEREST. The Registrar is hereby appointed as the paying agent for the Bonds. The principal of the Bonds, shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they become due and payable, whether at maturity or by prior redemption in the case of the Bonds, at the designated office for payment of the Registrar. The interest on each Bond shall be payable on August 15, 2002, and semiannually thereafter on February 15 and August 15 of each year by check payable on the Interest Payment Date, mailed by the Registrar on or before each Interest Payment Date to the Registered Owner as shown on the Register on the Record Date or, at the request of a Registered Owner, and at the Registered Owner's risk and expense, in such other manner as may be acceptable to the Registered Owner and the Registrar. Any accrued interest payable at maturity or earlier redemption, in the case of the Bonds, shall be paid upon presentation and surrender of the Bond to which such interest appertains.

If the date for payment on any Bond is a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Registrar is located are authorized by law or executive order to close, or the United States Postal Service is not open for business, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or a day on which banking institutions are authorized by law or executive order to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 3.05. SUCCESSOR REGISTRARS. The District covenants that at all times while any Bonds are outstanding it will provide a bank, trust company, financial institution or

other entity duly qualified and duly authorized to act as Registrar for the Bonds. The District reserves the right to change the Registrar on not less than 30 days written notice to the Registrar, so long as any such notice is effective at such time as to not disrupt payment on the next succeeding principal or interest payment date on the Bonds. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Registered Owner, by United States mail, first-class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

SECTION 3.06. SPECIAL RECORD DATE. If interest on any Bond is not paid on any Interest Payment Date and continues unpaid for 30 days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the District. Such Special Record Date shall be 15 days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first-class, postage prepaid, not later than 5 days prior to the Special Record Date, to each affected Registered Owner of record as of the close of business on the day prior to the mailing of such notice.

SECTION 3.07. REGISTERED OWNERS. The District, the Registrar and any other person may treat the person in whose name any Bond is registered as the absolute Registered Owner of such Bond for the purpose of making payment of principal or interest on such Bond, and for all other purposes, whether or not such Bond is overdue, and neither the District, nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Registered Owner of any Bond in accordance with this Section 3.07 shall be valid and effectual and shall discharge the liability of the District and the Registrar upon such Bond to the extent of the sums paid.

SECTION 3.08. EXECUTION OF BONDS. The Bonds shall be signed on behalf of the District by the County Judge, County Clerk and County Treasurer, by their manual, lithographed, or facsimile signatures, and the official seal of the District shall be impressed or placed in facsimile thereon. The facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and the facsimile seal on the Bonds shall have the same effect as if the official seal of the District had been manually impressed upon each of the Bonds. If any officer of the District whose manual or facsimile signature appears on the Bonds shall cease to be such officer before the authentication of such Bonds or before the delivery of such Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

SECTION 3.09. AUTHENTICATION. The Initial Bonds shall bear thereon a certificate of registration of the Comptroller of Public Accounts of the State of Texas, substantially in the form provided in Section 6.02 of this Bond Order, manually executed by the Comptroller or a duly authorized deputy. All other Bonds shall bear a certificate of authentication, substantially in

the form provided in Section 6.03 of this Bond Order, manually executed by an authorized officer of the Registrar. No Bond shall be valid or obligatory for any purpose unless either the registration certificate of the Comptroller or the authentication certificate of the Registrar has been signed by a duly authorized officer thereof.

ARTICLE FOUR

REGISTRATION, TRANSFER, AND EXCHANGE

SECTION 4.01. REGISTRATION, TRANSFER, AND EXCHANGE. So long as any Bonds remain outstanding, the Registrar shall keep at its designated office for payment the Register, in which, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of this Bond Order.

Each Bond shall be transferable only upon the presentation and surrender thereof at the designated office for payment of the Registrar, duly endorsed for transfer, or accompanied by an assignment duly executed by the Registered Owner or an authorized representative in form satisfactory to the Registrar. Upon due presentation of any Bond for transfer, the Registrar shall authenticate and deliver in exchange therefor, within 72 hours after such presentation, a new Bond or Bonds of the same type, registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount, and bearing interest at the same rate as the Bond or Bonds so presented.

All Bonds shall be exchangeable upon presentation and surrender thereof at the designated office for payment of the Registrar for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of the Bond or Bonds presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Bonds in accordance with the provisions of this Section 4.01. Each Bond delivered in accordance with this Section 4.01 shall be entitled to the benefits and security of this Bond Order to the same extent as the Bond or Bonds in lieu of which such Bond is delivered.

The District or the Registrar may require the Registered Owner of any Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Bond. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the District.

No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the District or any other body or person so as to accomplish the foregoing conversion and exchange of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein, and the Bonds shall be of type composition printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Chapter 1201, Texas Government Code, as amended,

and particularly Section 1201.062 thereof, the duty of conversion and exchange of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the Bond, the converted and exchanged Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which initially were issued and delivered pursuant to this Bond Order, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

SECTION 4.02. MUTILATED, LOST, OR STOLEN BONDS. Upon the presentation and surrender to the Registrar of a mutilated Bond, the Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding. If any Bond is lost, apparently destroyed, or wrongfully taken, the District, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall execute and the Registrar shall authenticate and deliver a replacement Bond of like amount, bearing a number not contemporaneously outstanding.

The District or the Registrar may require the Registered Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including apparently destroyed, or wrongfully taken, the District, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall execute and the Registrar shall authenticate and deliver a replacement Bond of like amount, bearing a number not contemporaneously outstanding.

The District or the Registrar may require the Registered Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The District or the Registrar may require the Registered Owner of a lost, apparently destroyed or wrongfully taken Bond, before any replacement Bond is issued, to:

(a) furnish to the District and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Bond;

(b) furnish such security or indemnity as may be required by the Registrar and the District to save them harmless;

(c) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and

(d) meet any other reasonable requirements of the District and the Registrar.

If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond which such replacement Bond was issued presents for payment such original Bond, the District and the Registrar

shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the District or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the District in its discretion may, instead of issuing a replacement Bond, authorize the Registrar to pay such Bond.

Each replacement Bond delivered in accordance with this Section 4.02 shall be entitled to the benefits and security of this Bond Order to the same extent as the Bond or Bonds in lieu of which such replacement is delivered.

SECTION 4.03. CHARACTERISTICS OF THE BONDS. (a) In General. The Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the Registered Owners thereof, (ii) may be transferred and assigned, (iii) may be converted and exchanged for other Bonds, (iv) shall have the characteristics, (v) shall be signed, sealed, executed and authenticated, (vi) the principal of and interest on the Bonds shall be payable, and (vii) shall be administered and the Paying Agent/Registrar and the District shall have certain duties and responsibilities with respect to the Bonds, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF BOND set forth in this Bond Order. The Bonds initially issued and delivered pursuant to this Bond Order are not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Bond issued in conversion of and exchange for any Bond or Bonds issued under this Bond Order the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF BOND.

(b) Book-Entry-Only System. The Bonds issued in exchange for the Bonds initially issued as provided in Sections 3.02 and 3.03 shall be issued in the form of a separate single fully registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("DTC") and except as provided in subsection (c) hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the District and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC participants (the "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the District and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner, as shown on the Registration Books, of any notice with respect to the

Bonds, or (iii) the payment to any DTC Participant or any person, other than a Registered Owner, as shown on the Registration Books of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Order to the contrary, but to the extent permitted by law, the District and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Registration Books as the absolute owner of such Bond for the purpose of payment of principal of and interest, with respect to such Bond, for the purposes of registering transfers with respect to such Bond, and for all other purposes of registering transfers with respect to such Bonds, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective Registered Owners, as shown in the Registration Books as provided in this Order, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the District's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Bond evidencing the obligation of the District to make payments of principal, and interest pursuant to this Order. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Order with respect to interest checks being mailed to the registered owner at the close of business on the Record Date the word "Cede & Co." in this Order shall refer to such new nominee of DTC.

(c) Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the District determines to discontinue the book-entry system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bond, the District shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the Registered Owner transferring or exchanging Bond shall designate, in accordance with the provisions of this Order.

(d) Payments to Cede & Co. Notwithstanding any other provision of this Order to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Blanket Issuer Letter of Representations of the District to DTC.

SECTION 4.04. CANCELLATION OF BONDS. All Bonds paid in accordance with this Bond Order, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated, registered, and delivered in accordance herewith, shall be canceled and destroyed upon

the making of proper records regarding such payment, redemption, exchange, or replacement. This Registrar shall furnish the District with appropriate certificates of destruction of such Bonds.

ARTICLE FIVE

REDEMPTION OF BONDS BEFORE MATURITY

SECTION 5.01. REDEMPTION OF BONDS. The District reserves the right to redeem the Bonds as set forth in the FORM OF BOND in Section 6.01.

ARTICLE SIX

FORM OF BOND

SECTION 6.01. FORM OF BOND. The Bonds authorized by this Bond Order shall be in substantially the following Form, with such omissions, insertions, and variations, including variations in form, spacing, and style, as may be necessary and desirable and consistent with the terms of this Bond Order. The District shall provide sufficient printed bond forms, duly executed by the District, to the Registrar for registration, authentication, and delivery of the Bonds in accordance with the provisions of this Bond Order.

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF TEXAS

AVERY RANCH ROAD DISTRICT NO. 1
UNLIMITED TAX ROAD BONDS
SERIES 2002

NO. R- **PRINCIPAL AMOUNT**
$_____

INTEREST RATE	DATE OF BONDS	MATURITY DATE	CUSIP NO.
	February 1, 2002		

REGISTERED OWNER:

PRINCIPAL AMOUNT:

ON THE MATURITY DATE specified above, **AVERY RANCH ROAD DISTRICT NO. 1** (the "District"), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assign (hereinafter called the "Registered Owner") the principal amount set forth above, and to pay interest thereon calculated on the basis of a 360 day year of twelve 30 day months, from February 1, 2002 on August 15, 2002 and semiannually on each February 15 and August 15 thereafter (an "Interest Payment Date") to the maturity date specified above, or the date of redemption prior to maturity, at the interest rate per annum specified above; except that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the Interest Payment Date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following Interest Payment Date, in which case such principal amount shall bear interest from such next following Interest Payment Date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged or converted from is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the District and the securities depository.

THE PRINCIPAL OF AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity or upon the date fixed for its redemption prior to maturity at JPMorgan Chase Bank which is the "Registrar" or "Paying Agent/Registrar" for this Bond at its designated office for payment in Dallas, Texas. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each Interest Payment Date by check or draft, dated as of such Interest Payment Date, drawn by the Registrar on, and payable solely from, funds of the District required by the order authorizing the issuance of the Bonds (the "Bond Order") to be on deposit with the Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Registrar by United States mail, first-class postage prepaid, on or before each such Interest Payment Date, to the Registered Owner hereof, at its address as it appeared on the last day of the month next preceding each such date, whether or not such date is a business day (the "Record Date") on the Register kept by the Registrar listing the names and addresses of the Registered Owners (the "Register"). In addition, interest may be paid by such other method, acceptable to the Registrar, requested by, and at the risk and expense of, the Registered Owner. In the event of a non-payment of interest on a scheduled payment date, and for 30 calendar days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the District. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 calendar days after the Special Record Date) shall be sent at least 5 business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each

Registered Owner as it appears on the Register at the close of business on the last business day next preceding the date of mailing of such notice.

DURING ANY PERIOD in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the District and the securities depository.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Bond prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Bond for payment at the designated office for payment of the Paying Agent/Registrar. The District covenants with the Registered Owner of this Bond that on or before each principal payment date, interest payment date, and any redemption date for this Bond it will make available to the Registrar, from the "Interest and Sinking Fund" the creation of which is affirmed by the Bond Order, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE for any payment due on this Bond shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the designated office for payment of the Paying Agent/Registrar is located are authorized by law or executive order to close, or the United States Postal Service is not open for business, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close, or the United States Postal Service is not open for business; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND is one of a series of Bonds dated as of February 1, 2002 and authorized to be issued pursuant to the Bond Order adopted by the Board of Directors of the District in the principal amount of **$6,425,000 FOR THE PURPOSE OF CONSTRUCTING, REIMBURSING FOR THE COSTS OF CONSTRUCTING, ACQUIRING BY PURCHASE, MAINTAINING AND OPERATING MACADAMIZED, GRAVELED OR PAVED ROADS AND TURNPIKES AND RELATED BRIDGES, DRAINAGE WORK AND OTHER SIMILAR FACILITIES INCLUDING PARTICULARLY REIMBURSING THE DEVELOPERS FOR THE CONSTRUCTION OF A PORTION OF A FOUR LANE DIVIDED ROAD LOCATED WITHIN THE DISTRICT GENERALLY KNOWN AS AVERY RANCH BOULEVARD (THE "ROAD"), FUNDING APPROXIMATELY 24 MONTHS OF CAPITALIZED INTEREST AND PAYING THE COSTS OF ISSUANCE**.

THE BONDS maturing on August 15, 2019 are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts, on the following dates and at a price of par plus accrued interest to the redemption date.

Bonds Maturing August 15, 2019

Redemption Date	Principal Amount
August 15, 2017	$395,000
August 15, 2018	420,000
August 15, 2019*	445,000*

*Final Maturity

Bonds Maturing August 15, 2022

Redemption Date	Principal Amount
August 15, 2020	$470,000
August 15, 2021	495,000
August 15, 2022*	525,000*

*Final Maturity

THE PRINCIPAL AMOUNT of the Term Bonds required to be redeemed pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option of the District by the principal amount of any Term Bonds of the stated maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the District, at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchase and canceled by the Paying Agent/Registrar at the request of the District with monies in the Debt Service Fund at a price not exceeding the principal amount of the Term Bonds plus accrued interest to the date of purchase thereof, or (3) shall have been redeemed pursuant to the optional redemption provisions and not theretofore credited against a mandatory sinking fund redemption requirement.

ON AUGUST 15, 2012 OR ON ANY DATE THEREAFTER, the Bonds maturing August 15, 2013 and thereafter, may be redeemed prior to their scheduled maturities, at the option of the District, with funds derived from any available and lawful source, at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption as a whole, or from time to time in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the District, and if less than all of a maturity is to be redeemed the Registrar shall determine by lot the Bonds, or portions thereof within such maturity to be redeemed (provided that a portion of a Bond may be redeemed only in integral multiples of $5,000 of principal amount).

ALL BONDS OF THIS SERIES are issuable solely as fully registered Bonds, without interest coupons, in the principal denomination in the case of the Bonds, of any integral multiple of $5,000. As provided in the Bond Order, this Bond may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate amount of fully registered Bonds, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case may be, having any authorized denomination or denominations as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Bond to the Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Order. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Registrar, evidencing assignment of this Bond or any portion or portions hereof in any authorized denomination to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be registered. The Form of Assignment printed or endorsed on this Bond may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the Registered Owner. The Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Bond or portion thereof will be paid by the District. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Registrar shall not be required to make any such transfer, conversion or exchange of any Bond or any portion thereof (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or Interest Payment Date or (ii) within 45 calendar days prior to its redemption date; provided, however, such limitation on transferability shall not be applicable to an exchange by the Registered Owner of the unredeemed balance hereof in the event of its redemption in part.

WHENEVER the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

IN THE EVENT any Registrar for the Bonds is changed by the District, resigns, or otherwise ceases to act as such, the District has covenanted in the Bond Order that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Bonds.

THE BONDS are payable from the proceeds of an ad valorem tax, without legal limit as to rate or amount, levied upon all taxable property within the District. The Bond Order further provides that the pledge of taxes, to the payment of the Bonds shall terminate at such time, if ever, money

and/or Defeasance Securities in an amount sufficient to defease the Bonds is deposited with or made available to the Registrar in accordance with the Bond Order.

THE BONDS are issued pursuant to the Bond Order, whereunder the County covenants to levy a continuing direct annual ad valorem tax, without legal limit as to rate or amount, on taxable property within the District, for each year while any part of the Bonds are considered outstanding under the provisions of the Bond Order, in sufficient amount, together with revenues and receipts available from other sources which are equally available for such purposes, to pay interest on the Bonds as it becomes due, to provide a sinking fund for the payment of the principal of the Bonds when due or the redemption price at any earlier required redemption date with respect to the Bonds, and to pay the expenses of assessing and collecting such tax, all as more specifically provided in the Bond Order. Reference is hereby made to the Bond Order for provisions with the custody and application of funds, remedies in the event of a default hereunder or thereunder, and the other rights of the Registered Owners of the Bonds. By acceptance of this Bond the Registered Owner hereof consents to all of the provisions of the Bond Order, a certified copy of which is on file in the office of the District.

THE OBLIGATION to pay the principal of and the interest on this Bond is solely and exclusively the obligation of the District until such time, if ever, as the District is abolished and this Bond is assumed as described above. No other entity, including the State of Texas, any political subdivision thereof other than the District, or any other public or private body, is obligated, directly, indirectly, contingently, or in any other manner, to pay the principal of or the interest on this Bond from any source whatsoever. No part of the physical properties of the District, including the properties provided by the proceeds of the Bonds, is encumbered by any lien for the benefit of the Registered Owner of this Bond.

THE DISTRICT RESERVES THE RIGHT to issue additional bonds heretofore or hereafter duly authorized at elections held in the District payable from a lien on and pledge of taxes. The District further reserves the right to issue refunding bonds in any manner permitted by law to refund any bonds (including the Bonds) at or prior to their respective dates of maturity or redemption.

TO THE EXTENT permitted by and in the manner provided in the Bond Order, the terms and provisions of the Bond Order and the rights of the Registered Owners of the Bonds may be modified with, in certain circumstances, the consent of the Registered Owners of a majority in aggregate principal amount of the Bonds affected thereby; provided, however, that, without the consent of the Registered Owners of all of the Bonds affected, no such modification shall (i) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (ii) give any preference to any Bond over any other Bond, or (iii) reduce the aggregate principal amount of the Bonds required for consent to any such modification.

THIS BOND shall not be valid or obligatory for any purpose or be entitled to any benefit under the Bond Order unless this Bond either (a) is registered by the Comptroller of Public Accounts of the State of Texas as evidenced by execution of the registration certificate endorsed hereon or (b) is authenticated as evidenced by execution of the authentication certificate endorsed hereon by the Registrar.

IT IS HEREBY CERTIFIED, COVENANTED, AND REPRESENTED that all acts, conditions, and things necessary to be done precedent to the issuance of the Bonds in order to render the same legal, valid, and binding obligations of the District have happened and have been accomplished and performed in regular and due time, form, and manner, as required by law; that provision has been made for the payment of the principal of and interest on the Bonds by the levy of a continuing, direct annual ad valorem tax upon all taxable property within the District and that issuance of the Bonds does not exceed any constitutional or statutory limitation. In the event that any provisions herein contained do or would, presently or prospectively, operate to make any part hereof void or voidable, such provisions shall be without effect or prejudice to the remaining provisions hereof, which shall nevertheless remain operative, and such violative provisions, if any, shall be reformed by a court of competent jurisdiction within the limits of the laws of the State of Texas.

IT IS FURTHER CERTIFIED that the Bonds have been designated as "qualified tax-exempt obligations" within the meaning of Section 265(b) of the Internal Revenue Code of 1986.

IN WITNESS WHEREOF, the District has caused this Bond to be signed with the manual or facsimile signature of the County Judge and countersigned with the manual or facsimile signature of the County Clerk and County Treasurer, and has caused the official seal to be duly impressed, or placed in facsimile, on this Bond.

AVERY RANCH ROAD DISTRICT NO. 1

_____ _____

County Clerk County Judge

_____

County Treasurer

(SEAL)

SECTION 6.02. REGISTRATION OF INITIAL BONDS BY STATE COMPTROLLER AND CERTIFICATE. The Initial Bonds shall be registered by the Comptroller of Public Accounts of the State of Texas as provided by law. The registration certificate of the Comptroller of Public Accounts of the State of Texas shall be printed on the face of each of the Initial Bonds and shall be in substantially the following form:

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

_____
Comptroller of Public Accounts
of the State of Texas

(COMPTROLLER'S SEAL)

SECTION 6.03. FORM OF AUTHENTICATION CERTIFICATE. The following form of authentication certificate shall be printed on the face of each of the Bonds other than the Initial Bonds:

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE
(To be executed if this Bond is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Bond has been issued under the provisions of the Bond Order described in the text of this Bond; and that this Bond has been issued in conversion or replacement of, or in exchange for, a Bond, Bonds, or a portion of a Bond or Bonds of a series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated:

JPMORGAN CHASE BANK
Registrar

By_____
Authorized Representative

SECTION 6.04. FORM OF ASSIGNMENT. A form of assignment shall be printed on the back of each of the Bonds and shall be in substantially the following form:

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

_____

_____

Please insert Social Security or Taxpayer
Identification Number of Transferee

_____

_____

(Please print or typewrite name and address,
including zip code of Transferee)

_____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.	NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

SECTION 6.05. CUSIP REGISTRATION. The President of the Board of Directors may secure the printing of identification numbers on the Bonds through the CUSIP Service Bureau.

SECTION 6.06. LEGAL OPINION AND BOND INSURANCE. The approving opinion of McCall, Parkhurst & Horton L.L.P., Austin, Texas, may be printed on the back of the Bonds. In addition, if any bond insurance is obtained, any statement of insurance may be placed on the Bonds.

ARTICLE SEVEN

SECURITY OF THE BONDS

SECTION 7.01. SECURITY OF BONDS. The Bonds are secured by and payable from the levy of a continuing, direct annual ad valorem tax, without legal limitation as to rate or amount, upon all taxable property within the District. THE BONDS ARE PAYABLE SOLELY FROM AD VALOREM TAX PROCEEDS PAYABLE BY PROPERTY OWNERS WITHIN THE DISTRICT AND ARE NOT OBLIGATIONS OF, NOR ARE THEY BACKED BY THE FAITH AND CREDIT OF WILLIAMSON COUNTY, TEXAS OR OF THE STATE OF TEXAS. The Bonds shall not constitute the personal obligation, either jointly or severally, of the members or officers of the District or the Commissioners Court.

SECTION 7.02. LEVY OF TAX. To pay the interest on the Bonds, and to create a sinking fund for the payment of the principal thereof when due, and to pay the expenses of assessing and collecting such taxes, there is hereby levied, and there shall be assessed and collected in due time, a continuing, direct annual ad valorem tax without limit as to rate or amount on all taxable property in the District for each year while any of the Bonds are outstanding. All of the proceeds of such collections, except expenses incurred in that connection, shall be paid into the Avery Ranch Road District No. 1 Interest and Sinking Fund (the "Interest and Sinking Fund") maintained in the County Treasury at its official depository bank, and the aforementioned tax and such payments into such fund shall continue until the Bonds and the interest thereon have been fully paid and discharged, and such proceeds shall be used for such purposes and no other. During each year while any of the Bonds are outstanding and unpaid, the Commissioners Court of the County shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls of the District, with full allowances being made for tax delinquencies and costs of tax collections, which will be sufficient to raise and produce the money required to pay the interest on the Bonds as such interest comes due, and to provide a sinking fund to pay the principal of the Bonds as such principal matures or is mandatorily redeemed in the years and in the principal amounts set forth in Section 3.03 hereof, but never less than 2% of the original principal amount of the Bonds as a sinking fund each year. Said rate and amount of ad valorem tax is hereby ordered to be levied and is hereby levied without limits as to rate or amount against all taxable property in the District for each year while any of said Bonds are outstanding and unpaid, and said ad valorem tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes necessary to pay the interest on and principal of the Bonds, as such interest comes due, and such principal matures or is mandatorily redeemed in the years and in the principal amounts set forth in Section 3.03 hereof, are hereby pledged irrevocably for such purpose.

In determining the amount of taxes which should be levied each year, the Commissioners Court may also consider whether proceeds from the sale of bonds of the District have been capitalized or placed in escrow to pay interest and whether the Commissioners Court reasonably expects to have revenues or receipts available from other sources which are legally available to pay the principal of or the interest, payment expenses or redemption price on the District's bonds.

So long as any of the Bonds remain outstanding, the District covenants that it will take such actions and use such measures as may be deemed appropriate under the circumstances to preserve and protect the existence and priority or its rights to and liens for the collection of delinquent taxes, including, but not limited to, where deemed appropriate, suits for collection of taxes and/or foreclosure of tax liens.

SECTION 7.03. PAYMENT OF BONDS AND PERFORMANCE OF OBLIGATIONS. The District covenants to pay promptly the principal of and interest on the Bonds as the same become due and payable, whether at maturity or by prior redemption, in accordance with the terms of the Bonds and this Bond Order, and to keep and perform faithfully all of its covenants, undertakings, and agreements contained in this Bond Order, or in any Bond executed, authenticated, and delivered hereunder.

ARTICLE EIGHT

FLOW OF FUNDS AND INVESTMENTS

SECTION 8.01. CREATION OF FUNDS. In addition to the Interest and Sinking Fund there shall be created an Avery Ranch Road District No. 1 Capital Projects Fund (the "Capital Projects Fund"). The Interest and Sinking Fund shall constitute a trust fund which shall be held in trust for the benefit of the owners of the Bonds. All other funds shall be used solely as provided in this Order until all of the Bonds have been retired, both as to principal and interest.

SECTION 8.02. CAPITAL PROJECTS FUND. The District shall deposit to the credit of the Capital Projects Fund the balance of the proceeds of the Bonds remaining after the deposits to the Interest and Sinking Fund provided in Section 9.02 of this Order. The Capital Projects Fund shall be applied solely to pay (i) the costs necessary or appropriate to accomplish such of the purposes for which the Bonds are issued as approved by the Commissioners Court and (ii) the costs of issuing the Bonds. Interest earnings derived from the investment of proceeds from the sale of the Bonds deposited in the Capital Projects Fund shall be used for the purpose for which the Bonds are issued; provided that after completion of the purposes authorized at the Bond Election interest earnings may be used as permitted by law including paying the principal and/or interest on the Bonds.

SECTION 8.03 SECURITY OF FUNDS. Any cash balance in any fund, to the extent not insured by the Federal Deposit Insurance Corporation or its successor, shall be continuously secured in the manner provided by law for the security of funds of counties of the State of Texas.

SECTION 8.04. INTEREST AND SINKING FUND; TAX LEVY. The District shall deposit or cause to be deposited into the Interest and Sinking Fund the aggregate of the following at the time specified:

(a) As soon as practicable after the Bonds are sold, accrued interest on the Bonds from their date to the date of their delivery and capitalized interest on the Bonds for 24 months; and

(b) The proceeds from collection of the ad valorem taxes levied, assessed and collected for and on account of the Bonds pursuant to Section 7.02 hereof, less costs of collection, as collected.

While the Bonds or any part of the principal thereof or interest thereon remain outstanding and unpaid, the taxes levied pursuant to Section 7.02 of this Order are hereby irrevocably pledged to the payment of the interest on and principal of the Bonds and to no other purpose. On or before the date for payment of the principal and/or Interest Payment Date on the Bonds, the Commissioners Court shall cause the transfer of moneys out of the Interest and Sinking Fund to the Registrar in an amount not less than that which is sufficient to pay the principal which matures on such date and the interest which accrues on such date. The District shall pay fees and charges of the Registrar for its services as paying agent and registrar for the Bonds from the Interest and Sinking Fund.

SECTION 8.05. INVESTMENTS; EARNINGS. Moneys deposited into the Interest and Sinking Fund and the Capital Projects Fund and any other fund or funds which the District may lawfully create may be invested or reinvested in Authorized Investments. All investments and any profits realized from and interest accruing on investments made from any fund may be transferred to the Interest and Sinking Fund. If any moneys are so invested, the District shall have the right to have sold in the open market a sufficient amount of such investments to meet its obligations in the event any fund does not have sufficient uninvested funds on hand to meet the obligations payable out of such fund. After such sale the moneys resulting therefrom shall belong to the fund from which the moneys for such investments were initially taken. The District shall not be responsible to the Registered Owners for any loss arising out of the sale of any investments.

SECTION 8.06. MAINTENANCE OF FUNDS. Any funds created pursuant to this Order may be created as separate funds or accounts or as subaccounts of the County's General Fund held by the County's depository, and, as such, not held in separate bank accounts, such treatment shall not constitute a commingling of the monies in such funds or of such funds and the County shall keep full and complete records indicating the monies and investments credited to each such fund.

ARTICLE NINE

APPLICATION OF BOND PROCEEDS

SECTION 9.01. BOND PROCEEDS. Proceeds from the sale of the Bonds will be disbursed in accordance with this Article.

SECTION 9.02. ACCRUED AND CAPITALIZED INTEREST. Moneys received from the purchaser of the Bonds representing accrued interest on the Bonds from their date to the date of their actual delivery shall be deposited into the Interest and Sinking Fund. In addition, proceeds of the Bonds representing capitalized interest shall be deposited into the Interest and Sinking Fund.

SECTION 9.03. CAPITAL PROJECTS FUND. Proceeds of the Bonds necessary to complete the purposes set forth in Section 3.01 herein and to pay the costs of issuance of the Bonds shall be deposited in the Capital Projects Fund.

ARTICLE TEN

PROVISIONS CONCERNING FEDERAL INCOME TAX EXCLUSION

SECTION 10.01. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE BONDS. The District covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the District covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the project financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds are so used, that amounts, whether or not received by the District, with respect to such private business use, do not, under the terms of this Order or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of $5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(1) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the bonds are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(g) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

In order to facilitate compliance with the above covenant (h), a "Rebate Fund" is hereby established by the District for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

For purposes of the foregoing (a) and (b), the District understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the District that the covenants contained herein

are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the District will not be required to comply with any covenant contained herein to the extent that such modification or expansion, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the District agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code.

SECTION 10.02. DESIGNATION AS QUALIFIED TAX-EXEMPT BONDS. The District hereby designates the Bonds as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Code, conditioned upon the Purchaser identified in Section 15.01 hereof certifying that the aggregate initial offering price of the Bonds to the public (excluding any accrued interest) is no greater than $10 million. Assuming such condition is met, in furtherance of such designation, the District represents, covenants and warrants the following: (a) that during the calendar year in which the Bonds are issued, the District (including any subordinate entities) has not designated nor will designate obligations, which when aggregated with the Bonds will result in more than $10,000,000 of "qualified tax-exempt obligations" being issued; (b) that the District reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Bonds are issued, by the District (or any subordinate entities) will not exceed $10,000,000; and (c) that the District will take such action or refrain from such action as necessary, and as more particularly set forth in Section 10.01, hereof, in order that the Bonds will not be considered "private activity bonds" within the meaning of section 141 of the Code.

SECTION 10.03. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR THE PROJECT. The District covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 3.01 of this Order (the "Project") on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the District shall not expend sale proceeds or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired, unless the District obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the District shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 10.04. DISPOSITION OF PROJECT. The District covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the District of cash or other compensation, unless the District obtains an opinion of

nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the District shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE ELEVEN

ADDITIONAL BONDS AND REFUNDING BONDS

SECTION 11.01. ADDITIONAL BONDS. The District expressly reserves the right to issue, in one or more installments, for the purpose of constructing, reimbursing for the costs of constructing, acquiring by purchase, maintaining and operating macadamized, graveled or paved roads and turnpikes and related bridges, drainage work and other similar facilities, or for any other lawful purpose:

(a) the unissued unlimited tax bonds which were authorized pursuant to the Bond Election; and

(b) such other unlimited tax bonds as may hereafter be authorized at subsequent elections.

SECTION 11.02. REFUNDING BONDS. The District further reserves the right to issue refunding bonds in any manner permitted by law to refund the Bonds, and any Outstanding Bonds, any Additional Bonds, or any other obligations issued by the District, at or prior to their respective dates of maturity or redemption.

ARTICLE TWELVE

DEFAULT PROVISIONS

SECTION 12.01. REMEDIES IN EVENT OF DEFAULT. In addition to any other rights and remedies provided by the laws of the State of Texas, the District covenants and agrees that in the event of default in payment of principal of or interest on any of the Bonds when due, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund, or defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Bond Order, the Registered Owners shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the District and the officials thereof to observe and perform the covenants, obligations, or conditions prescribed in this Bond Order. Any delay or omission to exercise any right or power or be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

SECTION 12.02. BOND ORDER IS CONTRACT. In consideration of the purchase and acceptance of the Bonds authorized to be issued hereunder by the Registered Owners, the provisions of this Bond Order shall be deemed to be and shall constitute a contract between the District and the Registered Owners; and the covenants and agreements herein set forth to be performed on behalf of the District shall be for the equal benefit, protection, and security of each of the Registered Owners. The Bonds, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority, or distinction of any Bond over any other, except as expressly provided herein.

ARTICLE THIRTEEN

DISCHARGE BY DEPOSIT

SECTION 13.01. DEFEASANCE OF BONDS. (a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Order, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the District with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied as provided in this Order, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bonds shall have been given, in accordance with this Order. Any money so deposited with the Paying Agent/Registrar as provided in this Section may at the discretion of the Commissioners Court also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar pursuant to this Section which is not required for the

payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be turned over to the Commissioners Court.

(c) Notwithstanding any provision of any other Section of this Order which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the District shall make proper arrangements to provide and pay for such services as required by this Order.

(d) Notwithstanding anything elsewhere in this Order, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the District retains the right under Texas law to later call that Defeased Bond for redemption in accordance with the provisions of the Order authorizing its issuance, the District may call such Defeased Bond for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

As used in this section, "Defeasance Securities" means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the Commissioners Court adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the Commissioners Court adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent. "Federal Securities" as used herein means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

ARTICLE FOURTEEN

MISCELLANEOUS PROVISIONS

SECTION 14.01. DISTRICT'S SUCCESSORS AND ASSIGNS. Whenever in this Bond Order the District is named and referred to, it shall be deemed to include its successors and assigns, and all covenants and agreements in this Bond Order by or on behalf of the District, except as otherwise provided herein, shall bind and inure to the benefit of its successors and assigns whether or not so expressed.

SECTION 14.02. NO RECOURSE AGAINST COUNTY OR DISTRICT OFFICES. No recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon or on this Bond Order against any officer or director of the County or the District or any person executing the Bonds.

SECTION 14.03. REGISTRAR. The Registrar shall act as agent for the payment of principal of and interest on the Bonds and shall maintain the Register for the Bonds, all in accordance with the terms of this Bond Order. If the Registrar or its successor becomes unable for any reason to act as Registrar hereunder, or if the Board of Directors of the District determines that a successor Registrar should be appointed, a successor Registrar shall be selected by the District. Any successor Registrar shall be either a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve and perform the duties as paying agent and registrar for the Bonds.

SECTION 14.04. REGISTRAR MAY OWN BONDS. The Registrar, in its individual or any other capacity, may become the owner or pledgee of the Bonds with the same rights it would have if it were not Registrar.

SECTION 14.05. BENEFITS OF PROVISIONS. Nothing in this Bond Order or in the Bonds, expressed or implied, shall give or be construed to give any person, firm, or corporation, other than the District, the Registrar, and the Registered Owners, any legal or equitable right or claim under or in respect of this Bond Order, or under any covenant, condition, or provision herein contained, all the covenants, conditions, and provisions contained in this Bond Order or in the Bonds being for the sole benefit of the District, the Registrar, and the Registered Owners.

SECTION 14.06. UNAVAILABILITY OF AUTHORIZED PUBLICATION. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Bond Order shall be given in such other manner and at such time or times as in the judgment of the District shall most effectively approximate such required publication, and the giving of such notice in such manner shall for all purposes of this Bond Order be deemed to be in compliance with the requirements for publication thereof.

SECTION 14.07. SEVERABILITY CLAUSE. If any word, phrase, clause, sentence, paragraph, section, or other part of this Bond Order, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Bond Order and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Bond Order to any other persons or circumstances shall not be affected thereby.

SECTION 14.08. ACCOUNTING. The District will keep proper records and accounts regarding the levy and collection of taxes, which records and accounts will be made available to any Registered Owner on reasonable request. Each year while any of the Bonds are outstanding, the District shall have an audit of its books and accounts by a certified public accountant or firm of certified public accountants, based on its Fiscal Year, and copies of such audits will be made available to any Registered Owner upon request.

SECTION 14.09. FURTHER PROCEEDINGS. The County Judge and other appropriate officials of the District are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Bond Order.

SECTION 14.10. REMEDIES IN EVENT OF DEFAULT. In addition to all of the rights and remedies provided by the laws of the State of Texas, the District covenants and agrees that in the event of default in payment of principal or interest on any of the Bonds when due, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund or defaults in the observance or performance of any other of the contracts, covenants, conditions or obligations set forth in this Bond Order or in the Bonds, the following remedies shall be available:

(a) the Registered Owners shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the District and the official thereof to observe and perform the contracts, covenants, obligations or conditions prescribed in this Bond Order; and

(b) any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE FIFTEEN

SALE AND DELIVERY OF BONDS AND APPROVAL OF DOCUMENTS

SECTION 15.01. SALE OF BONDS AND APPROVAL OF BOND PURCHASE AGREEMENT. The Bonds are hereby sold and shall be delivered to Morgan Keegan & Co., Inc. as set forth in the Bond Purchase Agreement (the "Initial Purchaser" or "Purchaser"), at the price of

$6,309,752.45 (which amount is equal to the principal amount of the Bonds less a net discount of $247.55 and less an underwriting discount of $115,000) plus accrued interest on the Bonds from February 1, 2002 to the date of initial delivery thereof, all pursuant to the terms and provisions of a Bond Purchase Agreement in substantially the form attached hereto as Exhibit "A" which the County Judge is hereby authorized to execute and deliver and which the County Clerk is hereby authorized to attest. The District will initially deliver to the Initial Purchaser one bond for each maturity of the Bonds authorized under this Order.

SECTION 15.02. APPROVAL, REGISTRATION, AND DELIVERY. The County Judge and representatives of McCall, Parkhurst & Horton L.L.P. are hereby authorized and directed to submit the Initial Bonds and a transcript of the proceedings relating to the issuance of the Bonds to the Attorney General of the State of Texas for approval and, following said approval, to submit the Initial Bonds to the Comptroller of Public Accounts of the State of Texas for registration. Upon registration of the Initial Bonds, the Comptroller of Public Accounts (or a deputy designated in writing to act for the Comptroller) shall manually sign the Comptroller's registration certificate prescribed herein to be printed and endorsed on each Initial Bond, and the seal of the Comptroller shall be impressed or placed in facsimile on each Initial Bond. After the Initial Bonds have been registered, signed, and sealed by the Comptroller, they shall be delivered to the Initial Purchaser, but only upon receipt of the full purchase price.

SECTION 15.03 APPROVAL OF OFFERING DOCUMENTS AND PAYING AGENT/REGISTRAR AGREEMENT. A "Preliminary Official Statement", dated January 10, 2002, and Official Statement dated January 29, 2002 were prepared and distributed in connection with the sale of the Bonds (said documents are hereinafter referred to as the "Offering Documents"). Said Offering Documents, and any addenda, supplement, or amendment thereto, are hereby approved by the District, and their use in the offer and sale of the Bonds is hereby approved.

The Paying Agent/Registrar Agreement by and between the District and JPMorgan Chase Bank ("Paying Agent Agreement") in substantially the form and substance attached hereto as Exhibit "B" is hereby approved and the County Judge is hereby authorized and directed to complete, amend, modify and execute the Paying Agent Agreement, as necessary and the County Clerk is authorized and directed to attest such agreement.

ARTICLE SIXTEEN

OPEN MEETING AND EFFECTIVE DATE

SECTION 16.01. OPEN MEETING. The Commissioners Court officially finds, determines, and declares that this Bond Order was reviewed, carefully considered, and adopted at a meeting of the District, and that a sufficient written notice of the date, hour, place, and subject of this meeting was posted as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Bond Order and the subject matter hereof has been discussed, considered, and acted upon.

The Commissioners Court further ratifies, approves and confirms such written notice and the contents and posting thereof.

SECTION 16.02. EFFECTIVE DATE OF BOND ORDER. This Bond Order shall take effect and be in full force and effect upon and after its passage.

ARTICLE SEVENTEEN

AMENDMENTS

SECTION 17.01. AMENDMENTS. (a) Amendment with Consent of Owners of 51% of Bonds. The owners of 51% in aggregate principal amount of then outstanding Bonds shall have the right from time to time to approve any amendment to this Bond Order which may be deemed necessary or desirable by the District; provided however, that, other than as permitted by subsection (f) of this Section 17.01, nothing herein contained shall permit or be construed to permit the amendment, without the consent of the owner of each of the outstanding Bonds affected thereby, of the terms and conditions of this Bond Order or the Bonds so as to:

(1) change debt service requirements, interest payment dates or the maturity or maturities of the outstanding Bonds;

(2) reduce the rate of interest borne by any of the outstanding Bonds;

(3) reduce the amount of the principal of, redemption premium, if any, or interest on the outstanding Bonds or impose any conditions with respect to such payments;

(4) modify the terms of payment of principal of, redemption premium, if any, or interest on the outstanding Bonds, or impose any conditions with respect to such payments;

(5) affect the right of the Registered Owners of less than all of the Bonds then outstanding; or

(6) decrease the minimum percentage of the principal amount of Bonds necessary for consent to any such amendment.

(b) Notice of Amendment. If at any time the District shall desire to amend this Bond Order it may cause a written notice of the proposed amendment to be published at least once on a business day in a financial newspaper, journal, or publication of general circulation in the City of New York, New York, or in the State of Texas. If, because of temporary or permanent suspension of the publication or general circulation of all such newspapers, journals, or publications, it is impossible or impractical to publish such notice in the manner provided herein, then such publication in lieu thereof as shall be made by the Registrar shall constitute a sufficient publication of notice. In addition to such publication, the Registrar shall cause a written notice of the proposed amendment to be given by

registered or certified mail to Registered Owners of the Bonds as shown on the Registration Books maintained by the Registrar; provided, however, that failure to receive such written notice of the proposed amendment, or any defect therein or in the mailing thereof, shall not affect the validity of any proceeding in connection with, or the adoption of, such amendment. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Registrar for inspection by all Registered Owners of Bonds.

(c) Consent to Amendment. Whenever at any time not less than 30 days, and within one year, from the date of the first publication of said notice or other services of written notice the District shall receive an instrument or instruments executed by the Registered Owners of at least 51% in aggregate principal amount of all Bonds then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and shall specifically consent to and approve such amendment, the District may adopt the amendatory resolution or order in substantially the same form.

(d) Effect of Amendment. Upon the adoption of any amendatory resolution or order pursuant to the provisions of this Section, this Bond Order shall be deemed to be amended in accordance with such amendatory resolution or order, and the respective rights, duties, and obligations under such amendatory resolution or order of all the Registered Owners shall thereafter be determined and exercised subject in all respects to such amendments.

(e) Consent of Registered Owners. Any consent given by a Registered Owners pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the first publication of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the Bonds during such period. Such consent may be revoked by the Registered Owner who gave such consent at any time after six months from the date of the first giving of such notice, or by a successor in title, by filing notice thereof with the Registrar and the District, but such revocation shall not be effective if the Registered Owners of 51% in aggregate principal amount of the then outstanding Bonds have, prior to the attempted revocation, consented to and approved the amendment.

(f) Amendments Without Consent. Notwithstanding the provisions of (a) through (f) of this Section, and without notice of the proposed amendment and without the consent of the Registered Owners. The District may, at any time, amend this Bond Order to cure any ambiguity or to cure, correct, or supplement any defective or inconsistent provision contained therein, or to make any other change that does not in any respect materially and adversely affect the interest of the Registered Owners, provided that no such amendment shall be made contrary to the provision to Section 17.01 (a), and a duly certified or executed copy of each such amendment shall be filed with the Registrar.

ARTICLE EIGHTEEN

CONTINUING DISCLOSURE UNDERTAKING

Section 18.01. CONTINUING DISCLOSURE UNDERTAKING. (a) Annual Reports. The District shall provide annually to each NRMSIR and any SID, within six months after the end of each fiscal year, financial information and operating data with respect to the District of the general type described in Exhibit "C" hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "C" hereto, or such other accounting principles as the District may be required to employ from time to time pursuant to state law or regulation and (2) audited, if the District commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the District shall provide unaudited financial statements by the required time, and will provide audited financial statements for the applicable fiscal year to each NRMSIR and any SID, when and if the audit report on such statements become available.

If the District changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the District otherwise would be required to provide financial information and operating data pursuant to this paragraph (a).

The financial information and operating data to be provided pursuant to this paragraph (a) may be set forth in full one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

(b) Material Event Notices. The District shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

A. Principal and interest payment delinquencies;

B. Non-payment related defaults;

C. Unscheduled draws on debt service reserves reflecting financial difficulties;

D. Unscheduled draws on credit enhancements reflecting financial difficulties;

E. Substitution of credit or liquidity providers, or their failure to perform;

F. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

G. Modifications to rights of holders of the Bonds;

H. Bond calls;

I. Defeasances;

J. Release, substitution or sale of property securing repayment of the Bonds; and

K. Rating changes.

The District shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the District to provide financial information or operating data in accordance with paragraph (a) of this Section 18.01 by the time required by such paragraph.

(c) Limitations, Disclaimers and Amendments. The District shall be obligated to observe and perform the covenants specified in this section for so long as, but only for so long as, the County remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the County in any event will give notice of any deposit made in accordance with Section 13.01 of this Order that causes Bonds no longer to be outstanding.

The provisions of this section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this section, express or implied, shall give any benefit or any legal or equitable right, remedy or claim hereunder to any other person. The District undertakes to provide only the financial information, operating data, financial statements and notices which it has expressly agreed to provide pursuant to this section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the District's financial results, condition or prospects or hereby undertake to update any information provided in accordance with this section or otherwise, except as expressly provided herein. The District does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE DISTRICT BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE DISTRICT, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the District in observing or performing its obligations under this section shall comprise a breach of or default under the Order for purposes of any other provision of this Order.

Nothing in this section is intended or shall act to disclaim, waive or otherwise limit the duties of the District under federal and state securities laws.

The provisions of this section may be amended by the District from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law or a change in the identity, nature, status or type of operations of the District, but only if (1) the provisions of this section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Order that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the District (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the Holders and beneficial owners of the Bonds. If the District so amends the provisions of this section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The County may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

ARTICLE NINETEEN

OTHER ACTIONS

SECTION 19.01. OTHER ACTIONS. The County Judge and all other officers, employees and agents of the District, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the District all instruments as may be necessary or desirable in order to carry out the terms and provisions of this Bond Order, the Bonds, the sale of the Bonds and the Official Statement.

EXHIBIT "A"

BOND PURCHASE AGREEMENT

EXHIBIT "B"

PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT "C"

CONTINUING DISCLOSURE

Information of the general type included in the Official Statement under the headings:

1) "FINANCIAL INFORMATION CONCERNING THE DISTRICT";
2) "TAX DATA";
3) "INVESTMENT CONSIDERATIONS - Future Debt"; and
4) APPENDIX "A".

Accounting Principles

The accounting and reporting policies of the District relating to the funds and account groups will conform to generally accepted accounting principles (GAAP) as applied to governmental entities.

VI.

Consider retaining Pena & Swayze to conduct audit regarding Avery Ranch Road District reimbursements.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To retain Pena & Swayze to conduct an audit regarding Avery Ranch Road District reimbursements.
Vote: **4 – 0**

VII.

Consider approval of Avery Ranch road construction and related contracts.

Moved: **Judge Doerfler**
Seconded: **Commissioner Boatright**
Motion: To approve Avery Ranch road construction and related contracts.
Vote: **4 – 0**

< Attachment >

AVERY RANCH BOULEVARD WEST
IRRIGATION LINE, LANDSCAPING, AND SIDEWALKS CONSTRUCTION AGREEMENT

This Agreement is made this the 8th day of October by and between TruGreen LandCare, L.L.C. ("CONTRACTOR") whose address is 8711 Burnet Road, Suite F-73, Austin, Texas 78757 and AVERY RANCH OWNERS' COMMITTEE, ("OWNER"), whose address is c/o Robert D. Wunsch Development, 2414 Exposition, Suite 280, Austin, Texas 78703;

WHEREAS, Contractor wishes to perform work and/or furnish materials in the construction of an Irrigation Line, Landscaping, and Sidewalks (the "Work") along Avery Ranch Boulevard West (the "Site") as more particularly described in the plans and specifications that are incorporated by reference.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. **WORK.** In accordance with all of the terms and conditions of this Agreement, Contractor shall perform and finish in a good and workmanlike manner, and shall furnish all materials, labor, equipment, supplies and tools for the Work. The Work shall be performed in accordance with this Agreement, plans, specifications, drawing and schedules for the Work, the Notice and Instructions to Bidders, the General Conditions of Agreement, the Subcontractor Agreement, the accepted Bid Proposal, and all other bid requirements set forth in the Bid Documents, all of which are on file at the offices of Owner whose address is 2414 Exposition, Ste. 280, Austin, Texas 78703, (collectively called the "Contract Documents") and incorporated into the Agreement by this reference into this Agreement. The contract price has been determined upon the basis of the accepted bid proposal (the "Proposal") submitted by Contractor to Owner and such Proposal is incorporated by reference into this Agreement.

CONTRACTOR agrees to commence work within five (5) calendar days of the date written notice to do so shall have been given to the CONTRACTOR, and will progress therewith so that the work shall be substantially completed within:

Estimated start date:	October 1, 2001.
Substantially Complete:	90 Calendar Days after start date
Complete & Accepted:	30 Calendar Days after Substantial Completion.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the "Proposal" submitted therefore, subject to additions and deductions, as provided in the "General Conditions of the Agreement", and to make payments on account thereof as provided herein.

2. **PRICE.** Owner shall pay to Contractor for the Work the sum of **$ 296,629.50** for the Work (the "Contract Price"). Change orders will be in accordance with the accepted bid proposal, if applicable.

3. **PAYMENT SCHEDULE.** Payments, less ten percent (10%) retainage shall be made based on the progress of the Contractor in completion of the Work subject to the following conditions:

Final payment to Contractor shall be made following completion of the Work. The making of final payment to Contractor shall not be construed as acceptance of the Work or waiver of any rights of Owner under this Agreement and shall not relieve Contractor of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement or the Contract Documents, Owner shall not be obligated to make any payment to Contractor if and as long as any one or more of the following conditions exist:

(a) Contractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement;

(b) Contractor has failed to furnish to Owner invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Owner;

(c) Any part of a payment requested is attributable to work which is defective or not performed in accordance with this Agreement and the Contract Documents; provided, however, if severable, payment shall be made as to the part thereof which appears to be properly performed after due allowances for the cost of correcting the defective part of the work as estimated by Owner, less retainage;

(d) Contractor has failed to make payment promptly to any lien claimants, suppliers or subcontractors;

(e) If Owner, in its good faith judgment, determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to so complete and correct the Work.

4. **PAYMENT BY CONTRACTOR.** Contractor shall promptly pay in cash all labor employed and materials and services furnished and used in the performance of the Work. Owner shall have the right, whenever it shall deem such procedure advisable, to make payments due to Contractor directly to any subcontractor, material or equipment supplier, utility or transportation company, insurance company, governmental agency, or union trust fund for any work, labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Contractor has first delivered written notice to Owner of a dispute with any such person and has furnished security satisfactory to Owner insuring against claims therefrom. Any payment so made shall be credited against sums due Contractor in the same manner as if such payment had been made directly to Contractor. The provisions of this Section 4 are intended solely for the benefit of Owner and shall not insure to the benefit of any third persons, or obligate Owner or its sureties in any way to any third party.

5. **PERFORMANCE OF WORK.** Contractor shall commence performance of the Work within five (5) working days of receiving notice to begin (excluding Saturdays, Sundays, and Federal holidays) and shall perform the Work as quickly and thoroughly as possible. If Contractor does not begin the Work within five (5) days, or stops the Work without cause or permission, of if

the Work is unreasonably delayed in the opinion of the Owner, Owner shall have the right to terminate the Agreement and replace the Contractor.

Further, if Contractor fails to perform any of its duties described in this Agreement, or in the Contract Documents, within the limits established, or if no limits are established, within forty-eight (48) hours after notice from Owner, Owner shall have the right to retain others to perform such duties, and the cost of such performance will be charged against the amount due Contractor. If the charges exceed the amount due, all payments will be withheld and Contractor shall pay Owner the excess within thirty (30) days of receipt of notice. Without limitations, charges against Contractor shall be assessed if Owner pays to complete Work not finished on time by Contractor, correct defects in the Work, pay fines or penalties arising from the Work, clean up after the Work, provide tools, material or equipment that are Contractor's obligations, repair damage to the site, obtain insurance on behalf of Contractor, pay claims indemnified by Contractor, pay taxes or legal orders that are Contractor's obligations, or pay any other amounts on behalf of Contractor.

6. FAMILIARITY WITH THE SITE. Contractor shall be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site with the plans and specifications, including any addenda to the plans and specifications. It is understood by the parties that Contractor is best able to evaluate the cost of the Work and that in arriving at the contract price it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Contractor further represents that it is fully familiar with the requirements of every governmental authority having jurisdiction over the Work and is prepared to comply with all such requirements without additional compensation. No estimates or bids of Contractor preceding this Agreement and no verbal agreements or conversation with any representative of Owner, either before or after execution of this Agreement, shall affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

7. PROTECTION OF WORK. Contractor shall see over and protect the Work against loss or damage from any cause and be responsible for all parts of the Work, temporary or permanent, furnished or not, until final completion. Contractor shall take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site, including, without limiting thereto, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Contractor shall bear and be liable for and Owner shall not be responsible for any loss or damage to the Work and any material, equipment, or other thing employed in the Work or placed at the site including, but not limited to, loss or damage due to theft, trespass or vandalism prior to final completion of the Work.

8a. INSURANCE. Contractor shall obtain, pay for and keep in full force and effect until final completion and acceptance of the Work, the following insurance in a company or companies satisfactory to Owner:

(i) *Business Automobile Liability Insurance.* Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement

b) 30 day Notice of Cancellation endorsement; and

c) Additional Insured endorsement.

Provide coverage in the following types and amounts:

A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

ii) *Worker's Compensation and Employer's Liability Insurance.* Worker's Compensation insurance covering all workers engaged in performance of the Work in amounts not less than minimum coverage required by law, including employer's liability coverage of not less than $100,000.00.

Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.), as amended. CONTRACTOR shall assure compliance with this statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person or subcontractor providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation; and

b) 30 day Notice of Cancellation.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

$100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

iii) *Commercial General Liability Insurance.* Provide coverage to include bodily injury and property damage liability insurance, providing coverage at least equivalent to the 1986 Commercial General Liability Insurance policy. Such policy or policies shall be written on an "occurrence" basis and maintained in minimum limits of $500,000 per occurrence with a $1,000,000 General Aggregate limit and a $500,000 Products/Completed Operations Aggregate limit

The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project,

f) OWNER listed as an additional insured,

g) 30 day notice of cancellation in favor of OWNER,.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER.

In addition, any policy of insurance herein required shall contain a contractual liability endorsement covering indemnity and defense obligations of Contractor and indemnity and defense of Owner, and such other coverage as may reasonably required by Owner. Such policy will, among other things, make specific reference to this Agreement. Any policy obtained by Contractor insuring against loss by physical damage to any portion of the Work or to materials to be incorporated in the Work or covering Contractor's tools, supplies, machinery or equipment shall contain an endorsement providing that the insurer waives its right of subrogation against Owner and any other named insured. Nothing in this paragraph shall give or create in any third party any claim or right of action against Owner, except that which may exist irrespective of this paragraph.

The insurance required hereunder may be contained in one or more policies. Prior to commencement of any construction, Contractor shall furnish to Owner certificates or copies of policies for the Contractor and all subcontractors of the Contractor who enter onto the Project, showing that such insurance is in force and that the premiums due have been paid and that Owner (and the owner of the Site, if other than Owner), the subcontractors of Contractor, and such other persons as Owner may direct are named as insured persons jointly with Owner in respect of any loss covered. (See conditions of agreement of this contract). Such certificates or policies shall provide that the insurance may not be canceled, terminated or modified without thirty (30) days advance written notice to Owner. A Waiver of Subrogation in favor of the Owner is required on the Worker's Compensation Insurance. The Owner shall be listed as Additional Insured on all Liability Insurance policies. Such policies shall contain any provisions for exclusion from liability other than provisions for exclusion forming a part of the standard basic unamended and unendorsed form of policy, provided, however, in no event shall any exclusion be permitted which conflicts with any coverage required by this Agreement.

CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract,

covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.
If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance. CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

The insurance coverage required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

In the event of any failure of Contractor to furnish and maintain insurance required hereunder, Owner, at its option and without waiving the default of Contractor, shall have the right to obtain such insurance for and in the name of Contractor. In such event, Contractor shall pay the cost thereof upon demand (or such sums shall be withheld from that which is due to Contractor under this Agreement) and shall furnish all information required by the insurance carrier.

8b. PERFORMANCE AND PAYMENT BONDS. Bonds shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract

and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

Performance Bonds and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

The Performance Bond shall extend for the one year warranty period.

9. INDEMNITY. Contractor shall indemnify, defend and hold harmless Owners, and the owner of the site if other than owner, its employees and agents from and against any and all claims, loss, damage or expense (including attorney's fees and other costs of defense incurred by Owner in defending against any claims or in enforcing this indemnity and defense obligation) arising from or in connection with the performance of the Work or this Agreement or any portion thereof or the failure to observe or comply with the provisions of the Agreement or the Contract Document by Contractor or any subcontractor or independent Contractor hired by Contractor or any agent or employee of any such persons, and Contractor.

Contractor waives all claims against Owner and the owner of the site if other than Owner, for damage to property and injury to persons in or about the site from any cause arising at any time including any losses caused by the negligence or gross negligence of Owner.

10. COMPLIANCE WITH LAWS. Contractor shall carefully check the drawings, plans and specifications, including any addenda, for conformity with all local, state and federal laws, codes, rules and regulations (hereinafter collectively called "Law") before commencing the Work. Contractor shall give all notices and comply with all Law bearing on the Work, including, by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the federal Occupational Safety and Health Act of 1970, as amended, and the Contractor at all times shall furnish to its agents and employees a safe place of employment. If Contractor observes any violation of Law, it shall immediately report such violation to Owner in writing. All workmanship and materials shall conform to Law and, if the Contractor performs or permits the performance of any work not in compliance with Law, it shall immediately cause such work to be redone and shall bear all costs in connection therewith. The Work, as performed, shall meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work shall meet the requirements of these governmental agencies. No work shall be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(a) The Occupational Safety and Health Administration (OSHA) has promulgated regulations ("Regulations") which are entitled OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets (MSDS) and share information about precautionary measures necessary to protect all workers on a building project.

(b) Contractor agrees as follows:

(1) Contractor will fully comply with the Regulations and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(2) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the job site.

(3) Contractor will indemnify, defend and hold Owner harmless of and from all claims, damages, liabilities and causes of action that arise from the failure of Contractor to comply with the Regulations.

(4) Contractor will assist Owner in complying with the Regulations.
(5) Contractor will not use any chemicals in its performance of the Work for Owner or incorporate any chemicals into materials or products supplied to Owner or to the property unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner, and has received a written consent of Owner to use such chemicals.

11. TERMINATION OF AGREEMENT BY OWNER. In the event that conditions arise which, in the opinion of the Owner, make it advisable for Contractor not to continue to Work, Owner may terminate this Agreement by forty-eight (48) hours prior written notice to Contractor.

Upon receipt of such notice, unless directed otherwise, Contractor shall immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Owner. Thereafter, Contractor shall do only such work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the project and to protect materials, supplies and equipment at or about the Site or in transit thereto.

On the date set for termination, the obligations of the parties to continue performance under this Agreement shall cease and Contractor shall be entitled to receive: (i) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly (subject to Owner being entitled to withhold amounts necessary to correct or repair any deficiencies in the work performed to date by Contractor); (ii) payment for materials for which it has made firm contracts, provided that materials are delivered to Owner, and (iii) payment for any other bona fide obligations assumed by Contractor prior to receipt of notice of termination, which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Owner. Payment to Contractor shall be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by

law for the filing of any claims to enforce mechanics liens arising out of the Work. Notwithstanding any other provision to be contrary, termination of this Agreement shall not prejudice any claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor shall it affect Contractor's warranty and guarantee of the portion of the Work performed or relieve Contractor of its duty to correct any defective work performed or to indemnify, defend and hold Owner harmless in those instances required by this Agreement.

12. ASSIGNMENT. Contractor may not assign this Agreement or any portion thereof or any money due or which may become due without the prior written consent of Owner. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 12 shall be null and void and the assignee shall acquire no rights thereunder. Nothing shall prohibit the right of Owner to assign this Agreement or seek reimbursement of amount s paid under this Agreement from any entity, including, but not limited to, the Avery Ranch Road District.

13. DEFAULT. In addition to any other remedies available under law: (i) if Contractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (ii) if Contractor should fail to make payment to subcontractors or for material or labor; or (iii) if Contractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents to be kept and complied with by Contractor; (iv) if Contractor should be adjudged a bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or (v) if a receiver should be appointed on account of Contractor's insolvency or otherwise; then, in any such event, Owner may, without prejudice to any other right or remedy and after giving Contractor and its surety, if any, three (3) days written notice, terminate its obligation to Contractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the amount that would be payable upon completion shall exceed the expense of completing the Work, including compensation for architectural, managerial and administrative services and a reasonable attorneys fee, if legal counsel is employed. Contractor shall be reimbursed from such excess for any costs of labor and materials incurred, and Contractor shall not be entitled to receive any other payments under this Agreement. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to Owner.

14. CLEAN UP. Contractor shall remove from the Site all scrap, trash, debris, excess materials, tools and equipment upon completion of the Work. If Contractor fails to clean up, Owner may do so after written notice to Contractor, and cost thereof shall be charged to Contractor.

15. CALL BACK RESPONSIBILITY. In connection with the performance of the Work, Contractor agrees that:

(a) it will, within forty-eight (48) hours from oral or written notice (Saturday and Sundays excluded), correct any and all deficiencies in the Work.

(b) the determination as to what constitutes a deficiency will be within the sole discretion of the Owner, which judgment shall be reasonably exercised.

(c) failure of the Contractor to make timely performance hereunder shall constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such work shall be charged to the Contractor and such cost plus a sum equal to fifteen percent (15%) thereof (which additional sum will represent an allowance for the administration by the Owner of such work) shall be charged against the account of the Contractor. In the event that the amount owing the Contractor under this Agreement at the time the Work is performed by others is less than the sum charged against its account to pay others to complete the Work, the Contractor shall remit the difference to the Owner within five (5) days following written demand for such payment. .

16. AUTHORIZED PERSONS. AVERY RANCH OWNERS' COMMITTEE, by and through its authorized agent(s), shall be the only persons with authority under this Agreement to: (i) execute change orders; (ii) allow Contractor additional time for performance of the Work; (iii) execute, modify, supplement or terminate this Agreement; or (iv) do any other act which waives any right or privilege of Owner under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized shall not be binding upon Owner.

17. ENTIRE AGREEMENT. This Agreement, together with the Contract Documents, which are incorporated herein by reference, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto.

18. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 12 relating to assignment, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

19. WAIVER. No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues shall not constitute a waiver of the rights of such party.

20. NOTICE. Any notice provided for herein shall be in writing and deemed delivered when mailed prepaid, certified or registered mail, return receipt requested to the address first shown herein for the respective party to whom notice is to be given or to such other address as may be designated by either party by written notice given pursuant hereto.

21. TIME. Time is of the essence of this Agreement and each provision herein contained.

22. WORDS AND HEADINGS. Words used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section headings used herein are for convenience only and shall have no affect upon the construction or interpretation of any part of this document.

23. BONDS. Owner shall have the right to require Contractor to provide a performance bond or completion bond as a condition precedent to payment.

24. TAXES. Contractor shall bear sole and exclusive responsibility for the payment of all taxes imposed by local, state or federal law applicable to the Work, materials supplied by Contractor, payments received by Contractor and payments made by Contractor. Contractor shall be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes on the payments made to Contractor and payments made by Contractor to its employees and suppliers. Sales tax not included on permanent material.

25. DRUGS AND ALCOHOL. No illegal drugs or alcohol shall be permitted on the site. Contractors, their employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the site will be subject to immediate termination. Individuals on the site whose performance, coordination or ability to work is impaired, in the opinion of the Owner's representative, shall be subject to immediate removal from the site.

26. LIENS. Contractors shall, at all time, keep the Project and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Contractor shall indemnify, defend and hold Owner harmless from and against all claims, losses, demands, causes of action or expenses (including attorneys fees and other costs of defense incurred by Owner in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. In the event any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Contractor shall immediately cause such lien to be released and discharged and if Contractor shall fail to do so, then Owner shall have the right to pay all sums, including attorneys fees and any other costs and expenses incurred necessary to obtain such release and discharge and hold Contractor liable for the amount thereof with the right to deduct all or a portion of such sum from amounts that may be due Contractor.

27. WARRANTY. In addition to any other warranty expressly made by Contractor or implied by Law, for a period of one (1) year from the date Owner determines that the work is completed and final payment is made, Contractor unconditionally warrants the Work, including all materials, goods, and services against defects in workmanship and materials for the benefit of Owner and its successors and assigns, usually a municipal corporation, road district, or quasi-governmental entity (collectively "municipality"), jurisdiction, agency or homeowners association. Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damage and expense (including attorneys fees and other costs of defense incurred by Owner's defending against any claim or enforcing this indemnity and defense obligations) arising out of any defective condition. This warranty shall specifically inure to the benefit of and be enforceable by Owner and the municipality or homeowners association that will ultimately own and/or govern the site of the Work. In the event that demand is made upon Contractor to perform under this warranty, Contractor, at its sole cost and expense, shall expeditiously repair or replace any defective work, whether existing because of faulty workmanship, defective equipment or materials, or from any other cause and repair or replace any damage to the work of others caused by such defective work. In the event Contractor shall fail to perform under this warranty, the party entitled to performance or the Owner shall have the right to hire other persons to correct the defective work and hold Contractor liable for the costs thereof including costs, disbursements and reasonable attorneys fees incurred in the enforcement of this provision.

28. OTHER AGREEMENTS. All Bid Documents are incorporated by reference into this Agreement. Should there now and hereafter exist one or more other agreements between the parties, or with any affiliated corporation or company or either, concerning this or any other construction project, then a breach by Contractor under the terms of any such agreements or any

provision of the Bid Documents, at the option of Owner, shall be considered a breach of this Agreement and all such agreements. In such event, Owner or its affiliates, may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.

29. CONFLICT IN CONTRACT DOCUMENTS. Should there exist a conflict of term, condition or any other matter between this Construction Agreement and any other document or item comprising the Bid Documents, this Construction Agreement will govern in all cases.

30. EPA-NOTICE OF INTENT. To the extent applicable, Contractor agrees to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the NPDES General permit prior to beginning construction on the project. Copies of the NOI shall be submitted to the Owner for their records. Upon completion of the project the contractor shall file Completion of NOI for Storm Water Discharges Associated with Industrial Activity under the NPDES General Permit. Copies of the completion of the NOI shall be submitted to the owner for their records.

31. MEDIATION AND ARBITRATION. In the event there is a disagreement that arises as to any matter related to the Work performed under this Agreement that is not resolved to their mutual satisfaction of the parties, then the parties agree to submit to non-binding mediation before a mutually agreed upon mediator in Travis or Williamson Counties, Texas. If non-binding mediation is not successful, the parties agree to enter into binding arbitration before a single arbitrator in Travis or Williamson Counties, Texas under the Commercial Rules of the American Arbitration Association ("AAA") to settle any and all controversies. The AAA's fees and expenses shall be shared equally by the parties. Attorneys' fees and costs of court shall be awarded as provided under the laws of the State of Texas. This Agreement shall be governed under the laws of the state of Texas.

32. GENERAL CONDITIONS. This Agreement is subject to the attached General Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Avery Ranch Owners' Committee,

OWNER:

By: RWR Development Company, L.L.C.
as General Partner for Developers
of Avery Ranch, Ltd. (Member of Avery Ranch Owners' Committee)

By: Robert D. Wunsch
Name: Robert D. Wunsch
Title: President

CONTRACTOR:

By:
Name: Steve E. Kuster
Title: Branch Manager

GENERAL CONDITIONS OF AGREEMENT

1.0 DEFINITION OF TERMS

1.01 OWNER, CONTRACTOR AND OWNER'S REPRESENTATIVE

The OWNER and the CONTRACTOR are those persons or organizations identified as such in the Agreement and are referred to throughout the Contract Documents as if singular in number and masculine in gender. The term OWNER'S REPRESENTATIVE means the OWNER'S agent or his duly authorized representative. The OWNER'S REPRESENTATIVE shall represent the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the OWNER'S REPRESENTATIVE and the CONTRACTOR.

1.02 CONTRACT DOCUMENTS

The Contract Documents shall consist of:

1. Signed Construction Agreement
2. Change Orders and other Documents executed by OWNER and CONTRACTOR and approved by OWNER'S REPRESENTATIVE after the execution of this agreement.
3. Technical Specifications and Approved Construction Plans, including any addenda
4. Special Conditions of Agreement, if any.
5. General Conditions of Agreement
6. Bid Proposal
7. Subcontractor Agreement
7. Notice and Instructions to Bidders
8. Performance and Payment Bonds
9. Insurance policies and endorsements
10. Bid Bonds
11. All modifications thereof incorporated in any of the documents before the execution of the Agreement.

1.03 SUB-CONTRACTOR

The term Sub-contractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.

1.04 WORK

The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendents, labor, service, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the Contract Documents. Unless otherwise specified, all materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind of quality of materials. Materials or work described in words which so applied have well-known technical or trade meaning shall be held to refer to such recognized standards.

1.05 EXTRA WORK

The term "Extra Work", as used in this contract, shall be understood to mean and include all work that may be required by the OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the Work not shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR'S Proposal, except as provided under "Changes and Alterations", herein.

1.06 WORKING DAY

A "Working Day" is defined as any day, not including Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 A.M. and 6:00 P.M.

1.07 CALENDAR DAY

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

1.08 SUBSTANTIALLY COMPLETE

By the term "substantially complete", it is meant that the Work is suitable for use or the improvements of the Work are in a condition to serve its intended purposes, but still may require minor miscellaneous work and adjustment

1.09 COMPLETE AND ACCEPTED

By the term "complete and accepted", it is meant the OWNER'S REPRESENTATIVE has inspected the Work under the terms of the Contract and find the Work acceptable for its intended purpose.

2.0 RESPONSIBILITIES OF THE OWNER'S REPRESENTATIVE AND THE CONTRACTOR

2.01 OWNER-OWNER'S REPRESENTATIVE RELATIONSHIP

The OWNER OR OWNER'S REPRESENTATIVE may select a registered professional engineer, architect, or other registered professional (the "PROFESSIONAL") to assist them in reviewing Contractor's work. The PROFESSIONAL may be, but is not necessarily, the OWNER'S representative during construction. The duties, responsibilities, and limitations of authority of the PROFESSIONAL, as the OWNER'S representative during construction, are set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER or OWNER'S REPRESENTATIVE. The PROFESSIONAL OR OWNER'S REPRESENTATIVE will advise and consult with the OWNER, and all of the OWNER'S instructions to the CONTRACTOR may be issued through the OWNER'S REPRESENTATIVE.

2.02 PROFESSIONAL INSPECTION BY OWNER'S REPRESENTATIVE

The PROFESSIONAL or OWNER'S REPRESENTATIVE shall make periodic visits to the site to familiarize himself generally with the progress of the executed work and to determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the PROFESSIONAL OR OWNER'S REPRESENTATIVE shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. PROFESSIONAL OR OWNER'S REPRESENTATIVE will report, in writing, through letter or copy of field reports, any act, error or omission of Contractor observed by either of them during the construction process which does not conform to the Contract Documents. Notwithstanding any other provision of this Agreement or any other Contract Document, neither the PROFESSIONAL nor the OWNER'S REPRESENTATIVE shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any Sub-contractor or any of the CONTRACTOR'S or Sub-contractor's agents, servants or employees or any other person, firm or corporation performing or attempting any of the work.

2.03 PAYMENTS FOR WORK

The PROFESSIONAL OR OWNER'S REPRESENTATIVE shall review CONTRACTOR'S applications for payment and supporting data, determine the amount owed to the CONTRACTOR and provide a recommendation, in writing, regarding payment to CONTRACTOR in such amounts; such recommendation of payment to CONTRACTOR constitutes a representation to the OWNER that in the professional judgment of Contractor the work has progressed to the point indicated to the best of his knowledge, information and belief. But, any payment by Owner based on Contractor's representation shall not constitute a representation by Owner that it has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

2.04 LINES AND GRADES

Unless otherwise specified, all lines and grades shall be furnished by the CONTRACTOR by a registered professional licensed surveyor (RPLS) in the State of Texas. Preparation of cut sheets, if any, shall be the responsibility of the CONTRACTOR. All lot pins, shall be carefully preserved by the CONTRACTOR, and in case of careless destruction or removal by him or his employees, or sub-contractors, shall be replaced at the CONTRACTOR'S expense.

2.05 CONTRACTOR'S DUTY AND SUPERINTENDENT

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the

CONTRACTOR in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and OWNER'S REPRESENTATIVE being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.
Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations. Engineering, construction drawings and specifications, as well as any additional information concerning the work to be performed passing from or through the PROFESSIONAL OR OWNER'S REPRESENTATIVE, shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications, and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, and installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to persons or property, including without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including, but without limitation, the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

2.06 CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of

the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER, OWNER'S REPRESENTATIVE, or PROFESSIONAL, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

2.07 CHARACTER OF WORKMEN

The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract to do the work; and agrees that whenever the OWNER'S REPRESENTATIVE shall inform him in writing that any person on the work site are, in his opinion, incompetent, unfaithful or disorderly, Contractor shall discharge such individual from performing any of the Work and shall not again be employed on the work without the OWNER'S written consent.

2.8 CONTRACTOR'S BUILDINGS

The building of structures for a field office (if necessary), , or the erection of tents or other forms of protection, will be permitted only at such places as the OWNER'S REPRESENTATIVE shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the OWNER'S REPRESENTATIVE.

2.9 SANITATION

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the OWNER'S REPRESENTATIVE. Such facilities will meet and conform to all applicable regulations of local and state of Texas governmental entities.

2.10 SHOP DRAWINGS

If necessary, the CONTRACTOR shall submit the OWNER'S REPRESENTATIVE, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, four checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the OWNER'S REPRESENTATIVE SHALL PASS UPON THEM WITH REASONABLE PROMPTNESS MAKING DESIRED CORRECTIONS. The CONTRACTOR shall make any corrections required by the OWNER'S REPRESENTATIVE'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing, called the OWNER'S REPRESENTATIVE'S attention to such deviation at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.
Such review by the OWNER'S REPRESENTATIVE shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being

expressly understood and agreed that the OWNER'S REPRESENTATIVE does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

2.11 PRELIMINARY APPROVAL

The OWNER'S REPRESENTATIVE shall not have the power to waive the obligations of this contract for the furnishing by the CONTRACTOR of good material, and of his performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the OWNER'S REPRESENTATIVE to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including, but without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the OWNER'S REPRESENTATIVE shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished, and in event the material has been once accepted by the OWNER'S REPRESENTATIVE and OWNER, such acceptance shall be binding on the OWNER, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered, taken up or removed for re-examination, by the OWNER'S REPRESENTATIVE, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; otherwise, the expense thus incurred shall be allowed as EXTRA WORK, and shall be paid for by the OWNER; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval he shall bear all expense of taking up, removing and replacing this work if so directed by the OWNER'S REPRESENTATIVE and/or OWNER.

2.12 DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part hereof, or any material brought on the site deemed by the OWNER'S REPRESENTATIVE as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the OWNER'S REPRESENTATIVE and OWNER forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract.

2.13 CHANGES AND ALTERATIONS

The CONTRACTOR further agrees that the OWNER may make such changes and alternations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quality or the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done at the unit price, if any, established for such work under this contract, except as provided for unit price items under Section 5 "Measurement and Payment"; otherwise, such additional work shall be paid for as provided under "EXTRA WORK". In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall compensate the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3.0 GENERAL OBLIGATIONS AND RESPONSIBILITIES

3.01 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The OWNER'S REPRESENTATIVE shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications, including any addenda, without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

3.02 OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the OWNER'S REPRESENTATIVE shall not be reused, copied, or distributed except as necessary for completion of the Work and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

3.03 RIGHT OF ENTRY

The OWNER reserves the right to enter, at any and all time, property or locations on which the work herein contracted for is to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

3.04 COLLATERAL CONTRACTS

The OWNER agrees to provide by separate document or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.

3.05 DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate Contract Documents, the priority of

interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the specifications or drawings, the OWNER'S REPRESENTATIVE shall define which is intended to apply to the work.

3.06 EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT

The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

3.07 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The CONTRACTOR shall, at all times, exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, actually taken and the adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.

3.8 PERFORMANCE AND PAYMENT BONDS

Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER.

Unless otherwise approved in writing by he OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included on the CONTRACTOR'S proposal.

3.9 LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work shall be sustained and borne by the CONTRACTOR at his own cost and expense.

3.10 PROTECTION OF ADJOINING PROPERTY

The CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered which might be injured or seriously affected by any process of construction to be undertaken under this Agreement from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract; but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

3.11 PROTECTION AGAINST CLAIMS OF SUB-CONTRACTORS, LABORERS, MATERIAL MEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

The CONTRACTOR agrees that he will indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from all claims growing out of the lawful demands of Sub-contractors, laborers, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature herein above designated, have been paid, discharged or waived.

3.12 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION

The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner. The CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from any loss on account thereof, except that the OWNER shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer is specified or required by the OWNER; provided, however, if choice of alternate design, device, material or process is allowed to the CONTRACTOR, then CONTRACTOR shall indemnify and save OWNER harmless of any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly gives such information to the OWNER.

3.13 LAWS AND ORDINANCES

The CONTRACTOR shall, at all times, observe and comply with all Federal, State and Local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim arising from the violation of such laws, ordinances, and regulations whether by the CONTRACTOR or his employees. If the CONTRACTOR observes that the plans and specifications are at variance therewith, he shall promptly notify the OWNER and OWNER'S REPRESENTATIVE in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

3.14 CERTIFICATE OF INSURANCE

Before commencing any of the work, CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER (for the Contractor and all subcontractors of the Contractor who enter the Project). Such Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the OWNER. The "Cancellation" notice of the Certificate shall be modified that the following text is deleted; the words "endeavor to " and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." CONTRACTOR shall file with the OWNER a Form B Additional Insured endorsement for the Contractor and all Subcontractors.
Contractor and Subcontractors will name each of the following entities as additional insured in the policies of insurance:
Avery Ranch Owner's Committee
R.D.W. Holdings, Inc., d/b/a Robert D. Wunsch Development,
An additional endorsement providing that he insurer waives it's rights of subrogation against Owner and any other named insured is also required.
The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all approved subcontractors providing for the same conditions listed above.

4.0 PROGRESS

4.01 TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the OWNER'S REPRESENTATIVE may direct the time and manner of constructing the work done under this contract, so that the conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the OWNER'S REPRESENTATIVE or OWNER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

4.02 EXTENSION OF TIME

Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER, PROFESSIONAL, or OWNER'S REPRESENTATIVE, or of any employee of either, or by other CONTRACTORS employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR'S control,

or by any cause which the OWNER'S REPRESENTATIVE shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the OWNER'S REPRESENTATIVE and OWNER; provided, however, that the CONTRACTOR shall give the OWNER'S REPRESENTATIVE notice in writing of the cause of such delay.

Claims for extension of time must be made in writing within seven (7) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

In case of claims for extension of time because of inclement weather in excess of normal, such extensions shall be granted only because such inclement weather prevented the execution of major critical items of work that delayed the final completion of the Contract.

The OWNER, with the assistance of the OWNER'S REPRESENTATIVE, shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgment, the findings justify such an extension of Contract Time.

Weekly construction progress meetings shall be held on site. Any requests for extensions of time for weather or other delays shall be requested in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE at that time.

5.0 MEASUREMENT AND PAYMENT

5.01 QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

5.02 ESTIMATED QUANTITIES

This Agreement, including the specifications, plans and estimates, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any indifferences which may be found between the quantities of work actually done, the material furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (25%) more than, or twenty percent

(25%) less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (25%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total cost, computed on the basis of the proposal quantities and the contract bid prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under "Extra Work".

5.03 PRICE OF WORK

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole hereof in the manner and according to this Agreement.

5.04 PARTIAL PAYMENTS

The CONTRACTOR shall prepare on an OWNER approved form, and deliver to the OWNER'S REPRESENTATIVE, a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to the time payment requests are due to the OWNER.

Request for payment delivered to the OWNER'S REPRESENTATIVE on or before five (5) working days prior to the first day of the month shall be paid by the 25th day of the same month.

The OWNER shall pay the CONTRACTOR the total amount of the CONTRACTOR'S statement less ten percent (10%) of the amount thereof, which ten percent (10%) shall be retained until final payment, and further less all previous payments, and further less all further sums that may be retained by the OWNER under the terms of the Agreement.

Upon substantially completion of each phase the CONTRACTOR may reduce retainage to five (5%) percent until the job is complete and accepted.

CONTRACTOR shall attach a legally notarized "Partial Release (Mechanic's Lien, Materialman's Lien, Stop Notice, Equitable Lien and Labor and Material Bond Release)", form or similar form to each pay request submitted. Copies of this affidavit are available upon request from the OWNER'S REPRESENTATIVE.

Partial payments made by the OWNER to the CONTRACTOR are moneys advanced solely for the purpose of assisting the CONTRACTOR to expedite the progress of the construction and in no way constitutes acceptance or approval of any work. All completed work covered by such partial payment shall remain the property of the

CONTRACTOR and he shall be responsible for the care and protection of all materials and work upon which the payments have been made. 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 in place, and to the satisfaction of the OWNER in all details.

No retainage will be released without written consent from the OWNER until the job is "completed" and accepted in writing Owner.

5.05 SUBSTANTIALLY COMPLETE

Prior to final payment, CONTRACTOR may, in writing to OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within a reasonable time thereafter, OWNER'S REPRESENTATIVE shall make an inspection of the Project to determine the status of completion. If OWNER'S REPRESENTATIVE does not consider the Project substantially complete, he will notify the CONTRACTOR in writing giving his reasons why the Project is not substantially complete.

If OWNER'S REPRESENTATIVE considers the Project substantially complete, he will prepare and deliver to the OWNER a tentative Certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the tentative certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected; said time to be within the Contract Time.

OWNER shall have seven (7) days after receipt of the tentative certificate during which time may make written objection to OWNER'S REPRESENTATIVE as to any provisions of the certificate or attached list. If, after considering such objections, OWNER'S REPRESENTATIVE concludes that the Project is <u>not</u> substantially complete, he will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing stating his reasons that the Project is not substantially complete.

If, after consideration of OWNER'S objections, OWNER'S REPRESENTATIVE considers the Project Substantially Complete, he will, within fourteen (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 he believes justified after consideration of any objections from OWNER. The failure of the OWNER'S REPRESENTATIVE to include any items on such tentative list of items to be completed does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

5.06 BENEFICIAL OCCUPANCY

Beneficial occupancy shall take place when OWNER notifies CONTRACTOR, in writing, that OWNER will occupy completed Work or portions thereof, for the purpose intended. OWNER'S beneficial occupancy of any facilities so identified in Contract Documents and Plans will not be grounds for extension of Contract Time or change in

Contract Price and will not be deemed an acceptance of work not completed in accordance with Contract Items or Plans.

OWNER'S beneficial occupancy of any facilities not specifically identified in Contract Documents and Plans will be in accordance with conditions agreed to prior to such use and any extra costs or delays in completion incurred and properly claimed by CONTRACTOR will be equitably adjusted with a Change Order.

Tests and instruction of OWNER'S personnel must be satisfactorily completed and OWNER shall assume responsibility for operations of facilities occupied or used except as may arise through portions of the Work not yet completed by CONTRACTOR.
Facilities substantially completed in accordance with Contract Documents and Plans which are occupied or used by OWNER prior to substantial completion of the entire Work will be defined by OWNER in a written notice to CONTRACTOR fixing the responsibility for insurance, maintenance and utilities on that part of the Work, and including a tentative list of items (punch list) to be completed or corrected before final acceptance.

5.07 FINAL COMPLETION AND ACCEPTANCE

Contractor shall notify OWNER'S REPRESENTATIVE when Substantial Completion punch list items and work are complete. OWNER'S REPRESENTATIVE will arrange a final inspection with OWNER and CONTRACTOR, and if OWNER and OWNER'S REPRESENTATIVE find the work acceptable under the Contract, and the CONTRACTOR has submitted: (1) Release of Liens for himself and all subcontractors and supplies, and (2) Maintenance Bonds, if necessary, for street, drainage, water and wastewater improvements as required, , the OWNER'S REPRESENTATIVE will issue a Letter of Final Acceptance.

5.08 FINAL PAYMENT

After CONTRACTOR has satisfactorily completed all such corrections as identified by OWNER'S REPRESENTATIVE and/or OWNER and delivered all Maintenance Bonds, certificates of inspection and as-built reproducible documents, all as required by the Contract Documents, and the Work has been accepted in writing by the Owner's Representative, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by complete releases or waivers (satisfactory to OWNER) of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In addition to or in lieu thereof and in the Owner's discretion, CONTRACTOR may furnish receipts or releases in full including an affidavit of CONTRACTOR that the releases and receipts include all labor, services material and equipment for which lien could be field, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property in any way be responsible, have been paid or otherwise satisfied and also including consent of the surety, if any, to final payment. If any Subcontractor, materialman, fabricator or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify him against any lien.

If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, as all required by the Contract Documents, OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after receipt of the final Application for Payment, indicate in writing his approval for payment and present the Application to OWNER for payment. Thereupon, OWNER'S REPRESENTATIVE will give written notice to OWNER and CONTRACTOR that the Work is acceptable. Otherwise, he will return the Application to CONTRACTOR indicating in writing his reasons for refusing to approval final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the application. OWNER shall, within ten (10) days of presentation to him of an approved final Application for Payment, pay CONTRACTOR the amount approved by OWNER'S REPRESENTATIVE less previous payments made to the CONTRACTOR and less any Liquidated Damages for delay.

5.09 PAYMENTS WITHHELD

The OWNER may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

(a) Defective work not remedied.
(b) Claims filed or reasonable evidence indicating probably filing of claims.
(c) Failure of the CONTRACTOR to make payments properly to Sub-contractors or for material or labor.
(d) Damage to another contractor.
(e) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
(f) Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provided a Surety Bond satisfactory to the OWNER that will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

6.0 EXTRA WORK AND CLAIMS

6.01 CHANGE ORDERS

Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the OWNER'S REPRESENTATIVE for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the OWNER'S REPRESENTATIVE and executed by the OWNER, the OWNER'S REPRESENTATIVE may, in writing, instruct the CONTRACTOR to

proceed with work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

6.02 MINOR CHANGES

The OWNER'S REPRESENTATIVE may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the CONTRACTOR believes that any minor change or alteration authorized by the OWNER'S REPRESENTATIVE involves Extra Work and entitles him to an increase in the Contract Price, CONTRACTOR shall make written request to the OWNER'S REPRESENTATIVE within ten (10) days of authorization by the OWNER'S REPRESENTATIVE for a written Field Order. In such case, the CONTRACTOR, by copy of his communication to the OWNER'S REPRESENTATIVE or otherwise in writing, shall advise the OWNER of his request to the OWNER'S REPRESENTATIVE for a written Field Order and that the work involved may result in an increase in the Contract Price.

Any request by the CONTRACTOR for a change in Contract Price shall be made prior to beginning the work covered by the proposed change.

6.03 EXTRA WORK

It is agreed that the basis for compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A)	By agreed unit prices; or
Method (B)	By agreed lump sum; or
Method (C)	If neither Method (A), nor Method (B) are agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said Extra Work is to be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" are hereby timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, altogether with all power, fuel lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The OWNER'S REPRESENTATIVE and OWNER may direct the form in which records of the "actual field cost" shall be kept and the records of the accounts shall be made available to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE or OWNER may also specify, in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one

hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Association of General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendent and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR'S Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the OWNER'S REPRESENTATIVE and OWNER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the OWNER'S REPRESENTATIVE or OWNER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and the OWNER'S REPRESENTATIVE insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to arbitration, as hereinbelow provided.

6.04 TIME OF FILING CLAIMS

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the OWNER'S REPRESENTATIVE and OWNER within ten (10) days after the OWNER'S REPRESENTATIVE has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The OWNER'S REPRESENTATIVE shall reply within ten (10) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should appeal the OWNER'S REPRESENTATIVE'S decision, any demand for arbitration shall be filed with the OWNER'S REPRESENTATIVE and the OWNER in writing within ten (10) days after the date of delivery to CONTRACTOR of the OWNER'S REPRESENTATIVE'S final decision. It is further agreed that final acceptance of the work by the OWNER and the acceptance by the CONTRACTOR of the final payment shall be a bar to any claims by the CONTRACTOR, except where noted otherwise in the Contract Documents.

6.05 ARBITRATION

Subject to the non-binding mediation requirement set forth in the Agreement, all questions of dispute under this Agreement or the Work shall be submitted to arbitration before a single arbitrator under the Commercial Rules of the American Arbitration Association. The award of the arbiters must be made in writing.

7.0 MISCELLANEOUS PROVISIONS

7.1. LIQUIDATED DAMAGES FOR DELAY

The OWNER may withhold permanently from the CONTRACTOR'S total compensation for the work under this Contract, the sum of $1,000.00 per day for every calendar day beyond the specified date per Phase agreed upon for the Substantial Completion and the Completion and Acceptance of the work herein specified and contracted for.

The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to:

(a) Any preference, priority, or allocation order duly issued by Owner or any regulatory authority;

(b) Unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and severe weather.

(c) Any delays of Subcontractors or suppliers occasioned by any of the causes specified in the subsections (a) and (b) of this article.

(d) It is understood that "Liquidated Damages" are not a penalty, but are intended to represent the actual costs per day the OWNER will incur as a result of the delay.

7.2 PERMITS

The CONTRACTOR for this project shall be responsible for obtaining all construction related permits required to complete the construction on any portion of the project covered by this contract. Owner will supply City Development permit and TNRCC Water Pollution Abatement Plan and/or Sewage Collection System Approval.

7.3 CONSTRUCTION STAKING

The construction staking will be provided by the CONTRACTOR as subsidiary to the contract.

7.4 TESTING

Testing required during the course of this project will be paid for by the OWNER, one time only. All testing and retesting required due to failure shall be paid for the CONTRACTOR.

7.5 PROTECTION OF PROPERTY AND RIGHT-OF-WAY

Before the CONTRACTOR commences work on the project, he shall inspect the site of the project to satisfy himself that all property corner pins and right-of-way pins are visible in place and clearly marked. Any pins disturbed or destroyed during the construction of improvements included in this document shall be replaced by the OWNER'S REPRESENTATIVE at the CONTRACTOR'S expense before the final payment is approved by the OWNER'S REPRESENTATIVE.

7.6 CONTINUANCE OF THE COURSE OF WORK UNDER CONTRACT

The CONTRACTOR hereby agrees that he shall work diligently and continuously toward the completion of this contract and shall not remove the labor force or equipment required for this project site to work on any other project until all the work included in the contract is complete and accepted in writing by the City of Austin.

7.7 SUBLETTING OF CONTRACT

Other than the subcontractors previously approved by Owner or Owner's Representative, the CONTRACTOR on this project shall not sublet the work to be done under this contract or any portion thereof without the expressed written consent of the OWNER.

7.8 EXCAVATION

All excavation shall be unclassified. All excess excavation which is not incorporated into the Work shall become the property of the CONTRACTOR who shall then be responsible for the disposal of said excavation. All excess excavation shall be disposed of at an approved site or facility and will supply evidence of same to OWNER as directed by the OWNER or his OWNER'S REPRESENTATIVE.

AVERY RANCH BOULEVARD
IRRIGATION LINE CONSTRUCTION AGREEMENT

This Agreement is made this the_____ day of _____200 ___, by and between, Wadsworth Golf Construction Company ("CONTRACTOR") whose address is 1901 Van Dyke Rd, Plainfield Illinois 60544 _____ and _____ ~~(Road District)~~ AVERY RANCH OWNERS' COMMITTEE, ("OWNER"), whose address is c/o Robert D. Wunsch Development, 2414 Exposition, Suite 280, Austin, Texas 78703; ROW

WHEREAS, Contractor wishes to perform work and/or furnish materials in the construction of an irrigation line with purchase and installation of, and connection to, Flowtronex PSI Vertical Turbine Variable Speed Pump Station (the "Work") parallel to Parmer Road from the pump station near Brushy Creek located in the Avery Ranch development to Avery Ranch Boulevard West as more particularly described in the plans and specifications which are incorporated by reference (the "Site");

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. **WORK.** In accordance with all of the terms and conditions of this Agreement, Contractor shall perform and finish in a good and workmanlike manner, and shall furnish all materials, labor, equipment, supplies and tools for the Work. The Work shall be performed in accordance with this Agreement, plans, specifications, drawing and schedules for the Work, General Conditions of Agreement, the Statement of Materials and Other Charges, the Subcontractor Agreement, the accepted bid proposal, and all other bid requirements set forth in the Bid Documents, all of which are on file at the offices of Owner whose address is 2414 Exposition, Ste. 280, Austin, Texas 78703, (collectively called the "Contract Documents") and incorporated into the Agreement by this reference into this Agreement. The contract price has been determined upon the basis of the accepted bid proposal (the "Proposal") submitted by Contractor to Owner and such Proposal is incorporated by reference into this Agreement. .

CONTRACTOR agrees to commence work within five (5) calendar days of the date written notice to do so shall have been given to the CONTRACTOR, and will progress therewith so that the work shall be substantially completed within:

Substantially Complete: 30_ Calendar Days after start date

Complete & Accepted: 30 Calendar Days after Substantial Completion.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the "Proposal" submitted therefore, subject to additions and deductions, as provided in the "General Conditions of the Agreement", and to make payments on account thereof as provided herein.

2. **PRICE.** Owner shall pay to Contractor for the Work the sum of **$ 161,766.39** for the Work (the "Contract Price"). Change Orders will be in accordance with the accepted bid.

3. **PAYMENT SCHEDULE.** Payments, less ten percent (10%) retainage shall be made based on the progress of the Contractor in completion of the Work subject to the following conditions:

Final payment to Contractor shall be made following completion of the Work. The making of final payment to Contractor shall not be construed as acceptance of the Work or waiver of any rights of Owner under this Agreement and shall not relieve Contractor of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement or the Contract Documents, Owner shall not be obligated to make any payment to Contractor if and as long as any one or more of the following conditions exist:

(a) Contractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement;

(b) Contractor has failed to furnish to Owner invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Owner;

(c) Any part of a payment requested is attributable to work which is defective or not performed in accordance with this Agreement and the Contract Documents; provided, however, if severable, payment shall be made as to the part thereof which appears to be properly performed after due allowances for the cost of correcting the defective part of the work as estimated by Owner, less retainage;

(d) Contractor has failed to make payment promptly to any lien claimants, suppliers or subcontractors;

(e) If Owner, in its good faith judgment, determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to so complete and correct the Work.

4. PAYMENT BY CONTRACTOR. Contractor shall promptly pay in cash all labor employed and materials and services furnished and used in the performance of the Work. Owner shall have the right, whenever it shall deem such procedure advisable, to make payments due to Contractor directly to any subcontractor, material or equipment supplier, utility or transportation company, insurance company, governmental agency, or union trust fund for any work, labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Contractor has first delivered written notice to Owner of a dispute with any such person and has furnished security satisfactory to Owner insuring against claims therefrom. Any payment so made shall be credited against sums due Contractor in the same manner as if such payment had been made directly to Contractor. The provisions of this Section 4 are intended solely for the benefit of Owner and shall not insure to the benefit of any third persons, or obligate Owner or its sureties in any way to any third party.

5. PERFORMANCE OF WORK. Contractor shall commence performance of the Work within five (5) working days of receiving notice to begin (excluding Saturdays, Sundays, and Federal holidays) and shall perform the Work as quickly and thoroughly as possible. If Contractor does not begin the Work within five (5) days, or stops the Work without cause or permission, of if

the Work is unreasonably delayed in the opinion of the Owner, Owner shall have the right to terminate the Agreement and replace the Contractor.

Further, if Contractor fails to perform any of its duties described in this Agreement, or in the Contract Documents, within the limits established, or if no limits are established, within forty-eight (48) hours after notice from Owner, Owner shall have the right to retain others to perform such duties, and the cost of such performance will be charged against the amount due Contractor. If the charges exceed the amount due, all payments will be withheld and Contractor shall pay Owner the excess within thirty (30) days of receipt of notice. Without limitations, charges against Contractor shall be assessed if Owner pays to complete Work not finished on time by Contractor, correct defects in the Work, pay fines or penalties arising from the Work, clean up after the Work, provide tools, material or equipment that are Contractor's obligations, repair damage to the site, obtain insurance on behalf of Contractor, pay claims indemnified by Contractor, pay taxes or legal orders that are Contractor's obligations, or pay any other amounts on behalf of Contractor.

6. FAMILIARITY WITH THE SITE. Contractor shall be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site with the plans and specifications, including any addenda to the plans and specifications. It is understood by the parties that Contractor is best able to evaluate the cost of the Work and that in arriving at the contract price it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Contractor further represents that it is fully familiar with the requirements of every governmental authority having jurisdiction over the Work and is prepared to comply with all such requirements without additional compensation. No estimates or bids of Contractor preceding this Agreement and no verbal agreements or conversation with any representative of Owner, either before or after execution of this Agreement, shall affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

7. PROTECTION OF WORK. Contractor shall see over and protect the Work against loss or damage from any cause and be responsible for all parts of the Work, temporary or permanent, furnished or not, until final completion. Contractor shall take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site, including, without limiting thereto, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Contractor shall bear and be liable for and Owner shall not be responsible for any loss or damage to the Work and any material, equipment, or other thing employed in the Work or placed at the site including, but not limited to, loss or damage due to theft, trespass or vandalism prior to final completion of the Work.

8a. INSURANCE. Contractor shall obtain, pay for and keep in full force and effect until final completion and acceptance of the Work, the following insurance in a company or companies satisfactory to Owner:

(i) *Business Automobile Liability Insurance.* Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement

b) 30 day Notice of Cancellation endorsement; and

c) Additional Insured endorsement.

Provide coverage in the following types and amounts:

A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

ii) *Worker's Compensation and Employer's Liability Insurance.* Worker's Compensation insurance covering all workers engaged in performance of the Work in amounts not less than minimum coverage required by law, including employer's liability coverage of not less than $100,000.00.

Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.), as amended. CONTRACTOR shall assure compliance with this statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person or subcontractor providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation; and

b) 30 day Notice of Cancellation.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

$100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

iii) *Commercial General Liability Insurance.* Provide coverage to include bodily injury and property damage liability insurance, providing coverage at least equivalent to the 1986 Commercial General Liability Insurance policy. Such policy or policies shall be written on an "occurrence" basis and maintained in minimum limits of $500,000 per occurrence with a $1,000,000 General Aggregate limit and a $500,000 Products/Completed Operations Aggregate limit.

The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project,

f) OWNER listed as an additional insured,

g) 30 day notice of cancellation in favor of OWNER,.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER.

In addition, any policy of insurance herein required shall contain a contractual liability endorsement covering indemnity and defense obligations of Contractor and indemnity and defense of Owner, and such other coverage às may reasonably required by Owner. Such policy will, among other things, make specific reference to this Agreement. Any policy obtained by Contractor insuring against loss by physical damage to any portion of the Work or to materials to be incorporated in the Work or covering Contractor's tools, supplies, machinery or equipment shall contain an endorsement providing that the insurer waives its right of subrogation against Owner and any other named insured. Nothing in this paragraph shall give or create in any third party any claim or right of action against Owner, except that which may exist irrespective of this paragraph.

The insurance required hereunder may be contained in one or more policies. Prior to commencement of any construction, Contractor shall furnish to Owner certificates or copies of policies for the Contractor and all subcontractors of the Contractor who enter onto the Project, showing that such insurance is in force and that the premiums due have been paid and that Owner (and the owner of the Site, if other than Owner), the subcontractors of Contractor, and such other persons as Owner may direct are named as insured persons jointly with Owner in respect of any loss covered. (See conditions of agreement of this contract). Such certificates or policies shall provide that the insurance may not be canceled, terminated or modified without thirty (30) days advance written notice to Owner. A Waiver of Subrogation in favor of the Owner is required on the Worker's Compensation Insurance. The Owner shall be listed as Additional Insured on all Liability Insurance policies. Such policies shall contain any provisions for exclusion from liability other than provisions for exclusion forming a part of the standard basic unamended and unendorsed form of policy, provided, however, in no event shall any exclusion be permitted which conflicts with any coverage required by this Agreement.

CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract,

covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.
If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance. CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

The insurance coverage required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

In the event of any failure of Contractor to furnish and maintain insurance required hereunder, Owner, at its option and without waiving the default of Contractor, shall have the right to obtain such insurance for and in the name of Contractor. In such event, Contractor shall pay the cost thereof upon demand (or such sums shall be withheld from that which is due to Contractor under this Agreement) and shall furnish all information required by the insurance carrier.

8b. PERFORMANCE AND PAYMENT BONDS. Bonds shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract

and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

Performance Bonds and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

The Performance Bond shall extend for the one year warranty period.

9. INDEMNITY. Contractor shall indemnify, defend and hold harmless Owners, and the owner of the site if other than owner, its employees and agents from and against any and all claims, loss, damage or expense (including attorney's fees and other costs of defense incurred by Owner in defending against any claims or in enforcing this indemnity and defense obligation) arising from or in connection with the performance of the Work or this Agreement or any portion thereof or the failure to observe or comply with the provisions of the Agreement or the Contract Document by Contractor or any subcontractor or independent Contractor hired by Contractor or any agent or employee of any such persons, and Contractor.

Contractor waives all claims against Owner and the owner of the site if other than Owner, for damage to property and injury to persons in or about the site from any cause arising at any time including any losses caused by the negligence or gross negligence of Owner.

10. COMPLIANCE WITH LAWS. Contractor shall carefully check the drawings, plans and specifications, including any addenda, for conformity with all local, state and federal laws, codes, rules and regulations (hereinafter collectively called "Law") before commencing the Work. Contractor shall give all notices and comply with all Law bearing on the Work, including, by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the federal Occupational Safety and Health Act of 1970, as amended, and the Contractor at all times shall furnish to its agents and employees a safe place of employment. If Contractor observes any violation of Law, it shall immediately report such violation to Owner in writing. All workmanship and materials shall conform to Law and, if the Contractor performs or permits the performance of any work not in compliance with Law, it shall immediately cause such work to be redone and shall bear all costs in connection therewith. The Work, as performed, shall meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work shall meet the requirements of these governmental agencies. No work shall be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(a) The Occupational Safety and Health Administration (OSHA) has promulgated regulations ("Regulations") which are entitled OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets (MSDS) and share information about precautionary measures necessary to protect all workers on a building project.

(b) Contractor agrees as follows:

(1) Contractor will fully comply with the Regulations and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(2) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the job site.

(3) Contractor will indemnify, defend and hold Owner harmless of and from all claims, damages, liabilities and causes of action that arise from the failure of Contractor to comply with the Regulations.

(4) Contractor will assist Owner in complying with the Regulations.

(5) Contractor will not use any chemicals in its performance of the Work for Owner or incorporate any chemicals into materials or products supplied to Owner or to the property unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner, and has received a written consent of Owner to use such chemicals.

11. TERMINATION OF AGREEMENT BY OWNER. In the event that conditions arise which, in the opinion of the Owner, make it advisable for Contractor not to continue to Work, Owner may terminate this Agreement by forty-eight (48) hours prior written notice to Contractor.

Upon receipt of such notice, unless directed otherwise, Contractor shall immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Owner. Thereafter, Contractor shall do only such work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the project and to protect materials, supplies and equipment at or about the Site or in transit thereto.

On the date set for termination, the obligations of the parties to continue performance under this Agreement shall cease and Contractor shall be entitled to receive: (i) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly (subject to Owner being entitled to withhold amounts necessary to correct or repair any deficiencies in the work performed to date by Contractor); (ii) payment for materials for which it has made firm contracts, provided that materials are delivered to Owner, and (iii) payment for any other bona fide obligations assumed by Contractor prior to receipt of notice of termination, which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Owner. Payment to Contractor shall be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by

law for the filing of any claims to enforce mechanics liens arising out of the Work. Notwithstanding any other provision to be contrary, termination of this Agreement shall not prejudice any claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor shall it affect Contractor's warranty and guarantee of the portion of the Work performed or relieve Contractor of its duty to correct any defective work performed or to indemnify, defend and hold Owner harmless in those instances required by this Agreement.

12. ASSIGNMENT. Contractor may not assign this Agreement or any portion thereof or any money due or which may become due without the prior written consent of Owner. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 12 shall be null and void and the assignee shall acquire no rights thereunder. Nothing shall prohibit the right of Owner to assign this Agreement or seek reimbursement of amount s paid under this Agreement from any entity, including, but not limited to, the Avery Ranch Road District.

13. DEFAULT. In addition to any other remedies available under law: (i) if Contractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (ii) if Contractor should fail to make payment to subcontractors or for material or labor; or (iii) if Contractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents to be kept and complied with by Contractor; (iv) if Contractor should be adjudged a bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or (v) if a receiver should be appointed on account of Contractor's insolvency or otherwise; then, in any such event, Owner may, without prejudice to any other right or remedy and after giving Contractor and its surety, if any, three (3) days written notice, terminate its obligation to Contractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the amount that would be payable upon completion shall exceed the expense of completing the Work, including compensation for architectural, managerial and administrative services and a reasonable attorneys fee, if legal counsel is employed. Contractor shall be reimbursed from such excess for any costs of labor and materials incurred, and Contractor shall not be entitled to receive any other payments under this Agreement. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to Owner.

14. CLEAN UP. Contractor shall remove from the Site all scrap, trash, debris, excess materials, tools and equipment upon completion of the Work. If Contractor fails to clean up, Owner may do so after written notice to Contractor, and cost thereof shall be charged to Contractor.

15. CALL BACK RESPONSIBILITY. In connection with the performance of the Work, Contractor agrees that:

(a) it will, within forty-eight (48) hours from oral or written notice (Saturday and Sundays excluded), correct any and all deficiencies in the Work.

(b) the determination as to what constitutes a deficiency will be within the sole discretion of the Owner, which judgment shall be reasonably exercised.

(c) failure of the Contractor to make timely performance hereunder shall constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such work shall be charged to the Contractor and such cost plus a sum equal to fifteen percent (15%) thereof (which additional sum will represent an allowance for the administration by the Owner of such work) shall be charged against the account of the Contractor. In the event that the amount owing the Contractor under this Agreement at the time the Work is performed by others is less than the sum charged against its account to pay others to complete the Work, the Contractor shall remit the difference to the Owner within five (5) days following written demand for such payment. .

16. AUTHORIZED PERSONS. AVERY RANCH OWNERS' COMMITTEE, by and through its authorized agent(s), shall be the only persons with authority under this Agreement to: (i) execute change orders; (ii) allow Contractor additional time for performance of the Work; (iii) execute, modify, supplement or terminate this Agreement; or (iv) do any other act which waives any right or privilege of Owner under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized shall not be binding upon Owner.

17. ENTIRE AGREEMENT. This Agreement, together with the Contract Documents, which are incorporated herein by reference, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto.

18. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 12 relating to assignment, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

19. WAIVER. No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues shall not constitute a waiver of the rights of such party.

20. NOTICE. Any notice provided for herein shall be in writing and deemed delivered when mailed prepaid, certified or registered mail, return receipt requested to the address first shown herein for the respective party to whom notice is to be given or to such other address as may be designated by either party by written notice given pursuant hereto.

21. TIME. Time is of the essence of this Agreement and each provision herein contained.

22. WORDS AND HEADINGS. Words used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section headings used herein are for convenience only and shall have no affect upon the construction or interpretation of any part of this document.

23. BONDS. Owner shall have the right to require Contractor to provide a performance bond or completion bond as a condition precedent to payment.

24. TAXES. Contractor shall bear sole and exclusive responsibility for the payment of all taxes imposed by local, state or federal law applicable to the Work, materials supplied by Contractor, payments received by Contractor and payments made by Contractor. Contractor shall be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes on the payments made to Contractor and payments made by Contractor to its employees and suppliers. Sales tax not included on permanent material.

25. DRUGS AND ALCOHOL. No illegal drugs or alcohol shall be permitted on the site. Contractors, their employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the site will be subject to immediate termination. Individuals on the site whose performance, coordination or ability to work is impaired, in the opinion of the Owner's representative, shall be subject to immediate removal from the site.

26. LIENS. Contractors shall, at all time, keep the Project and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Contractor shall indemnify, defend and hold Owner harmless from and against all claims, losses, demands, causes of action or expenses (including attorneys fees and other costs of defense incurred by Owner in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. In the event any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Contractor shall immediately cause such lien to be released and discharged and if Contractor shall fail to do so, then Owner shall have the right to pay all sums, including attorneys fees and any other costs and expenses incurred necessary to obtain such release and discharge and hold Contractor liable for the amount thereof with the right to deduct all or a portion of such sum from amounts that may be due Contractor.

27. WARRANTY. In addition to any other warranty expressly made by Contractor or implied by Law, Contractor unconditionally warrants the Work against defects in workmanship and materials for the benefit of Owner and its successors and assigns, usually a municipal corporation, road district, or quasi-governmental entity (collectively "municipality"), jurisdiction, agency or homeowners association, and Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damage and expense (including attorneys fees and other costs of defense incurred by Owner's defending against any claim or enforcing this indemnity and defense obligations) arising out of any defective condition. This warranty shall specifically ensure to the benefit of and be enforceable by Owner and the municipality or homeowners association that will ultimately own and/or govern the site of the Work. This warranty shall commence upon completion of the Work and shall continue for a period of one year (or for as may be otherwise required in the General or Special Conditions of Agreement) from the date of formal acceptance by the municipality or homeowners association. In the event that demand is made upon Contractor to perform under this warranty, Contractor, at its sole cost and expense, shall expeditiously repair or replace any defective work, whether existing because of faulty workmanship, defective equipment or materials, or from any other cause and repair or replace any damage to the work of others caused by such defective work. In the event Contractor shall fail to perform under this warranty, the party entitled to performance or the Owner shall have the right to hire other persons to correct the defective work and hold Contractor liable for the costs thereof including costs, disbursements and reasonable attorneys fees incurred in the enforcement of this provision.

28. OTHER AGREEMENTS. All Bid Documents are incorporated by reference into this Agreement. Should there now and hereafter exist one or more other agreements between the

parties, or with any affiliated corporation or company or either, concerning this or any other construction project, then a breach by Contractor under the terms of any such agreements or any provision of the Bid Documents, at the option of Owner, shall be considered a breach of this Agreement and all such agreements. In such event, Owner or its affiliates, may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.

29. CONFLICT IN CONTRACT DOCUMENTS. Should there exist a conflict of term, condition or any other matter between this Irrigation Line Construction Agreement and any other document or item comprising the Bid Documents, this Irrigation Line Construction Agreement will govern in all cases.

30. EPA-NOTICE OF INTENT. To the extent applicable, Contractor agrees to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the NPDES General permit prior to beginning construction on the project. Copies of the NOI shall be submitted to the Owner for their records. Upon completion of the project the contractor shall file Completion of NOI for Storm Water Discharges Associated with Industrial Activity under the NPDES General Permit. Copies of the completion of the NOI shall be submitted to the owner for their records.

31. MEDIATION AND ARBITRATION. In the event there is a disagreement that arises as to any matter related to the Work performed under this Agreement that is not resolved to their mutual satisfaction of the parties, then the parties agree to submit to non-binding mediation before a mutually agreed upon mediator in Travis or Williamson Counties, Texas. If non-binding mediation is not successful, the parties agree to enter into binding arbitration before a single arbitrator in Travis or Williamson Counties, Texas under the Commercial Rules of the American Arbitration Association ("AAA") to settle any and all controversies. The AAA's fees and expenses shall be shared equally by the parties. Attorneys' fees and costs of court shall be awarded as provided under the laws of the State of Texas. This Agreement shall be governed under the laws of the state of Texas.

32. GENERAL AND SPECIAL CONDITIONS. This Agreement is subject to the attached General and Special Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Avery Ranch Owners' Committee,
By: DEVELOPERS OF AVERY RANCH, LTD., A TEXAS Ltd Partnership (Member)

OWNER:

By: [signature]
Name: ROBERT D. WUNSCH
Title: PRESIDENT OF RW2 DEVELOPMENT Company LLC, A TEXAS Ltd liability Company, its GENERAL PARTNER

CONTRACTOR:

By: [signature]
Name: John Cotter
Title: Chairman

GENERAL CONDITIONS OF AGREEMENT

1.0 DEFINITION OF TERMS

1.01 OWNER, CONTRACTOR AND OWNER'S REPRESENTATIVE

The OWNER and the CONTRACTOR are those persons or organizations identified as such in the Agreement and are referred to throughout the Contract Documents as if singular in number and masculine in gender. The term OWNER'S REPRESENTATIVE means the OWNER'S agent or his duly authorized representative. The OWNER'S REPRESENTATIVE shall represent the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the OWNER'S REPRESENTATIVE and the CONTRACTOR.

1.02 CONTRACT DOCUMENTS

The Contract Documents shall consist of:

1. Signed Irrigation Line Construction Agreement
2. Change Orders and other Documents executed by OWNER and CONTRACTOR and approved by OWNER'S REPRESENTATIVE after the execution of this agreement.
3. Technical Specifications and Approved Construction Plans, including any addenda
4. Special Conditions of Agreement
5. General Conditions of Agreement
6. Bid Proposal
7. Subcontractor Agreement
7. Notice and Instructions to Bidders
8. Performance and Payment Bonds
9. Insurance policies and endorsements
10. Bid Bonds
11. All modifications thereof incorporated in any of the documents before the execution of the Agreement.

1.03 SUB-CONTRACTOR

The term Sub-contractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.

1.04 WORK

The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendents, labor, service, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the Contract Documents. Unless otherwise specified, all materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind of quality of materials. Materials or work described in words which so applied have well-known technical or trade meaning shall be held to refer to such recognized standards.

1.05 EXTRA WORK

The term "Extra Work", as used in this contract, shall be understood to mean and include all work that may be required by the OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the Work not shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR'S Proposal, except as provided under "Changes and Alterations", herein.

1.06 WORKING DAY

A "Working Day" is defined as any day, not including Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 A.M. and 6:00 P.M.

1.07 CALENDAR DAY

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

1.08 SUBSTANTIALLY COMPLETE

By the term "substantially complete", it is meant that the Work is suitable for use or the improvements of the Work are in a condition to serve its intended purposes, but still may require minor miscellaneous work and adjustment

1.09 COMPLETE AND ACCEPTED

By the term "complete and accepted", it is meant the OWNER'S REPRESENTATIVE has inspected the Work under the terms of the Contract and find the Work acceptable for its intended purpose.

2.0 RESPONSIBILITIES OF THE OWNER'S REPRESENTATIVE AND THE CONTRACTOR

2.01 OWNER-OWNER'S REPRESENTATIVE RELATIONSHIP

The OWNER OR OWNER'S REPRESENTATIVE may select a registered professional engineer, architect, or other registered professional (the "PROFESSIONAL") to assist them in reviewing Contractor's work. The PROFESSIONAL may be, but is not necessarily, the OWNER'S representative during construction. The duties, responsibilities, and limitations of authority of the PROFESSIONAL, as the OWNER'S representative during construction, are set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER or OWNER'S REPRESENTATIVE. The PROFESSIONAL OR OWNER'S REPRESENTATIVE will advise and consult with the OWNER, and all of the OWNER'S instructions to the CONTRACTOR may be issued through the OWNER'S REPRESENTATIVE.

2.02 PROFESSIONAL INSPECTION BY OWNER'S REPRESENTATIVE

The PROFESSIONAL or OWNER'S REPRESENTATIVE shall make periodic visits to the site to familiarize himself generally with the progress of the executed work and to

determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the PROFESSIONAL OR OWNER'S REPRESENTATIVE shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site
inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. PROFESSIONAL OR OWNER'S REPRESENTATIVE will report, in writing, through letter or copy of field reports, any act, error or omission of Contractor observed by either of them during the construction process which does not conform to the Contract Documents. Notwithstanding any other provision of this Agreement or any other Contract Document, neither the PROFESSIONAL nor the OWNER'S REPRESENTATIVE shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any Sub-contractor or any of the CONTRACTOR'S or Sub-contractor's agents, servants or employees or any other person, firm or corporation performing or attempting any of the work.

2.03 PAYMENTS FOR WORK

The PROFESSIONAL OR OWNER'S REPRESENTATIVE shall review CONTRACTOR'S applications for payment and supporting data, determine the amount owed to the CONTRACTOR and provide a recommendation, in writing, regarding payment to CONTRACTOR in such amounts; such recommendation of payment to CONTRACTOR constitutes a representation to the OWNER that in the professional judgment of Contractor the work has progressed to the point indicated to the best of his knowledge, information and belief. But, any payment by Owner based on Contractor's representation shall not constitute a representation by Owner that it has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

2.04 LINES AND GRADES

Unless otherwise specified, all lines and grades shall be furnished by the CONTRACTOR by a registered professional licensed surveyor (RPLS) in the State of Texas. Preparation of cut sheets, if any, shall be the responsibility of the CONTRACTOR. All lot pins, shall be carefully preserved by the CONTRACTOR, and in case of careless destruction or removal by him or his employees, or sub-contractors, shall be replaced at the CONTRACTOR'S expense.

2.05 CONTRACTOR'S DUTY AND SUPERINTENDENT

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such

work, so long as such methods do not adversely affect the completed improvements, the OWNER and OWNER'S REPRESENTATIVE being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations. Engineering, construction drawings and specifications, as well as any additional information concerning the work to be performed passing from or through the PROFESSIONAL OR OWNER'S REPRESENTATIVE, shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications, and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, and installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to persons or property, including without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including, but without limitation, the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

2.06 CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER, OWNER'S REPRESENTATIVE, or PROFESSIONAL, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

2.07 CHARACTER OF WORKMEN

The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract to do the work; and agrees that whenever the OWNER'S REPRESENTATIVE shall inform him in writing that any person on the work site are, in his opinion, incompetent, unfaithful or disorderly, Contractor shall discharge such individual from performing any of the Work and shall not again be employed on the work without the OWNER'S written consent.

2.8 CONTRACTOR'S BUILDINGS

The building of structures for a field office (if necessary), , or the erection of tents or other forms of protection, will be permitted only at such places as the OWNER'S REPRESENTATIVE shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the OWNER'S REPRESENTATIVE.

2.9 SANITATION

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the OWNER'S REPRESENTATIVE. Such facilities will meet and conform to all applicable regulations of local and state of Texas governmental entities.

2.10 SHOP DRAWINGS

If necessary, the CONTRACTOR shall submit the OWNER'S REPRESENTATIVE, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, four checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the OWNER'S REPRESENTATIVE SHALL PASS UPON THEM WITH REASONABLE PROMPTNESS MAKING DESIRED CORRECTIONS. The CONTRACTOR shall make any corrections required by the OWNER'S REPRESENTATIVE'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing, called the OWNER'S REPRESENTATIVE'S attention to such deviation at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.
Such review by the OWNER'S REPRESENTATIVE shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being expressly understood and agreed that the OWNER'S REPRESENTATIVE does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

2.11 PRELIMINARY APPROVAL

The OWNER'S REPRESENTATIVE shall not have the power to waive the obligations of this contract for the furnishing by the CONTRACTOR of good material, and of his performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the OWNER'S REPRESENTATIVE to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including, but without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the OWNER'S REPRESENTATIVE shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished, and in event the material has been once accepted by the OWNER'S REPRESENTATIVE and OWNER, such acceptance shall be binding on the OWNER, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered, taken up or removed for re-examination, by the OWNER'S REPRESENTATIVE, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; otherwise, the expense thus incurred shall be allowed as EXTRA WORK, and shall be paid for by the OWNER; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval he shall bear all expense of taking up, removing and replacing this work if so directed by the OWNER'S REPRESENTATIVE and/or OWNER.

2.12 DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part hereof, or any material brought on the site deemed by the OWNER'S REPRESENTATIVE as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the OWNER'S REPRESENTATIVE and OWNER forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract.

2.13 CHANGES AND ALTERATIONS

The CONTRACTOR further agrees that the OWNER may make such changes and alternations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quality or the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done at the unit price, if any, established for such work under this contract, except as provided for unit price items under Section 5 "Measurement and

Payment"; otherwise, such additional work shall be paid for as provided under "EXTRA WORK". In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall compensate the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3.0 GENERAL OBLIGATIONS AND RESPONSIBILITIES

3.01 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The OWNER'S REPRESENTATIVE shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications, including any addenda, without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

3.02 OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the OWNER'S REPRESENTATIVE shall not be reused, copied, or distributed except as necessary for completion of the Work and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

3.03 RIGHT OF ENTRY

The OWNER reserves the right to enter, at any and all time, property or locations on which the work herein contracted for is to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

3.04 COLLATERAL CONTRACTS

The OWNER agrees to provide by separate document or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.

3.05 DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate Contract Documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the specifications or drawings, the OWNER'S REPRESENTATIVE shall define which is intended to apply to the work.

3.06 EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT

The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

3.07 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The CONTRACTOR shall, at all times, exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, actually taken and the adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.

3.8 PERFORMANCE AND PAYMENT BONDS

Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER.

Unless otherwise approved in writing by he OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included on the CONTRACTOR'S proposal.

3.9 LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work shall be sustained and borne by the CONTRACTOR at his own cost and expense.

3.10 PROTECTION OF ADJOINING PROPERTY

The CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered which might be injured or seriously affected by any process of construction to be undertaken under this Agreement from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract; but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

3.11 PROTECTION AGAINST CLAIMS OF SUB-CONTRACTORS, LABORERS, MATERIAL MEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

The CONTRACTOR agrees that he will indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from all claims growing out of the lawful demands of Sub-contractors, laborers, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature herein above designated, have been paid, discharged or waived.

3.12 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION

The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner. The CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from any loss on account thereof, except that the OWNER shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer is specified or required by the OWNER; provided, however, if choice of alternate design, device, material or process is allowed to the CONTRACTOR, then CONTRACTOR shall indemnify and save OWNER harmless of any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR

shall be responsible for such loss unless he promptly gives such information to the OWNER.

3.13 LAWS AND ORDINANCES

The CONTRACTOR shall, at all times, observe and comply with all Federal, State and Local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim arising from the violation of such laws, ordinances, and regulations whether by the CONTRACTOR or his employees. If the CONTRACTOR observes that the plans and specifications are at variance therewith, he shall promptly notify the OWNER and OWNER'S REPRESENTATIVE in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

3.14 CERTIFICATE OF INSURANCE

Before commencing any of the work, CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER (for the Contractor and all subcontractors of the Contractor who enter the Project). Such Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the OWNER. The "Cancellation" notice of the Certificate shall be modified that the following text is deleted; the words "endeavor to " and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." CONTRACTOR shall file with the OWNER a Form B Additional Insured endorsement for the Contractor and all Subcontractors.
Contractor and Subcontractors will name each of the following entities as additional insured in the policies of insurance:
Avery Ranch Owner's Committee
R.D.W. Holdings, Inc., d/b/a Robert D. Wunsch Development,
An additional endorsement providing that he insurer waives it's rights of subrogation against Owner and any other named insured is also required.
The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all approved subcontractors providing for the same conditions listed above.

4.0 PROSECUTION AND PROGRESS

4.01 TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the OWNER'S REPRESENTATIVE may direct the time and manner of constructing the work done under this contract, so that the conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the OWNER'S REPRESENTATIVE or OWNER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

4.02 EXTENSION OF TIME

Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER, PROFESSIONAL, or OWNER'S REPRESENTATIVE, or of any employee of either, or by other CONTRACTORS employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR'S control, or by any cause which the OWNER'S REPRESENTATIVE shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the OWNER'S REPRESENTATIVE and OWNER; provided, however, that the CONTRACTOR shall give the OWNER'S REPRESENTATIVE notice in writing of the cause of such delay.

Claims for extension of time must be made in writing within seven (7) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

In case of claims for extension of time because of inclement weather in excess of normal, such extensions shall be granted only because such inclement weather prevented the execution of major critical items of work that delayed the final completion of the Contract.

The OWNER, with the assistance of the OWNER'S REPRESENTATIVE, shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgment, the findings justify such an extension of Contract Time.

Weekly construction progress meetings shall be held on site. Any requests for extensions of time for weather or other delays shall be requested in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE at that time.

5.0 MEASUREMENT AND PAYMENT

5.01 QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

5.02 ESTIMATED QUANTITIES

This Agreement, including the specifications, plans and estimates, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated

quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any indifferences which may be found between the quantities of work actually done, the material furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (25%) more than, or twenty percent (25%) less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (25%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total cost, computed on the basis of the proposal quantities and the contract bid prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under "Extra Work".

5.03 PRICE OF WORK

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole hereof in the manner and according to this Agreement.

5.04 PARTIAL PAYMENTS

The CONTRACTOR shall prepare on an OWNER approved form, and deliver to the OWNER'S REPRESENTATIVE, a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to the time payment requests are due to the OWNER. The statement shall not include the value of any materials delivered to the site unless such a request is granted by the OWNER in writing prior to submitting a statement.

Request for payment delivered to the OWNER'S REPRESENTATIVE on or before five (5) working days prior to the first day of the month shall be paid by the 25th day of the same month.

The OWNER shall pay the CONTRACTOR the total amount of the CONTRACTOR'S statement less ten percent (10%) of the amount thereof, which ten percent (10%) shall be

retained until final payment, and further less all previous payments, and further less all further sums that may be retained by the OWNER under the terms of the Agreement.

Upon substantially completion of each phase the CONTRACTOR may reduce retainage to five (5%) percent until the job is complete and accepted.

CONTRACTOR shall attach a legally notarized "Partial Release (Mechanic's Lien, Materialman's Lien, Stop Notice, Equitable Lien and Labor and Material Bond Release)", form or similar form to each pay request submitted. Copies of this affidavit are available upon request from the OWNER'S REPRESENTATIVE.

Partial payments made by the OWNER to the CONTRACTOR are moneys advanced solely for the purpose of assisting the CONTRACTOR to expedite the progress of the construction and in no way constitutes acceptance or approval of any work. All completed work covered by such partial payment shall remain the property of the CONTRACTOR and he shall be responsible for the care and protection of all materials and work upon which the payments have been made. 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 in place, and to the satisfaction of the OWNER in all details.

No retainage will be released without written consent from the OWNER until the job is "completed" and accepted in writing Owner.

5.05 SUBSTANTIALLY COMPLETE

Prior to final payment, CONTRACTOR may, in writing to OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within a reasonable time thereafter, OWNER'S REPRESENTATIVE shall make an inspection of the Project to determine the status of completion. If OWNER'S REPRESENTATIVE does not consider the Project substantially complete, he will notify the CONTRACTOR in writing giving his reasons why the Project is not substantially complete.

If OWNER'S REPRESENTATIVE considers the Project substantially complete, he will prepare and deliver to the OWNER a tentative Certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the tentative certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected; said time to be within the Contract Time.

OWNER shall have seven (7) days after receipt of the tentative certificate during which time may make written objection to OWNER'S REPRESENTATIVE as to any provisions of the certificate or attached list. If, after considering such objections, OWNER'S REPRESENTATIVE concludes that the Project is not substantially complete, he will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing stating his reasons that the Project is not substantially complete.

If, after consideration of OWNER'S objections, OWNER'S REPRESENTATIVE considers the Project Substantially Complete, he will, within fourteen (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 he believes justified after consideration of any objections from OWNER. The failure of the OWNER'S REPRESENTATIVE to include any items on such tentative list of items to be completed does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

5.06 BENEFICIAL OCCUPANCY

Beneficial occupancy shall take place when OWNER notifies CONTRACTOR, in writing, that OWNER will occupy completed Work or portions thereof, for the purpose intended. OWNER'S beneficial occupancy of any facilities so identified in Contract Documents and Plans will not be grounds for extension of Contract Time or change in Contract Price and will not be deemed an acceptance of work not completed in accordance with Contract Items or Plans.

OWNER'S beneficial occupancy of any facilities not specifically identified in Contract Documents and Plans will be in accordance with conditions agreed to prior to such use and any extra costs or delays in completion incurred and properly claimed by CONTRACTOR will be equitably adjusted with a Change Order.

Tests and instruction of OWNER'S personnel must be satisfactorily completed and OWNER shall assume responsibility for operations of facilities occupied or used except as may arise through portions of the Work not yet completed by CONTRACTOR.
Facilities substantially completed in accordance with Contract Documents and Plans which are occupied or used by OWNER prior to substantial completion of the entire Work will be defined by OWNER in a written notice to CONTRACTOR fixing the responsibility for insurance, maintenance and utilities on that part of the Work, and including a tentative list of items (punch list) to be completed or corrected before final acceptance.

5.07 FINAL COMPLETION AND ACCEPTANCE

Contractor shall notify OWNER'S REPRESENTATIVE when Substantial Completion punch list items and work are complete. OWNER'S REPRESENTATIVE will arrange a final inspection with OWNER and CONTRACTOR, and if OWNER and OWNER'S REPRESENTATIVE find the work acceptable under the Contract, and the CONTRACTOR has submitted: (1) Release of Liens for himself and all subcontractors and supplies, and (2) Maintenance Bonds, if necessary, for street, drainage, water and wastewater improvements as required, , the OWNER'S REPRESENTATIVE will issue a Letter of Final Acceptance.

5.08 FINAL PAYMENT

After CONTRACTOR has satisfactorily completed all such corrections as identified by OWNER'S REPRESENTATIVE and/or OWNER and delivered all Maintenance Bonds, certificates of inspection and as-built reproducible documents, all as required by the Contract Documents, and the Work has been accepted in writing by the Owner's

Representative, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by complete releases or waivers (satisfactory to OWNER) of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In addition to or in lieu thereof and in the Owner's discretion, CONTRACTOR may furnish receipts or releases in full including an affidavit of CONTRACTOR that the releases and receipts include all labor, services material and equipment for which lien could be field, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property in any way be responsible, have been paid or otherwise satisfied and also including consent of the surety, if any, to final payment. If any Subcontractor, materialman, fabricator or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify him against any lien.

If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, as all required by the Contract Documents, OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after receipt of the final Application for Payment, indicate in writing his approval for payment and present the Application to OWNER for payment. Thereupon, OWNER'S REPRESENTATIVE will give written notice to OWNER and CONTRACTOR that the Work is acceptable. Otherwise, he will return the Application to CONTRACTOR indicating in writing his reasons for refusing to approval final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the application. OWNER shall, within ten (10) days of presentation to him of an approved final Application for Payment, pay CONTRACTOR the amount approved by OWNER'S REPRESENTATIVE less previous payments made to the CONTRACTOR and less any Liquidated Damages for delay.

5.09 PAYMENTS WITHHELD

The OWNER may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

(a) Defective work not remedied.
(b) Claims filed or reasonable evidence indicating probably filing of claims.
(c) Failure of the CONTRACTOR to make payments properly to Sub-contractors or for material or labor.
(d) Damage to another contractor.
(e) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
(f) Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provided a Surety Bond satisfactory to the OWNER that will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

6.0 EXTRA WORK AND CLAIMS

6.01 CHANGE ORDERS

Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the OWNER'S REPRESENTATIVE for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the OWNER'S REPRESENTATIVE and executed by the OWNER, the OWNER'S REPRESENTATIVE may, in writing, instruct the CONTRACTOR to proceed with work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

6.02 MINOR CHANGES

The OWNER'S REPRESENTATIVE may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the CONTRACTOR believes that any minor change or alteration authorized by the OWNER'S REPRESENTATIVE involves Extra Work and entitles him to an increase in the Contract Price, CONTRACTOR shall make written request to the OWNER'S REPRESENTATIVE within ten (10) days of authorization by the OWNER'S REPRESENTATIVE for a written Field Order. In such case, the CONTRACTOR, by copy of his communication to the OWNER'S REPRESENTATIVE or otherwise in writing, shall advise the OWNER of his request to the OWNER'S REPRESENTATIVE for a written Field Order and that the work involved may result in an increase in the Contract Price.

Any request by the CONTRACTOR for a change in Contract Price shall be made prior to beginning the work covered by the proposed change.

6.03 EXTRA WORK

It is agreed that the basis for compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A)	By agreed unit prices; or
Method (B)	By agreed lump sum; or
Method (C)	If neither Method (A), nor Method (B) are agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said Extra Work is to be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" are hereby timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, altogether with all power, fuel

lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The OWNER'S REPRESENTATIVE and OWNER may direct the form in which records of the "actual field cost" shall be kept and the records of the accounts shall be made available to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE or OWNER may also specify, in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Association of General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendent and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR'S Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the OWNER'S REPRESENTATIVE and OWNER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the OWNER'S REPRESENTATIVE or OWNER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and the OWNER'S REPRESENTATIVE insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to arbitration, as hereinbelow provided.

6.04 TIME OF FILING CLAIMS

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the OWNER'S REPRESENTATIVE and OWNER within ten (10) days after the OWNER'S REPRESENTATIVE has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The OWNER'S REPRESENTATIVE shall reply within ten (10) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should appeal the OWNER'S REPRESENTATIVE'S decision, any demand for arbitration shall be filed with the OWNER'S REPRESENTATIVE and the OWNER in writing within ten (10) days after the date of delivery to CONTRACTOR of the OWNER'S REPRESENTATIVE'S final decision. It is further agreed that final acceptance of the work by the OWNER and the

acceptance by the CONTRACTOR of the final payment shall be a bar to any claims by the CONTRACTOR, except where noted otherwise in the Contract Documents.

6.05 ARBITRATION

Subject to the non-binding mediation requirement set forth in the Agreement, all questions of dispute under this Agreement or the Work shall be submitted to arbitration before a single arbitrator under the Commercial Rules of the American Arbitration Association. The award of the arbiters must be made in writing.

7.0 MISCELLANEOUS PROVISIONS

7.1. LIQUIDATED DAMAGES FOR DELAY

The OWNER may withhold permanently from the CONTRACTOR'S total compensation for the work under this Contract, the sum of $1,000.00 per day for every calendar day beyond the specified date per Phase agreed upon for the Substantial Completion and the Completion and Acceptance of the work herein specified and contracted for.

The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to:

(a) Any preference, priority, or allocation order duly issued by Owner or any regulatory authority;

(b) Unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and severe weather.

(c) Any delays of Subcontractors or suppliers occasioned by any of the causes specified in the subsections (a) and (b) of this article.

(d) It is understood that "Liquidated Damages" are not a penalty, but are intended to represent the actual costs per day the OWNER will incur as a result of the delay.

7.2 PERMITS

The CONTRACTOR for this project shall be responsible for obtaining all construction related permits required to complete the construction on any portion of the project covered by this contract. Owner will supply City Development permit and TNRCC Water Pollution Abatement Plan and/or Sewage Collection System Approval.

7.3 CONSTRUCTION STAKING

The construction staking will be provided by the CONTRACTOR as subsidiary to the contract.

7.4 TESTING

Testing required during the course of this project will be paid for by the OWNER, one time only. All testing and retesting required due to failure shall be paid for the CONTRACTOR.

7.5 PROTECTION OF PROPERTY AND RIGHT-OF-WAY

Before the CONTRACTOR commences work on the project, he shall inspect the site of the project to satisfy himself that all property corner pins and right-of-way pins are visible in place and clearly marked. Any pins disturbed or destroyed during the construction of improvements included in this document shall be replaced by the OWNER'S REPRESENTATIVE at the CONTRACTOR'S expense before the final payment is approved by the OWNER'S REPRESENTATIVE.

7.6 CONTINUANCE OF THE COURSE OF WORK UNDER CONTRACT

The CONTRACTOR hereby agrees that he shall work diligently and continuously toward the completion of this contract and shall not remove the labor force or equipment required for this project site to work on any other project until all the work included in the contract is complete and accepted in writing by the City of Austin.

7.7 SUBLETTING OF CONTRACT

Other than the subcontractors previously approved by Owner or Owner's Representative, the CONTRACTOR on this project shall not sublet the work to be done under this contract or any portion thereof without the expressed written consent of the OWNER.

7.8 EXCAVATION

All excavation shall be unclassified. All excess excavation which is not incorporated into the Work shall become the property of the CONTRACTOR who shall then be responsible for the disposal of said excavation. All excess excavation shall be disposed of at an approved site or facility and will supply evidence of same to OWNER as directed by the OWNER or his OWNER'S REPRESENTATIVE.

AVERY RANCH BOULEVARD EAST
WALL CONSTRUCTION AGREEMENT

This Agreement is made this the 24TH day of September, 2001, by and between PBC, INC. ("CONTRACTOR") whose address is 3580 Rocking J Road, Round Rock, Texas 78664 and AVERY RANCH OWNERS' COMMITTEE, ("OWNER"), whose address is c/o Robert D. Wunsch Development, 2414 Exposition, Suite 280, Austin, Texas 78703;

WHEREAS, Contractor wishes to perform work and/or furnish materials in the construction of approximately 7,000 linear feet of a masonry wall (the "Work") along Avery Ranch Boulevard East (the "Site") as more particularly described in the plans and specifications which are incorporated by reference.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. WORK. In accordance with all of the terms and conditions of this Agreement, Contractor shall perform and finish in a good and workmanlike manner, and shall furnish all materials, labor, equipment, supplies and tools for the Work. The Work shall be performed in accordance with this Agreement, plans, specifications, drawing and schedules for the Work, the Notice and Instructions to Bidders, the General Conditions of Agreement, the Subcontractor Agreement, the accepted Bid Proposal, and all other bid requirements set forth in the Bid Documents, all of which are on file at the offices of Owner whose address is 2414 Exposition, Ste. 280, Austin, Texas 78703, (collectively called the "Contract Documents") and incorporated into the Agreement by this reference into this Agreement. The contract price has been determined upon the basis of the accepted bid proposal (the "Proposal") submitted by Contractor to Owner and such Proposal is incorporated by reference into this Agreement. .

CONTRACTOR agrees to commence work within five (5) calendar days of the date written notice to do so shall have been given to the CONTRACTOR, and will progress therewith so that the work shall be substantially completed within:

Estimated start date: October 1, 2001.

Phase 1 ***(approximately 4,000-4,500 linear feet)***

Substantially Complete: 90 Calendar Days after start date

Complete & Accepted: 30 Calendar Days after Substantial Completion.

Phase 2 ***(approximately 1,000 linear feet)***

Substantially Complete: 30 Calendar Days after start date

Complete & Accepted: 15 Calendar Days after Substantial Completion.

Contractor will commence Phase 2 upon notice from Owner within fourteen (14) days after final acceptance of the relevant sections of the Avery Ranch Boulevard East road improvements regardless of whether the Phase 1 wall section is complete.

Phase 3 ***(approximately 2,500 linear feet)***

Substantially Complete: 90 Calendar Days after start date

Complete & Accepted: 30 Calendar Days after Substantial Completion.

Contractor will commence Phase 3 upon notice from Owner within fourteen (14) days after final acceptance of the relevant sections of the Avery Ranch Boulevard East road improvements regardless of whether the Phase 1 or 2 wall sections are complete.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the "Proposal" submitted therefore, subject to additions and deductions, as provided in the "General Conditions of the Agreement", and to make payments on account thereof as provided herein.

2. **PRICE**. Owner shall pay to Contractor for the Work the sum of **$ 95.00 per linear foot** of wall construction (subject to adjustment based on the necessary depth of the footings) for the Work (the "Contract Price"). CONTRACTOR and OWNER estimate that the Contract Price will be **$665,000** based on the estimated aggregate length of the wall totaling 7,000 linear feet. However, the final Contract Price will be based on the actual aggregate length of the wall in linear feet multiplied by **$95.00 per linear foot** (as adjusted for footing depth). Change orders will be in accordance with the accepted bid proposal, if applicable.

3. **PAYMENT SCHEDULE.** Payments, less ten percent (10%) retainage shall be made based on the progress of the Contractor in completion of the Work subject to the following conditions:

Final payment to Contractor shall be made following completion of the Work. The making of final payment to Contractor shall not be construed as acceptance of the Work or waiver of any rights of Owner under this Agreement and shall not relieve Contractor of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement or the Contract Documents, Owner shall not be obligated to make any payment to Contractor if and as long as any one or more of the following conditions exist:

(a) Contractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement;

(b) Contractor has failed to furnish to Owner invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Owner;

(c) Any part of a payment requested is attributable to work which is defective or not performed in accordance with this Agreement and the Contract Documents; provided, however, if severable, payment shall be made as to the part thereof which appears to be properly performed after due allowances for the cost of correcting the defective part of the work as estimated by Owner, less retainage;

(d) Contractor has failed to make payment promptly to any lien claimants, suppliers or subcontractors;

(e) If Owner, in its good faith judgment, determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to so complete and correct the Work.

4. PAYMENT BY CONTRACTOR. Contractor shall promptly pay in cash all labor employed and materials and services furnished and used in the performance of the Work. Owner shall have the right, whenever it shall deem such procedure advisable, to make payments due to Contractor directly to any subcontractor, material or equipment supplier, utility or transportation company, insurance company, governmental agency, or union trust fund for any work, labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Contractor has first delivered written notice to Owner of a dispute with any such person and has furnished security satisfactory to Owner insuring against claims therefrom. Any payment so made shall be credited against sums due Contractor in the same manner as if such payment had been made directly to Contractor. The provisions of this Section 4 are intended solely for the benefit of Owner and shall not insure to the benefit of any third persons, or obligate Owner or its sureties in any way to any third party.

5. PERFORMANCE OF WORK. Contractor shall commence performance of the Work within five (5) working days of receiving notice to begin (excluding Saturdays, Sundays, and Federal holidays) and shall perform the Work as quickly and thoroughly as possible. If Contractor does not begin the Work within five (5) days, or stops the Work without cause or permission, of if the Work is unreasonably delayed in the opinion of the Owner, Owner shall have the right to terminate the Agreement and replace the Contractor.

Further, if Contractor fails to perform any of its duties described in this Agreement, or in the Contract Documents, within the limits established, or if no limits are established, within forty-eight (48) hours after notice from Owner, Owner shall have the right to retain others to perform such duties, and the cost of such performance will be charged against the amount due Contractor. If the charges exceed the amount due, all payments will be withheld and Contractor shall pay Owner the excess within thirty (30) days of receipt of notice. Without limitations, charges against Contractor shall be assessed if Owner pays to complete Work not finished on time by Contractor, correct defects in the Work, pay fines or penalties arising from the Work, clean up after the Work, provide tools, material or equipment that are Contractor's obligations, repair damage to the site, obtain insurance on behalf of Contractor, pay claims indemnified by Contractor, pay taxes or legal orders that are Contractor's obligations, or pay any other amounts on behalf of Contractor.

6. FAMILIARITY WITH THE SITE. Contractor shall be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site with the plans and specifications, including any addenda to the plans and specifications. It is understood by the parties that Contractor is best able to evaluate the cost of the Work and that in arriving at the contract price it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of

this Agreement. Contractor further represents that it is fully familiar with the requirements of every governmental authority having jurisdiction over the Work and is prepared to comply with all such requirements without additional compensation. No estimates or bids of Contractor preceding this Agreement and no verbal agreements or conversation with any representative of Owner, either before or after execution of this Agreement, shall affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

7. **PROTECTION OF WORK.** Contractor shall see over and protect the Work against loss or damage from any cause and be responsible for all parts of the Work, temporary or permanent, furnished or not, until final completion. Contractor shall take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site, including, without limiting thereto, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Contractor shall bear and be liable for and Owner shall not be responsible for any loss or damage to the Work and any material, equipment, or other thing employed in the Work or placed at the site including, but not limited to, loss or damage due to theft, trespass or vandalism prior to final completion of the Work.

8a. INSURANCE. Contractor shall obtain, pay for and keep in full force and effect until final completion and acceptance of the Work, the following insurance in a company or companies satisfactory to Owner:

(i) *Business Automobile Liability Insurance.* Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement

b) 30 day Notice of Cancellation endorsement; and

c) Additional Insured endorsement.

Provide coverage in the following types and amounts:

A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

ii) *Worker's Compensation and Employer's Liability Insurance.* Worker's Compensation insurance covering all workers engaged in performance of the Work in amounts not less than minimum coverage required by law, including employer's liability coverage of not less than $100,000.00.

Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.), as amended. CONTRACTOR shall assure compliance with this statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person or subcontractor providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is

acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation; and

b) 30 day Notice of Cancellation.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

$100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

iii) *Commercial General Liability Insurance.* Provide coverage to include bodily injury and property damage liability insurance, providing coverage at least equivalent to the 1986 Commercial General Liability Insurance policy. Such policy or policies shall be written on an "occurrence" basis and maintained in minimum limits of $500,000 per occurrence with a $1,000,000 General Aggregate limit and a $500,000 Products/Completed Operations Aggregate limit.

The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project,

f) OWNER listed as an additional insured,

g) 30 day notice of cancellation in favor of OWNER,.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER.

In addition, any policy of insurance herein required shall contain a contractual liability endorsement covering indemnity and defense obligations of Contractor and indemnity and defense of Owner, and such other coverage as may reasonably required by Owner. Such policy will, among other things, make specific reference to this Agreement. Any policy obtained by Contractor insuring against loss by physical damage to any portion of the Work or to materials to be incorporated in the Work or covering Contractor's tools, supplies, machinery or equipment shall contain an endorsement providing that the insurer waives its right of subrogation against Owner and any other named insured. Nothing in this paragraph shall give or create in any third party any claim or right of action against Owner, except that which may exist irrespective of this paragraph.

The insurance required hereunder may be contained in one or more policies. Prior to commencement of any construction, Contractor shall furnish to Owner certificates or copies of

policies for the Contractor and all subcontractors of the Contractor who enter onto the Project, showing that such insurance is in force and that the premiums due have been paid and that Owner (and the owner of the Site, if other than Owner), the subcontractors of Contractor, and such other persons as Owner may direct are named as insured persons jointly with Owner in respect of any loss covered. (See conditions of agreement of this contract). Such certificates or policies shall provide that the insurance may not be canceled, terminated or modified without thirty (30) days advance written notice to Owner. A Waiver of Subrogation in favor of the Owner is required on the Worker's Compensation Insurance. The Owner shall be listed as Additional Insured on all Liability Insurance policies. Such policies shall contain any provisions for exclusion from liability other than provisions for exclusion forming a part of the standard basic unamended and unendorsed form of policy, provided, however, in no event shall any exclusion be permitted which conflicts with any coverage required by this Agreement.

CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.
If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

The insurance coverage required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

In the event of any failure of Contractor to furnish and maintain insurance required hereunder, Owner, at its option and without waiving the default of Contractor, shall have the right to obtain such insurance for and in the name of Contractor. In such event, Contractor shall pay the cost thereof upon demand (or such sums shall be withheld from that which is due to Contractor under this Agreement) and shall furnish all information required by the insurance carrier.

8b. PERFORMANCE AND PAYMENT BONDS. Bonds shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

Performance Bonds and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

The Performance Bond shall extend for the one year warranty period.

9. INDEMNITY. Contractor shall indemnify, defend and hold harmless Owners, and the owner of the site if other than owner, its employees and agents from and against any and all

claims, loss, damage or expense (including attorney's fees and other costs of defense incurred by Owner in defending against any claims or in enforcing this indemnity and defense obligation) arising from or in connection with the performance of the Work or this Agreement or any portion thereof or the failure to observe or comply with the provisions of the Agreement or the Contract Document by Contractor or any subcontractor or independent Contractor hired by Contractor or any agent or employee of any such persons, and Contractor.

Contractor waives all claims against Owner and the owner of the site if other than Owner, for damage to property and injury to persons in or about the site from any cause arising at any time including any losses caused by the negligence or gross negligence of Owner.

10. COMPLIANCE WITH LAWS. Contractor shall carefully check the drawings, plans and specifications, including any addenda, for conformity with all local, state and federal laws, codes, rules and regulations (hereinafter collectively called "Law") before commencing the Work. Contractor shall give all notices and comply with all Law bearing on the Work, including, by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the federal Occupational Safety and Health Act of 1970, as amended, and the Contractor at all times shall furnish to its agents and employees a safe place of employment. If Contractor observes any violation of Law, it shall immediately report such violation to Owner in writing. All workmanship and materials shall conform to Law and, if the Contractor performs or permits the performance of any work not in compliance with Law, it shall immediately cause such work to be redone and shall bear all costs in connection therewith. The Work, as performed, shall meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work shall meet the requirements of these governmental agencies. No work shall be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(a) The Occupational Safety and Health Administration (OSHA) has promulgated regulations ("Regulations") which are entitled OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets (MSDS) and share information about precautionary measures necessary to protect all workers on a building project.

(b) Contractor agrees as follows:

(1) Contractor will fully comply with the Regulations and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(2) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the job site.

(3) Contractor will indemnify, defend and hold Owner harmless of and from all claims, damages, liabilities and causes of action that arise from the failure of Contractor to comply with the Regulations.

(4) Contractor will assist Owner in complying with the Regulations.

(5) Contractor will not use any chemicals in its performance of the Work for Owner or incorporate any chemicals into materials or products supplied to Owner or to the property unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner, and has received a written consent of Owner to use such chemicals.

11. TERMINATION OF AGREEMENT BY OWNER. In the event that conditions arise which, in the opinion of the Owner, make it advisable for Contractor not to continue to Work, Owner may terminate this Agreement by forty-eight (48) hours prior written notice to Contractor.

Upon receipt of such notice, unless directed otherwise, Contractor shall immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Owner. Thereafter, Contractor shall do only such work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the project and to protect materials, supplies and equipment at or about the Site or in transit thereto.

On the date set for termination, the obligations of the parties to continue performance under this Agreement shall cease and Contractor shall be entitled to receive: (i) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly (subject to Owner being entitled to withhold amounts necessary to correct or repair any deficiencies in the work performed to date by Contractor); (ii) payment for materials for which it has made firm contracts, provided that materials are delivered to Owner, and (iii) payment for any other bona fide obligations assumed by Contractor prior to receipt of notice of termination, which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Owner. Payment to Contractor shall be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by law for the filing of any claims to enforce mechanics liens arising out of the Work. Notwithstanding any other provision to be contrary, termination of this Agreement shall not prejudice any claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor shall it affect Contractor's warranty and guarantee of the portion of the Work performed or relieve Contractor of its duty to correct any defective work performed or to indemnify, defend and hold Owner harmless in those instances required by this Agreement.

12. ASSIGNMENT. Contractor may not assign this Agreement or any portion thereof or any money due or which may become due without the prior written consent of Owner. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 12 shall be null and void and the assignee shall acquire no rights thereunder. Nothing shall prohibit the right of Owner to assign this Agreement or seek reimbursement of amount s paid under this Agreement from any entity, including, but not limited to, the Avery Ranch Road District.

13. DEFAULT. In addition to any other remedies available under law: (i) if Contractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (ii) if Contractor should fail to make payment to subcontractors or for material or labor; or (iii) if Contractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents to be kept and complied with by Contractor; (iv) if Contractor should be adjudged a bankrupt, file or

suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or (v) if a receiver should be appointed on account of Contractor's insolvency or otherwise; then, in any such event, Owner may, without prejudice to any other right or remedy and after giving Contractor and its surety, if any, three (3) days written notice, terminate its obligation to Contractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the amount that would be payable upon completion shall exceed the expense of completing the Work, including compensation for architectural, managerial and administrative services and a reasonable attorneys fee, if legal counsel is employed. Contractor shall be reimbursed from such excess for any costs of labor and materials incurred, and Contractor shall not be entitled to receive any other payments under this Agreement. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to Owner.

14. CLEAN UP. Contractor shall remove from the Site all scrap, trash, debris, excess materials, tools and equipment upon completion of the Work. If Contractor fails to clean up, Owner may do so after written notice to Contractor, and cost thereof shall be charged to Contractor.

15. CALL BACK RESPONSIBILITY. In connection with the performance of the Work, Contractor agrees that:

(a) it will, within forty-eight (48) hours from oral or written notice (Saturday and Sundays excluded), correct any and all deficiencies in the Work.

(b) the determination as to what constitutes a deficiency will be within the sole discretion of the Owner, which judgment shall be reasonably exercised.

(c) failure of the Contractor to make timely performance hereunder shall constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such work shall be charged to the Contractor and such cost plus a sum equal to fifteen percent (15%) thereof (which additional sum will represent an allowance for the administration by the Owner of such work) shall be charged against the account of the Contractor. In the event that the amount owing the Contractor under this Agreement at the time the Work is performed by others is less than the sum charged against its account to pay others to complete the Work, the Contractor shall remit the difference to the Owner within five (5) days following written demand for such payment. .

16. AUTHORIZED PERSONS. AVERY RANCH OWNERS' COMMITTEE, by and through its authorized agent(s), shall be the only persons with authority under this Agreement to: (i) execute change orders; (ii) allow Contractor additional time for performance of the Work; (iii) execute, modify, supplement or terminate this Agreement; or (iv) do any other act which waives any right or privilege of Owner under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized shall not be binding upon Owner.

17. ENTIRE AGREEMENT. This Agreement, together with the Contract Documents, which are incorporated herein by reference, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto.

18. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 12 relating to assignment, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

19. WAIVER. No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues shall not constitute a waiver of the rights of such party.

20. NOTICE. Any notice provided for herein shall be in writing and deemed delivered when mailed prepaid, certified or registered mail, return receipt requested to the address first shown herein for the respective party to whom notice is to be given or to such other address as may be designated by either party by written notice given pursuant hereto.

21. TIME. Time is of the essence of this Agreement and each provision herein contained.

22. WORDS AND HEADINGS. Words used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section headings used herein are for convenience only and shall have no affect upon the construction or interpretation of any part of this document.

23. BONDS. Owner shall have the right to require Contractor to provide a performance bond or completion bond as a condition precedent to payment.

24. TAXES. Contractor shall bear sole and exclusive responsibility for the payment of all taxes imposed by local, state or federal law applicable to the Work, materials supplied by Contractor, payments received by Contractor and payments made by Contractor. Contractor shall be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes on the payments made to Contractor and payments made by Contractor to its employees and suppliers. Sales tax not included on permanent material.

25. DRUGS AND ALCOHOL. No illegal drugs or alcohol shall be permitted on the site. Contractors, their employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the site will be subject to immediate termination. Individuals on the site whose performance, coordination or ability to work is impaired, in the opinion of the Owner's representative, shall be subject to immediate removal from the site.

26. LIENS. Contractors shall, at all time, keep the Project and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Contractor shall indemnify, defend and hold Owner harmless from and against all claims, losses, demands, causes of action or expenses (including attorneys fees and other costs of defense incurred by Owner in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. In the event any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Contractor shall immediately cause such lien to be released and discharged and if Contractor shall fail to do so, then Owner shall have the

right to pay all sums, including attorneys fees and any other costs and expenses incurred necessary to obtain such release and discharge and hold Contractor liable for the amount thereof with the right to deduct all or a portion of such sum from amounts that may be due Contractor.

27. WARRANTY. In addition to any other warranty expressly made by Contractor or implied by Law, for a period of one (1) year from the date Owner determines that the work is completed and final payment is made, Contractor unconditionally warrants the Work, including all materials, goods, and services against defects in workmanship and materials for the benefit of Owner and its successors and assigns, usually a municipal corporation, road district, or quasi-governmental entity (collectively "municipality"), jurisdiction, agency or homeowners association. Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damage and expense (including attorneys fees and other costs of defense incurred by Owner's defending against any claim or enforcing this indemnity and defense obligations) arising out of any defective condition. This warranty shall specifically inure to the benefit of and be enforceable by Owner and the municipality or homeowners association that will ultimately own and/or govern the site of the Work. In the event that demand is made upon Contractor to perform under this warranty, Contractor, at its sole cost and expense, shall expeditiously repair or replace any defective work, whether existing because of faulty workmanship, defective equipment or materials, or from any other cause and repair or replace any damage to the work of others caused by such defective work. In the event Contractor shall fail to perform under this warranty, the party entitled to performance or the Owner shall have the right to hire other persons to correct the defective work and hold Contractor liable for the costs thereof including costs, disbursements and reasonable attorneys fees incurred in the enforcement of this provision.

28. OTHER AGREEMENTS. All Bid Documents are incorporated by reference into this Agreement. Should there now and hereafter exist one or more other agreements between the parties, or with any affiliated corporation or company or either, concerning this or any other construction project, then a breach by Contractor under the terms of any such agreements or any provision of the Bid Documents, at the option of Owner, shall be considered a breach of this Agreement and all such agreements. In such event, Owner or its affiliates, may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.

29. CONFLICT IN CONTRACT DOCUMENTS. Should there exist a conflict of term, condition or any other matter between this Construction Agreement and any other document or item comprising the Bid Documents, this Construction Agreement will govern in all cases.

30. EPA-NOTICE OF INTENT. To the extent applicable, Contractor agrees to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the NPDES General permit prior to beginning construction on the project. Copies of the NOI shall be submitted to the Owner for their records. Upon completion of the project the contractor shall file Completion of NOI for Storm Water Discharges Associated with Industrial Activity under the NPDES General Permit. Copies of the completion of the NOI shall be submitted to the owner for their records.

31. MEDIATION AND ARBITRATION. In the event there is a disagreement that arises as to any matter related to the Work performed under this Agreement that is not resolved to their mutual satisfaction of the parties, then the parties agree to submit to non-binding mediation before a mutually agreed upon mediator in Travis or Williamson Counties, Texas. If non-binding mediation is not successful, the parties agree to enter into binding arbitration before

a single arbitrator in Travis or Williamson Counties, Texas under the Commercial Rules of the American Arbitration Association ("AAA") to settle any and all controversies. The AAA's fees and expenses shall be shared equally by the parties. Attorneys' fees and costs of court shall be awarded as provided under the laws of the State of Texas. This Agreement shall be governed under the laws of the state of Texas.

32. GENERAL CONDITIONS. This Agreement is subject to the attached General Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Avery Ranch Owners' Committee,

OWNER:

By: RWR Development Company, L.L.C.
as General Partner for Developers
of Avery Ranch, Ltd. (Member of Avery Ranch Owners' Committee)

By: Robert D. Wunsch
Name: Robert D. Wunsch
Title: President

CONTRACTOR:

By: Jed Adams
Name: Jed Adams
Title: Operations Manager

GENERAL CONDITIONS OF AGREEMENT

1.0 DEFINITION OF TERMS

1.01 OWNER, CONTRACTOR AND OWNER'S REPRESENTATIVE

The OWNER and the CONTRACTOR are those persons or organizations identified as such in the Agreement and are referred to throughout the Contract Documents as if singular in number and masculine in gender. The term OWNER'S REPRESENTATIVE means the OWNER'S agent or his duly authorized representative. The OWNER'S REPRESENTATIVE shall represent the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the OWNER'S REPRESENTATIVE and the CONTRACTOR.

1.02 CONTRACT DOCUMENTS

The Contract Documents shall consist of:

1. Signed Construction Agreement
2. Change Orders and other Documents executed by OWNER and CONTRACTOR and approved by OWNER'S REPRESENTATIVE after the execution of this agreement.
3. Technical Specifications and Approved Construction Plans, including any addenda
4. Special Conditions of Agreement, if any.
5. General Conditions of Agreement
6. Bid Proposal
7. Subcontractor Agreement
7. Notice and Instructions to Bidders
8. Performance and Payment Bonds
9. Insurance policies and endorsements
10. Bid Bonds
11. All modifications thereof incorporated in any of the documents before the execution of the Agreement.

1.03 SUB-CONTRACTOR

The term Sub-contractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.

1.04 WORK

The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendents, labor, service, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the Contract Documents. Unless otherwise specified, all materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind of quality of materials. Materials or work described in words which so applied have well-known technical or trade meaning shall be held to refer to such recognized standards.

1.05 EXTRA WORK

The term "Extra Work", as used in this contract, shall be understood to mean and include all work that may be required by the OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the Work not shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR'S Proposal, except as provided under "Changes and Alterations", herein.

1.06 WORKING DAY

A "Working Day" is defined as any day, not including Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 A.M. and 6:00 P.M.

1.07 CALENDAR DAY

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

1.08 SUBSTANTIALLY COMPLETE

By the term "substantially complete", it is meant that the Work is suitable for use or the improvements of the Work are in a condition to serve its intended purposes, but still may require minor miscellaneous work and adjustment

1.09 COMPLETE AND ACCEPTED

By the term "complete and accepted", it is meant the OWNER'S REPRESENTATIVE has inspected the Work under the terms of the Contract and find the Work acceptable for its intended purpose.

2.0 RESPONSIBILITIES OF THE OWNER'S REPRESENTATIVE AND THE CONTRACTOR

2.01 OWNER-OWNER'S REPRESENTATIVE RELATIONSHIP

The OWNER OR OWNER'S REPRESENTATIVE may select a registered professional engineer, architect, or other registered professional (the "PROFESSIONAL") to assist them in reviewing Contractor's work. The PROFESSIONAL may be, but is not necessarily, the OWNER'S representative during construction. The duties, responsibilities, and limitations of authority of the PROFESSIONAL, as the OWNER'S representative during construction, are set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER or OWNER'S REPRESENTATIVE. The PROFESSIONAL OR OWNER'S REPRESENTATIVE will advise and consult with the OWNER, and all of the OWNER'S instructions to the CONTRACTOR may be issued through the OWNER'S REPRESENTATIVE.

2.02 PROFESSIONAL INSPECTION BY OWNER'S REPRESENTATIVE

The PROFESSIONAL or OWNER'S REPRESENTATIVE shall make periodic visits to the site to familiarize himself generally with the progress of the executed work and to

determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the PROFESSIONAL OR OWNER'S REPRESENTATIVE shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. PROFESSIONAL OR OWNER'S REPRESENTATIVE will report, in writing, through letter or copy of field reports, any act, error or omission of Contractor observed by either of them during the construction process which does not conform to the Contract Documents. Notwithstanding any other provision of this Agreement or any other Contract Document, neither the PROFESSIONAL nor the OWNER'S REPRESENTATIVE shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any Sub-contractor or any of the CONTRACTOR'S or Sub-contractor's agents, servants or employees or any other person, firm or corporation performing or attempting any of the work.

2.03 PAYMENTS FOR WORK

The PROFESSIONAL OR OWNER'S REPRESENTATIVE shall review CONTRACTOR'S applications for payment and supporting data, determine the amount owed to the CONTRACTOR and provide a recommendation, in writing, regarding payment to CONTRACTOR in such amounts; such recommendation of payment to CONTRACTOR constitutes a representation to the OWNER that in the professional judgment of Contractor the work has progressed to the point indicated to the best of his knowledge, information and belief. But, any payment by Owner based on Contractor's representation shall not constitute a representation by Owner that it has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

2.04 LINES AND GRADES

Unless otherwise specified, all lines and grades shall be furnished by the CONTRACTOR by a registered professional licensed surveyor (RPLS) in the State of Texas. Preparation of cut sheets, if any, shall be the responsibility of the CONTRACTOR. All lot pins, shall be carefully preserved by the CONTRACTOR, and in case of careless destruction or removal by him or his employees, or sub-contractors, shall be replaced at the CONTRACTOR'S expense.

2.05 CONTRACTOR'S DUTY AND SUPERINTENDENT

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such

work, so long as such methods do not adversely affect the completed improvements, the OWNER and OWNER'S REPRESENTATIVE being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations. Engineering, construction drawings and specifications, as well as any additional information concerning the work to be performed passing from or through the PROFESSIONAL OR OWNER'S REPRESENTATIVE, shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications, and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, and installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to persons or property, including without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including, but without limitation, the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

2.06 CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER, OWNER'S REPRESENTATIVE, or PROFESSIONAL, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

2.07 CHARACTER OF WORKMEN

The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract to do the work; and agrees that whenever the OWNER'S REPRESENTATIVE shall inform him in writing that any person on the work site are, in his opinion, incompetent, unfaithful or disorderly, Contractor shall discharge such individual from performing any of the Work and shall not again be employed on the work without the OWNER'S written consent.

2.8 CONTRACTOR'S BUILDINGS

The building of structures for a field office (if necessary), , or the erection of tents or other forms of protection, will be permitted only at such places as the OWNER'S REPRESENTATIVE shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the OWNER'S REPRESENTATIVE.

2.9 SANITATION

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the OWNER'S REPRESENTATIVE. Such facilities will meet and conform to all applicable regulations of local and state of Texas governmental entities.

2.10 SHOP DRAWINGS

If necessary, the CONTRACTOR shall submit the OWNER'S REPRESENTATIVE, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, four checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the OWNER'S REPRESENTATIVE SHALL PASS UPON THEM WITH REASONABLE PROMPTNESS MAKING DESIRED CORRECTIONS. The CONTRACTOR shall make any corrections required by the OWNER'S REPRESENTATIVE'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing, called the OWNER'S REPRESENTATIVE'S attention to such deviation at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.
Such review by the OWNER'S REPRESENTATIVE shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being expressly understood and agreed that the OWNER'S REPRESENTATIVE does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

2.11 PRELIMINARY APPROVAL

The OWNER'S REPRESENTATIVE shall not have the power to waive the obligations of this contract for the furnishing by the CONTRACTOR of good material, and of his performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the OWNER'S REPRESENTATIVE to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including, but without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the OWNER'S REPRESENTATIVE shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished, and in event the material has been once accepted by the OWNER'S REPRESENTATIVE and OWNER, such acceptance shall be binding on the OWNER, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered, taken up or removed for re-examination, by the OWNER'S REPRESENTATIVE, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; otherwise, the expense thus incurred shall be allowed as EXTRA WORK, and shall be paid for by the OWNER; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval he shall bear all expense of taking up, removing and replacing this work if so directed by the OWNER'S REPRESENTATIVE and/or OWNER.

2.12 DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part hereof, or any material brought on the site deemed by the OWNER'S REPRESENTATIVE as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the OWNER'S REPRESENTATIVE and OWNER forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract.

2.13 CHANGES AND ALTERATIONS

The CONTRACTOR further agrees that the OWNER may make such changes and alternations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quality or the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the work can

fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done at the unit price, if any, established for such work under this contract, except as provided for unit price items under Section 5 "Measurement and Payment"; otherwise, such additional work shall be paid for as provided under "EXTRA WORK". In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall compensate the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3.0 GENERAL OBLIGATIONS AND RESPONSIBILITIES

3.01 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The OWNER'S REPRESENTATIVE shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications, including any addenda, without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

3.02 OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the OWNER'S REPRESENTATIVE shall not be reused, copied, or distributed except as necessary for completion of the Work and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

3.03 RIGHT OF ENTRY

The OWNER reserves the right to enter, at any and all time, property or locations on which the work herein contracted for is to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

3.04 COLLATERAL CONTRACTS

The OWNER agrees to provide by separate document or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.

3.05 DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate Contract Documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the specifications or drawings, the OWNER'S REPRESENTATIVE shall define which is intended to apply to the work.

3.06 EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT

The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

3.07 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The CONTRACTOR shall, at all times, exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, actually taken and the adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.

3.8 PERFORMANCE AND PAYMENT BONDS

Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER.
Unless otherwise approved in writing by he OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States.
Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included on the CONTRACTOR'S proposal.

3.9 LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work shall be sustained and borne by the CONTRACTOR at his own cost and expense.

3.10 PROTECTION OF ADJOINING PROPERTY

The CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered which might be injured or seriously affected by any process of construction to be undertaken under this Agreement from any damage or injury by reason of said process of construction; and he shall be liable for any

and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract; but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

3.11 PROTECTION AGAINST CLAIMS OF SUB-CONTRACTORS, LABORERS, MATERIAL MEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

The CONTRACTOR agrees that he will indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from all claims growing out of the lawful demands of Sub-contractors, laborers, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature herein above designated, have been paid, discharged or waived.

3.12 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION

The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner. The CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from any loss on account thereof, except that the OWNER shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer is specified or required by the OWNER; provided, however, if choice of alternate design, device, material or process is allowed to the CONTRACTOR, then CONTRACTOR shall indemnify and save OWNER harmless of any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly gives such information to the OWNER.

3.13 LAWS AND ORDINANCES

The CONTRACTOR shall, at all times, observe and comply with all Federal, State and Local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim arising from the violation of such laws, ordinances, and regulations whether by the CONTRACTOR or his employees. If the CONTRACTOR observes that the plans and specifications are at variance therewith, he shall promptly notify the OWNER and OWNER'S REPRESENTATIVE in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

3.14 CERTIFICATE OF INSURANCE

Before commencing any of the work, CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER (for the Contractor and all subcontractors of the Contractor who enter the Project). Such Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the OWNER. The "Cancellation" notice of the Certificate shall be modified that the following text is deleted; the words "endeavor to " and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." CONTRACTOR shall file with the OWNER a Form B Additional Insured endorsement for the Contractor and all Subcontractors.
Contractor and Subcontractors will name each of the following entities as additional insured in the policies of insurance:
Avery Ranch Owner's Committee
R.D.W. Holdings, Inc., d/b/a Robert D. Wunsch Development,
An additional endorsement providing that he insurer waives it's rights of subrogation against Owner and any other named insured is also required.
The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all approved subcontractors providing for the same conditions listed above.

4.0 PROGRESS

4.01 TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the OWNER'S REPRESENTATIVE may direct the time and manner of constructing the work done under this contract, so that the conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the OWNER'S REPRESENTATIVE or OWNER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

4.02 EXTENSION OF TIME

Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER, PROFESSIONAL, or OWNER'S REPRESENTATIVE, or of any employee of either, or by other CONTRACTORS employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR'S control,

or by any cause which the OWNER'S REPRESENTATIVE shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the OWNER'S REPRESENTATIVE and OWNER; provided, however, that the CONTRACTOR shall give the OWNER'S REPRESENTATIVE notice in writing of the cause of such delay.

Claims for extension of time must be made in writing within seven (7) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

In case of claims for extension of time because of inclement weather in excess of normal, such extensions shall be granted only because such inclement weather prevented the execution of major critical items of work that delayed the final completion of the Contract.

The OWNER, with the assistance of the OWNER'S REPRESENTATIVE, shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgment, the findings justify such an extension of Contract Time.

Weekly construction progress meetings shall be held on site. Any requests for extensions of time for weather or other delays shall be requested in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE at that time.

5.0 MEASUREMENT AND PAYMENT

5.01 QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

5.02 ESTIMATED QUANTITIES

This Agreement, including the specifications, plans and estimates, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any indifferences which may be found between the quantities of work actually done, the material furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (25%) more than, or twenty percent

(25%) less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (25%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total cost, computed on the basis of the proposal quantities and the contract bid prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under "Extra Work".

5.03 PRICE OF WORK

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole hereof in the manner and according to this Agreement.

5.04 PARTIAL PAYMENTS

The CONTRACTOR shall prepare on an OWNER approved form, and deliver to the OWNER'S REPRESENTATIVE, a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to the time payment requests are due to the OWNER.

Request for payment delivered to the OWNER'S REPRESENTATIVE on or before five (5) working days prior to the first day of the month shall be paid by the 25th day of the same month.

The OWNER shall pay the CONTRACTOR the total amount of the CONTRACTOR'S statement less ten percent (10%) of the amount thereof, which ten percent (10%) shall be retained until final payment, and further less all previous payments, and further less all further sums that may be retained by the OWNER under the terms of the Agreement.

Upon substantially completion of each phase the CONTRACTOR may reduce retainage to five (5%) percent until the job is complete and accepted.

CONTRACTOR shall attach a legally notarized "Partial Release (Mechanic's Lien, Materialman's Lien, Stop Notice, Equitable Lien and Labor and Material Bond Release)", form or similar form to each pay request submitted. Copies of this affidavit are available upon request from the OWNER'S REPRESENTATIVE.

Partial payments made by the OWNER to the CONTRACTOR are moneys advanced solely for the purpose of assisting the CONTRACTOR to expedite the progress of the construction and in no way constitutes acceptance or approval of any work. All completed work covered by such partial payment shall remain the property of the

CONTRACTOR and he shall be responsible for the care and protection of all materials and work upon which the payments have been made. 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 in place, and to the satisfaction of the OWNER in all details.

No retainage will be released without written consent from the OWNER until the job is "completed" and accepted in writing Owner.

5.05 SUBSTANTIALLY COMPLETE

Prior to final payment, CONTRACTOR may, in writing to OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within a reasonable time thereafter, OWNER'S REPRESENTATIVE shall make an inspection of the Project to determine the status of completion. If OWNER'S REPRESENTATIVE does not consider the Project substantially complete, he will notify the CONTRACTOR in writing giving his reasons why the Project is not substantially complete.

If OWNER'S REPRESENTATIVE considers the Project substantially complete, he will prepare and deliver to the OWNER a tentative Certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the tentative certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected; said time to be within the Contract Time.

OWNER shall have seven (7) days after receipt of the tentative certificate during which time may make written objection to OWNER'S REPRESENTATIVE as to any provisions of the certificate or attached list. If, after considering such objections, OWNER'S REPRESENTATIVE concludes that the Project is not substantially complete, he will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing stating his reasons that the Project is not substantially complete.

If, after consideration of OWNER'S objections, OWNER'S REPRESENTATIVE considers the Project Substantially Complete, he will, within fourteen (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 he believes justified after consideration of any objections from OWNER. The failure of the OWNER'S REPRESENTATIVE to include any items on such tentative list of items to be completed does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

5.06 BENEFICIAL OCCUPANCY

Beneficial occupancy shall take place when OWNER notifies CONTRACTOR, in writing, that OWNER will occupy completed Work or portions thereof, for the purpose intended. OWNER'S beneficial occupancy of any facilities so identified in Contract Documents and Plans will not be grounds for extension of Contract Time or change in

Contract Price and will not be deemed an acceptance of work not completed in accordance with Contract Items or Plans.

OWNER'S beneficial occupancy of any facilities not specifically identified in Contract Documents and Plans will be in accordance with conditions agreed to prior to such use and any extra costs or delays in completion incurred and properly claimed by CONTRACTOR will be equitably adjusted with a Change Order.

Tests and instruction of OWNER'S personnel must be satisfactorily completed and OWNER shall assume responsibility for operations of facilities occupied or used except as may arise through portions of the Work not yet completed by CONTRACTOR.
Facilities substantially completed in accordance with Contract Documents and Plans which are occupied or used by OWNER prior to substantial completion of the entire Work will be defined by OWNER in a written notice to CONTRACTOR fixing the responsibility for insurance, maintenance and utilities on that part of the Work, and including a tentative list of items (punch list) to be completed or corrected before final acceptance.

5.07 FINAL COMPLETION AND ACCEPTANCE

Contractor shall notify OWNER'S REPRESENTATIVE when Substantial Completion punch list items and work are complete. OWNER'S REPRESENTATIVE will arrange a final inspection with OWNER and CONTRACTOR, and if OWNER and OWNER'S REPRESENTATIVE find the work acceptable under the Contract, and the CONTRACTOR has submitted: (1) Release of Liens for himself and all subcontractors and supplies, and (2) Maintenance Bonds, if necessary, for street, drainage, water and wastewater improvements as required, , the OWNER'S REPRESENTATIVE will issue a Letter of Final Acceptance.

5.08 FINAL PAYMENT

After CONTRACTOR has satisfactorily completed all such corrections as identified by OWNER'S REPRESENTATIVE and/or OWNER and delivered all Maintenance Bonds, certificates of inspection and as-built reproducible documents, all as required by the Contract Documents, and the Work has been accepted in writing by the Owner's Representative, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by complete releases or waivers (satisfactory to OWNER) of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In addition to or in lieu thereof and in the Owner's discretion, CONTRACTOR may furnish receipts or releases in full including an affidavit of CONTRACTOR that the releases and receipts include all labor, services material and equipment for which lien could be field, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property in any way be responsible, have been paid or otherwise satisfied and also including consent of the surety, if any, to final payment. If any Subcontractor, materialman, fabricator or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify him against any lien.

If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, as all required by the Contract Documents, OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after receipt of the final Application for Payment, indicate in writing his approval for payment and present the Application to OWNER for payment. Thereupon, OWNER'S REPRESENTATIVE will give written notice to OWNER and CONTRACTOR that the Work is acceptable. Otherwise, he will return the Application to CONTRACTOR indicating in writing his reasons for refusing to approval final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the application. OWNER shall, within ten (10) days of presentation to him of an approved final Application for Payment, pay CONTRACTOR the amount approved by OWNER'S REPRESENTATIVE less previous payments made to the CONTRACTOR and less any Liquidated Damages for delay.

5.09 PAYMENTS WITHHELD

The OWNER may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

(a) Defective work not remedied.
(b) Claims filed or reasonable evidence indicating probably filing of claims.
(c) Failure of the CONTRACTOR to make payments properly to Sub-contractors or for material or labor.
(d) Damage to another contractor.
(e) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
(f) Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provided a Surety Bond satisfactory to the OWNER that will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

6.0 EXTRA WORK AND CLAIMS

6.01 CHANGE ORDERS

Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the OWNER'S REPRESENTATIVE for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the OWNER'S REPRESENTATIVE and executed by the OWNER, the OWNER'S REPRESENTATIVE may, in writing, instruct the CONTRACTOR to

proceed with work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

6.02 MINOR CHANGES

The OWNER'S REPRESENTATIVE may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the CONTRACTOR believes that any minor change or alteration authorized by the OWNER'S REPRESENTATIVE involves Extra Work and entitles him to an increase in the Contract Price, CONTRACTOR shall make written request to the OWNER'S REPRESENTATIVE within ten (10) days of authorization by the OWNER'S REPRESENTATIVE for a written Field Order. In such case, the CONTRACTOR, by copy of his communication to the OWNER'S REPRESENTATIVE or otherwise in writing, shall advise the OWNER of his request to the OWNER'S REPRESENTATIVE for a written Field Order and that the work involved may result in an increase in the Contract Price.

Any request by the CONTRACTOR for a change in Contract Price shall be made prior to beginning the work covered by the proposed change.

6.03 EXTRA WORK

It is agreed that the basis for compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A)	By agreed unit prices; or
Method (B)	By agreed lump sum; or
Method (C)	If neither Method (A), nor Method (B) are agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said Extra Work is to be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" are hereby timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, altogether with all power, fuel lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The OWNER'S REPRESENTATIVE and OWNER may direct the form in which records of the "actual field cost" shall be kept and the records of the accounts shall be made available to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE or OWNER may also specify, in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one

hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Association of General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendent and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR'S Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the OWNER'S REPRESENTATIVE and OWNER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the OWNER'S REPRESENTATIVE or OWNER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and the OWNER'S REPRESENTATIVE insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to arbitration, as hereinbelow provided.

6.04 *TIME OF FILING CLAIMS*

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the OWNER'S REPRESENTATIVE and OWNER within ten (10) days after the OWNER'S REPRESENTATIVE has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The OWNER'S REPRESENTATIVE shall reply within ten (10) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should appeal the OWNER'S REPRESENTATIVE'S decision, any demand for arbitration shall be filed with the OWNER'S REPRESENTATIVE and the OWNER in writing within ten (10) days after the date of delivery to CONTRACTOR of the OWNER'S REPRESENTATIVE'S final decision. It is further agreed that final acceptance of the work by the OWNER and the acceptance by the CONTRACTOR of the final payment shall be a bar to any claims by the CONTRACTOR, except where noted otherwise in the Contract Documents.

6.05 ARBITRATION

Subject to the non-binding mediation requirement set forth in the Agreement, all questions of dispute under this Agreement or the Work shall be submitted to arbitration before a single arbitrator under the Commercial Rules of the American Arbitration Association. The award of the arbiters must be made in writing.

7.0 MISCELLANEOUS PROVISIONS

7.1. LIQUIDATED DAMAGES FOR DELAY

The OWNER may withhold permanently from the CONTRACTOR'S total compensation for the work under this Contract, the sum of $1,000.00 per day for every calendar day beyond the specified date per Phase agreed upon for the Substantial Completion and the Completion and Acceptance of the work herein specified and contracted for.

The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to:

(a) Any preference, priority, or allocation order duly issued by Owner or any regulatory authority;

(b) Unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and severe weather.

(c) Any delays of Subcontractors or suppliers occasioned by any of the causes specified in the subsections (a) and (b) of this article.

(d) It is understood that "Liquidated Damages" are not a penalty, but are intended to represent the actual costs per day the OWNER will incur as a result of the delay.

7.2 PERMITS

The CONTRACTOR for this project shall be responsible for obtaining all construction related permits required to complete the construction on any portion of the project covered by this contract. Owner will supply City Development permit and TNRCC Water Pollution Abatement Plan and/or Sewage Collection System Approval.

7.3 CONSTRUCTION STAKING

The construction staking will be provided by the CONTRACTOR as subsidiary to the contract.

7.4 TESTING

Testing required during the course of this project will be paid for by the OWNER, one time only. All testing and retesting required due to failure shall be paid for the CONTRACTOR.

7.5 PROTECTION OF PROPERTY AND RIGHT-OF-WAY

Before the CONTRACTOR commences work on the project, he shall inspect the site of the project to satisfy himself that all property corner pins and right-of-way pins are visible in place and clearly marked. Any pins disturbed or destroyed during the construction of improvements included in this document shall be replaced by the OWNER'S REPRESENTATIVE at the CONTRACTOR'S expense before the final payment is approved by the OWNER'S REPRESENTATIVE.

7.6 CONTINUANCE OF THE COURSE OF WORK UNDER CONTRACT

The CONTRACTOR hereby agrees that he shall work diligently and continuously toward the completion of this contract and shall not remove the labor force or equipment required for this project site to work on any other project until all the work included in the contract is complete and accepted in writing by the City of Austin.

7.7 SUBLETTING OF CONTRACT

Other than the subcontractors previously approved by Owner or Owner's Representative, the CONTRACTOR on this project shall not sublet the work to be done under this contract or any portion thereof without the expressed written consent of the OWNER.

7.8 EXCAVATION

All excavation shall be unclassified. All excess excavation which is not incorporated into the Work shall become the property of the CONTRACTOR who shall then be responsible for the disposal of said excavation. All excess excavation shall be disposed of at an approved site or facility and will supply evidence of same to OWNER as directed by the OWNER or his OWNER'S REPRESENTATIVE.

AVERY RANCH BOULEVARD WEST
WALL CONSTRUCTION AGREEMENT

This Agreement is made this the 8TH day of August, 2001, by and between PITT BUILDING COMPANY, INC. ("CONTRACTOR") whose address is 3580 Rocking J Road, Round Rock, Texas 78664 and AVERY RANCH OWNERS' COMMITTEE, ("OWNER"), whose address is c/o Robert D. Wunsch Development, 2414 Exposition, Suite 280, Austin, Texas 78703;

WHEREAS, Contractor wishes to perform work and/or furnish materials in the construction of approximately 3,000 linear feet of a masonry wall (the "Work") along Avery Ranch Boulevard West (the "Site") as more particularly described in the plans and specifications which are incorporated by reference.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. WORK. In accordance with all of the terms and conditions of this Agreement, Contractor shall perform and finish in a good and workmanlike manner, and shall furnish all materials, labor, equipment, supplies and tools for the Work. The Work shall be performed in accordance with this Agreement, plans, specifications, drawing and schedules for the Work, the Notice and Instructions to Bidders, the General Conditions of Agreement, the Subcontractor Agreement, the accepted Bid Proposal, and all other bid requirements set forth in the Bid Documents, all of which are on file at the offices of Owner whose address is 2414 Exposition, Ste. 280, Austin, Texas 78703, (collectively called the "Contract Documents") and incorporated into the Agreement by this reference into this Agreement. The contract price has been determined upon the basis of the accepted bid proposal (the "Proposal") submitted by Contractor to Owner and such Proposal is incorporated by reference into this Agreement. .

CONTRACTOR agrees to commence work within five (5) calendar days of the date written notice to do so shall have been given to the CONTRACTOR, and will progress therewith so that the work shall be substantially completed within:

Substantially Complete: 90 Calendar Days after start date,

Complete & Accepted: 30 Calendar Days after Substantial Completion.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the "Proposal" submitted therefore, subject to additions and deductions, as provided in the "General Conditions of the Agreement", and to make payments on account thereof as provided herein.

2. PRICE. Owner shall pay to Contractor for the Work the sum of **$ 90.80 per linear foot of wall** construction for the Work (the "Contract Price"). CONTRACTOR and OWNER estimate that the Contract Price will be **$272,400** based on the estimated aggregate length of the wall totaling 3,000 linear feet. However, the final Contract Price will be based on the actual aggregate length of the wall in linear feet multiplied by $90.80 per linear foot. Change orders will be in accordance with the accepted bid proposal, if applicable.

RECORDERS MEMORANDUM
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3. **PAYMENT SCHEDULE.** Payments, less ten percent (10%) retainage shall be made based on the progress of the Contractor in completion of the Work subject to the following conditions:

Final payment to Contractor shall be made following completion of the Work. The making of final payment to Contractor shall not be construed as acceptance of the Work or waiver of any rights of Owner under this Agreement and shall not relieve Contractor of any of its obligations hereunder.

Notwithstanding any other provisions of this Agreement or the Contract Documents, Owner shall not be obligated to make any payment to Contractor if and as long as any one or more of the following conditions exist:

(a) Contractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement;

(b) Contractor has failed to furnish to Owner invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Owner;

(c) Any part of a payment requested is attributable to work which is defective or not performed in accordance with this Agreement and the Contract Documents; provided, however, if severable, payment shall be made as to the part thereof which appears to be properly performed after due allowances for the cost of correcting the defective part of the work as estimated by Owner, less retainage;

(d) Contractor has failed to make payment promptly to any lien claimants, suppliers or subcontractors;

(e) If Owner, in its good faith judgment, determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to so complete and correct the Work.

4. **PAYMENT BY CONTRACTOR.** Contractor shall promptly pay in cash all labor employed and materials and services furnished and used in the performance of the Work. Owner shall have the right, whenever it shall deem such procedure advisable, to make payments due to Contractor directly to any subcontractor, material or equipment supplier, utility or transportation company, insurance company, governmental agency, or union trust fund for any work, labor, materials, equipment, utilities, transportation, insurance premiums, taxes or the like, performed, furnished, rendered or payable in connection with the performance of the Work, unless Contractor has first delivered written notice to Owner of a dispute with any such person and has furnished security satisfactory to Owner insuring against claims therefrom. Any payment so made shall be credited against sums due Contractor in the same manner as if such payment had been made directly to Contractor. The provisions of this Section 4 are intended solely for the benefit of Owner and shall not insure to the benefit of any third persons, or obligate Owner or its sureties in any way to any third party.

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5. **PERFORMANCE OF WORK.** Contractor shall commence performance of the Work within five (5) working days of receiving notice to begin (excluding Saturdays, Sundays, and Federal holidays) and shall perform the Work as quickly and thoroughly as possible. If Contractor does not begin the Work within five (5) days, or stops the Work without cause or permission, of if the Work is unreasonably delayed in the opinion of the Owner, Owner shall have the right to terminate the Agreement and replace the Contractor.

Further, if Contractor fails to perform any of its duties described in this Agreement, or in the Contract Documents, within the limits established, or if no limits are established, within forty-eight (48) hours after notice from Owner, Owner shall have the right to retain others to perform such duties, and the cost of such performance will be charged against the amount due Contractor. If the charges exceed the amount due, all payments will be withheld and Contractor shall pay Owner the excess within thirty (30) days of receipt of notice. Without limitations, charges against Contractor shall be assessed if Owner pays to complete Work not finished on time by Contractor, correct defects in the Work, pay fines or penalties arising from the Work, clean up after the Work, provide tools, material or equipment that are Contractor's obligations, repair damage to the site, obtain insurance on behalf of Contractor, pay claims indemnified by Contractor, pay taxes or legal orders that are Contractor's obligations, or pay any other amounts on behalf of Contractor.

6. **FAMILIARITY WITH THE SITE.** Contractor shall be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site with the plans and specifications, including any addenda to the plans and specifications. It is understood by the parties that Contractor is best able to evaluate the cost of the Work and that in arriving at the contract price it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Contractor further represents that it is fully familiar with the requirements of every governmental authority having jurisdiction over the Work and is prepared to comply with all such requirements without additional compensation. No estimates or bids of Contractor preceding this Agreement and no verbal agreements or conversation with any representative of Owner, either before or after execution of this Agreement, shall affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.

7. **PROTECTION OF WORK.** Contractor shall see over and protect the Work against loss or damage from any cause and be responsible for all parts of the Work, temporary or permanent, furnished or not, until final completion. Contractor shall take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site, including, without limiting thereto, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Contractor shall bear and be liable for and Owner shall not be responsible for any loss or damage to the Work and any material, equipment, or other thing employed in the Work or placed at the site including, but not limited to, loss or damage due to theft, trespass or vandalism prior to final completion of the Work.

8a. INSURANCE. Contractor shall obtain, pay for and keep in full force and effect until final completion and acceptance of the Work, the following insurance in a company or companies satisfactory to Owner:

RECORDERS MEMORANDUM
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(i) *Business Automobile Liability Insurance.* Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement

b) 30 day Notice of Cancellation endorsement; and

c) Additional Insured endorsement.

Provide coverage in the following types and amounts:

A minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage.

ii) *Worker's Compensation and Employer's Liability Insurance.* Worker's Compensation insurance covering all workers engaged in performance of the Work in amounts not less than minimum coverage required by law, including employer's liability coverage of not less than $100,000.00.

Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.), as amended. CONTRACTOR shall assure compliance with this statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person or subcontractor providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation; and

b) 30 day Notice of Cancellation.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

$100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

iii) *Commercial General Liability Insurance.* Provide coverage to include bodily injury and property damage liability insurance, providing coverage at least equivalent to the 1986 Commercial General Liability Insurance policy. Such policy or policies shall be written on an "occurrence" basis and maintained in minimum limits of $500,000 per occurrence with a $1,000,000 General Aggregate limit and a $500,000 Products/Completed Operations Aggregate limit.

The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

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b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project,

f) OWNER listed as an additional insured,

g) 30 day notice of cancellation in favor of OWNER,.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER.

In addition, any policy of insurance herein required shall contain a contractual liability endorsement covering indemnity and defense obligations of Contractor and indemnity and defense of Owner, and such other coverage as may reasonably required by Owner. Such policy will, among other things, make specific reference to this Agreement. Any policy obtained by Contractor insuring against loss by physical damage to any portion of the Work or to materials to be incorporated in the Work or covering Contractor's tools, supplies, machinery or equipment shall contain an endorsement providing that the insurer waives its right of subrogation against Owner and any other named insured. Nothing in this paragraph shall give or create in any third party any claim or right of action against Owner, except that which may exist irrespective of this paragraph.

The insurance required hereunder may be contained in one or more policies. Prior to commencement of any construction, Contractor shall furnish to Owner certificates or copies of policies for the Contractor and all subcontractors of the Contractor who enter onto the Project, showing that such insurance is in force and that the premiums due have been paid and that Owner (and the owner of the Site, if other than Owner), the subcontractors of Contractor, and such other persons as Owner may direct are named as insured persons jointly with Owner in respect of any loss covered. (See conditions of agreement of this contract). Such certificates or policies shall provide that the insurance may not be canceled, terminated or modified without thirty (30) days advance written notice to Owner. A Waiver of Subrogation in favor of the Owner is required on the Worker's Compensation Insurance. The Owner shall be listed as Additional Insured on all Liability Insurance policies. Such policies shall contain any provisions for exclusion from liability other than provisions for exclusion forming a part of the standard basic unamended and unendorsed form of policy, provided, however, in no event shall any exclusion be permitted which conflicts with any coverage required by this Agreement.

CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

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All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.
If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance. CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

The insurance coverage required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

In the event of any failure of Contractor to furnish and maintain insurance required hereunder, Owner, at its option and without waiving the default of Contractor, shall have the right to obtain such insurance for and in the name of Contractor. In such event, Contractor shall pay the cost thereof upon demand (or such sums shall be withheld from that which is due to Contractor under this Agreement) and shall furnish all information required by the insurance carrier.

8b. PERFORMANCE AND PAYMENT BONDS. Bonds shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business

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Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

Performance Bonds and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

The Performance Bond shall extend for the one year warranty period.

9. INDEMNITY. Contractor shall indemnify, defend and hold harmless Owners, and the owner of the site if other than owner, its employees and agents from and against any and all claims, loss, damage or expense (including attorney's fees and other costs of defense incurred by Owner in defending against any claims or in enforcing this indemnity and defense obligation) arising from or in connection with the performance of the Work or this Agreement or any portion thereof or the failure to observe or comply with the provisions of the Agreement or the Contract Document by Contractor or any subcontractor or independent Contractor hired by Contractor or any agent or employee of any such persons, and Contractor.

Contractor waives all claims against Owner and the owner of the site if other than Owner, for damage to property and injury to persons in or about the site from any cause arising at any time including any losses caused by the negligence or gross negligence of Owner.

10. COMPLIANCE WITH LAWS. Contractor shall carefully check the drawings, plans and specifications, including any addenda, for conformity with all local, state and federal laws, codes, rules and regulations (hereinafter collectively called "Law") before commencing the Work. Contractor shall give all notices and comply with all Law bearing on the Work, including, by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the federal Occupational Safety and Health Act of 1970, as amended, and the Contractor at all times shall furnish to its agents and employees a safe place of employment. If Contractor observes any violation of Law, it shall immediately report such violation to Owner in writing. All workmanship and materials shall conform to Law and, if the Contractor performs or permits the performance of any work not in compliance with Law, it shall immediately cause such work to be redone and shall bear all costs in connection therewith. The Work, as performed,

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shall meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work shall meet the requirements of these governmental agencies. No work shall be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(a) The Occupational Safety and Health Administration (OSHA) has promulgated regulations ("Regulations") which are entitled OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets (MSDS) and share information about precautionary measures necessary to protect all workers on a building project.

(b) Contractor agrees as follows:

(1) Contractor will fully comply with the Regulations and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(2) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the job site.

(3) Contractor will indemnify, defend and hold Owner harmless of and from all claims, damages, liabilities and causes of action that arise from the failure of Contractor to comply with the Regulations.

(4) Contractor will assist Owner in complying with the Regulations.

(5) Contractor will not use any chemicals in its performance of the Work for Owner or incorporate any chemicals into materials or products supplied to Owner or to the property unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner, and has received a written consent of Owner to use such chemicals.

11. TERMINATION OF AGREEMENT BY OWNER. In the event that conditions arise which, in the opinion of the Owner, make it advisable for Contractor not to continue to Work, Owner may terminate this Agreement by forty-eight (48) hours prior written notice to Contractor.

Upon receipt of such notice, unless directed otherwise, Contractor shall immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Owner. Thereafter, Contractor shall do only such work as may be necessary to preserve and protect that portion of the Work which has been incorporated into the project and to protect materials, supplies and equipment at or about the Site or in transit thereto.

On the date set for termination, the obligations of the parties to continue performance under this Agreement shall cease and Contractor shall be entitled to receive: (i) compensation for the portion of the Work already performed with the Contract Price being prorated accordingly (subject to Owner being entitled to withhold amounts necessary to correct or repair any

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deficiencies in the work performed to date by Contractor); (ii) payment for materials for which it has made firm contracts, provided that materials are delivered to Owner, and (iii) payment for any other bona fide obligations assumed by Contractor prior to receipt of notice of termination, which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Owner. Payment to Contractor shall be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by law for the filing of any claims to enforce mechanics liens arising out of the Work. Notwithstanding any other provision to be contrary, termination of this Agreement shall not prejudice any claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor shall it affect Contractor's warranty and guarantee of the portion of the Work performed or relieve Contractor of its duty to correct any defective work performed or to indemnify, defend and hold Owner harmless in those instances required by this Agreement.

12. ASSIGNMENT. Contractor may not assign this Agreement or any portion thereof or any money due or which may become due without the prior written consent of Owner. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 12 shall be null and void and the assignee shall acquire no rights thereunder. Nothing shall prohibit the right of Owner to assign this Agreement or seek reimbursement of amount s paid under this Agreement from any entity, including, but not limited to, the Avery Ranch Road District.

13. DEFAULT. In addition to any other remedies available under law: (i) if Contractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workmen or proper materials for the Work; or (ii) if Contractor should fail to make payment to subcontractors or for material or labor; or (iii) if Contractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents to be kept and complied with by Contractor; (iv) if Contractor should be adjudged a bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or (v) if a receiver should be appointed on account of Contractor's insolvency or otherwise; then, in any such event, Owner may, without prejudice to any other right or remedy and after giving Contractor and its surety, if any, three (3) days written notice, terminate its obligation to Contractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the amount that would be payable upon completion shall exceed the expense of completing the Work, including compensation for architectural, managerial and administrative services and a reasonable attorneys fee, if legal counsel is employed. Contractor shall be reimbursed from such excess for any costs of labor and materials incurred, and Contractor shall not be entitled to receive any other payments under this Agreement. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to Owner.

14. CLEAN UP. Contractor shall remove from the Site all scrap, trash, debris, excess materials, tools and equipment upon completion of the Work. If Contractor fails to clean up, Owner may do so after written notice to Contractor, and cost thereof shall be charged to Contractor.

15. CALL BACK RESPONSIBILITY. In connection with the performance of the Work, Contractor agrees that:

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(a) it will, within forty-eight (48) hours from oral or written notice (Saturday and Sundays excluded), correct any and all deficiencies in the Work.

(b) the determination as to what constitutes a deficiency will be within the sole discretion of the Owner, which judgment shall be reasonably exercised.

(c) failure of the Contractor to make timely performance hereunder shall constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such work shall be charged to the Contractor and such cost plus a sum equal to fifteen percent (15%) thereof (which additional sum will represent an allowance for the administration by the Owner of such work) shall be charged against the account of the Contractor. In the event that the amount owing the Contractor under this Agreement at the time the Work is performed by others is less than the sum charged against its account to pay others to complete the Work, the Contractor shall remit the difference to the Owner within five (5) days following written demand for such payment. .

16. AUTHORIZED PERSONS. AVERY RANCH OWNERS' COMMITTEE, by and through its authorized agent(s), shall be the only persons with authority under this Agreement to: (i) execute change orders; (ii) allow Contractor additional time for performance of the Work; (iii) execute, modify, supplement or terminate this Agreement; or (iv) do any other act which waives any right or privilege of Owner under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized shall not be binding upon Owner.

17. ENTIRE AGREEMENT. This Agreement, together with the Contract Documents, which are incorporated herein by reference, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto.

18. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 12 relating to assignment, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

19. WAIVER. No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues shall not constitute a waiver of the rights of such party.

20. NOTICE. Any notice provided for herein shall be in writing and deemed delivered when mailed prepaid, certified or registered mail, return receipt requested to the address first shown herein for the respective party to whom notice is to be given or to such other address as may be designated by either party by written notice given pursuant hereto.

21. TIME. Time is of the essence of this Agreement and each provision herein contained.

22. WORDS AND HEADINGS. Words used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section

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headings used herein are for convenience only and shall have no affect upon the construction or interpretation of any part of this document.

23. BONDS. Owner shall have the right to require Contractor to provide a performance bond or completion bond as a condition precedent to payment.

24. TAXES. Contractor shall bear sole and exclusive responsibility for the payment of all taxes imposed by local, state or federal law applicable to the Work, materials supplied by Contractor, payments received by Contractor and payments made by Contractor. Contractor shall be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self-employment taxes, social security taxes and other taxes on the payments made to Contractor and payments made by Contractor to its employees and suppliers. Sales tax not included on permanent material.

25. DRUGS AND ALCOHOL. No illegal drugs or alcohol shall be permitted on the site. Contractors, their employees, agents, subcontractors or suppliers in possession of illegal drugs or alcohol on the site will be subject to immediate termination. Individuals on the site whose performance, coordination or ability to work is impaired, in the opinion of the Owner's representative, shall be subject to immediate removal from the site.

26. LIENS. Contractors shall, at all time, keep the Project and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Contractor shall indemnify, defend and hold Owner harmless from and against all claims, losses, demands, causes of action or expenses (including attorneys fees and other costs of defense incurred by Owner in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. In the event any claim is filed to enforce any laborers, materialmen, mechanics, or other similar lien arising out of or relating to the Work, Contractor shall immediately cause such lien to be released and discharged and if Contractor shall fail to do so, then Owner shall have the right to pay all sums, including attorneys fees and any other costs and expenses incurred necessary to obtain such release and discharge and hold Contractor liable for the amount thereof with the right to deduct all or a portion of such sum from amounts that may be due Contractor.

27. WARRANTY. In addition to any other warranty expressly made by Contractor or implied by Law, for a period of one (1) year from the date Owner determines that the work is completed and final payment is made, Contractor unconditionally warrants the Work, including all materials, goods, and services against defects in workmanship and materials for the benefit of Owner and its successors and assigns, usually a municipal corporation, road district, or quasi-governmental entity (collectively "municipality"), jurisdiction, agency or homeowners association. Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damage and expense (including attorneys fees and other costs of defense incurred by Owner's defending against any claim or enforcing this indemnity and defense obligations) arising out of any defective condition. This warranty shall specifically inure to the benefit of and be enforceable by Owner and the municipality or homeowners association that will ultimately own and/or govern the site of the Work. In the event that demand is made upon Contractor to perform under this warranty, Contractor, at its sole cost and expense, shall expeditiously repair or replace any defective work, whether existing because of faulty workmanship, defective equipment or materials, or from any other cause and repair or replace any damage to the work of others caused by such defective work. In the event Contractor shall fail to perform under this warranty, the party entitled to performance or the Owner shall have the right to hire other persons to correct the

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defective work and hold Contractor liable for the costs thereof including costs, disbursements and reasonable attorneys fees incurred in the enforcement of this provision.

28. OTHER AGREEMENTS. All Bid Documents are incorporated by reference into this Agreement. Should there now and hereafter exist one or more other agreements between the parties, or with any affiliated corporation or company or either, concerning this or any other construction project, then a breach by Contractor under the terms of any such agreements or any provision of the Bid Documents, at the option of Owner, shall be considered a breach of this Agreement and all such agreements. In such event, Owner or its affiliates, may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.

29. CONFLICT IN CONTRACT DOCUMENTS. Should there exist a conflict of term, condition or any other matter between this ~~Irrigation Line~~ Construction Agreement and any other document or item comprising the Bid Documents, this ~~Irrigation Line~~ Construction Agreement will govern in all cases.

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30. EPA-NOTICE OF INTENT. To the extent applicable, Contractor agrees to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under the NPDES General permit prior to beginning construction on the project. Copies of the NOI shall be submitted to the Owner for their records. Upon completion of the project the contractor shall file Completion of NOI for Storm Water Discharges Associated with Industrial Activity under the NPDES General Permit. Copies of the completion of the NOI shall be submitted to the owner for their records.

31. MEDIATION AND ARBITRATION. In the event there is a disagreement that arises as to any matter related to the Work performed under this Agreement that is not resolved to their mutual satisfaction of the parties, then the parties agree to submit to non-binding mediation before a mutually agreed upon mediator in Travis or Williamson Counties, Texas. If non-binding mediation is not successful, the parties agree to enter into binding arbitration before a single arbitrator in Travis or Williamson Counties, Texas under the Commercial Rules of the American Arbitration Association ("AAA") to settle any and all controversies. The AAA's fees and expenses shall be shared equally by the parties. Attorneys' fees and costs of court shall be awarded as provided under the laws of the State of Texas. This Agreement shall be governed under the laws of the state of Texas.

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32. GENERAL CONDITIONS. This Agreement is subject to the attached General Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Avery Ranch Owners' Committee,
By: _____, President RWL Development Company, L.L.C. As General Partner For Developers of Avery Ranch, Ltd.

OWNER:

By: _____
Name: Robert D. Dunsch
Title: Member

CONTRACTOR:

By: _____
Name: Jed Adams
Title: Operations Manager

GENERAL CONDITIONS OF AGREEMENT

1.0 DEFINITION OF TERMS

1.01 OWNER, CONTRACTOR AND OWNER'S REPRESENTATIVE

The OWNER and the CONTRACTOR are those persons or organizations identified as such in the Agreement and are referred to throughout the Contract Documents as if singular in number and masculine in gender. The term OWNER'S REPRESENTATIVE means the OWNER'S agent or his duly authorized representative. The OWNER'S REPRESENTATIVE shall represent the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the OWNER'S REPRESENTATIVE and the CONTRACTOR.

1.02 CONTRACT DOCUMENTS

The Contract Documents shall consist of:

1. Signed Construction Agreement
2. Change Orders and other Documents executed by OWNER and CONTRACTOR and approved by OWNER'S REPRESENTATIVE after the execution of this agreement.
3. Technical Specifications and Approved Construction Plans, including any addenda
4. Special Conditions of Agreement, if any.
5. General Conditions of Agreement
6. Bid Proposal
7. Subcontractor Agreement
7. Notice and Instructions to Bidders
8. Performance and Payment Bonds
9. Insurance policies and endorsements
10. Bid Bonds
11. All modifications thereof incorporated in any of the documents before the execution of the Agreement.

1.03 SUB-CONTRACTOR

The term Sub-contractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.

1.04 WORK

The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendents, labor, service, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the Contract Documents. Unless otherwise specified, all materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind of quality of materials. Materials or work described in words which so applied have well-known technical or trade meaning shall be held to refer to such recognized standards.

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1.05 EXTRA WORK

The term "Extra Work", as used in this contract, shall be understood to mean and include all work that may be required by the OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the Work not shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR'S Proposal, except as provided under "Changes and Alterations", herein.

1.06 WORKING DAY

A "Working Day" is defined as any day, not including Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 A.M. and 6:00 P.M.

1.07 CALENDAR DAY

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

1.08 SUBSTANTIALLY COMPLETE

By the term "substantially complete", it is meant that the Work is suitable for use or the improvements of the Work are in a condition to serve its intended purposes, but still may require minor miscellaneous work and adjustment

1.09 COMPLETE AND ACCEPTED

By the term "complete and accepted", it is meant the OWNER'S REPRESENTATIVE has inspected the Work under the terms of the Contract and find the Work acceptable for its intended purpose.

2.0 RESPONSIBILITIES OF THE OWNER'S REPRESENTATIVE AND THE CONTRACTOR

2.01 OWNER-OWNER'S REPRESENTATIVE RELATIONSHIP

The OWNER OR OWNER'S REPRESENTATIVE may select a registered professional engineer, architect, or other registered professional (the "PROFESSIONAL") to assist them in reviewing Contractor's work. The PROFESSIONAL may be, but is not necessarily, the OWNER'S representative during construction. The duties, responsibilities, and limitations of authority of the PROFESSIONAL, as the OWNER'S representative during construction, are set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER or OWNER'S REPRESENTATIVE. The PROFESSIONAL OR OWNER'S REPRESENTATIVE will advise and consult with the OWNER, and all of the OWNER'S instructions to the CONTRACTOR may be issued through the OWNER'S REPRESENTATIVE.

2.02 PROFESSIONAL INSPECTION BY OWNER'S REPRESENTATIVE

The PROFESSIONAL or OWNER'S REPRESENTATIVE shall make periodic visits to the site to familiarize himself generally with the progress of the executed work and to

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determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the PROFESSIONAL OR OWNER'S REPRESENTATIVE shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. PROFESSIONAL OR OWNER'S REPRESENTATIVE will report, in writing, through letter or copy of field reports, any act, error or omission of Contractor observed by either of them during the construction process which does not conform to the Contract Documents. Notwithstanding any other provision of this Agreement or any other Contract Document, neither the PROFESSIONAL nor the OWNER'S REPRESENTATIVE shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any Sub-contractor or any of the CONTRACTOR'S or Sub-contractor's agents, servants or employees or any other person, firm or corporation performing or attempting any of the work.

2.03 PAYMENTS FOR WORK

The PROFESSIONAL OR OWNER'S REPRESENTATIVE shall review CONTRACTOR'S applications for payment and supporting data, determine the amount owed to the CONTRACTOR and provide a recommendation, in writing, regarding payment to CONTRACTOR in such amounts; such recommendation of payment to CONTRACTOR constitutes a representation to the OWNER that in the professional judgment of Contractor the work has progressed to the point indicated to the best of his knowledge, information and belief. But, any payment by Owner based on Contractor's representation shall not constitute a representation by Owner that it has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

2.04 LINES AND GRADES

Unless otherwise specified, all lines and grades shall be furnished by the CONTRACTOR by a registered professional licensed surveyor (RPLS) in the State of Texas. Preparation of cut sheets, if any, shall be the responsibility of the CONTRACTOR. All lot pins, shall be carefully preserved by the CONTRACTOR, and in case of careless destruction or removal by him or his employees, or sub-contractors, shall be replaced at the CONTRACTOR'S expense.

2.05 CONTRACTOR'S DUTY AND SUPERINTENDENT

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such

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work, so long as such methods do not adversely affect the completed improvements, the OWNER and OWNER'S REPRESENTATIVE being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations. Engineering, construction drawings and specifications, as well as any additional information concerning the work to be performed passing from or through the PROFESSIONAL OR OWNER'S REPRESENTATIVE, shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications, and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, and installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to persons or property, including without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including, but without limitation, the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the PROFESSIONAL or OWNER'S REPRESENTATIVE, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

2.06 CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER, OWNER'S REPRESENTATIVE, or PROFESSIONAL, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

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2.07 CHARACTER OF WORKMEN

The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract to do the work; and agrees that whenever the OWNER'S REPRESENTATIVE shall inform him in writing that any person on the work site are, in his opinion, incompetent, unfaithful or disorderly, Contractor shall discharge such individual from performing any of the Work and shall not again be employed on the work without the OWNER'S written consent.

2.8 CONTRACTOR'S BUILDINGS

The building of structures for a field office (if necessary), , or the erection of tents or other forms of protection, will be permitted only at such places as the OWNER'S REPRESENTATIVE shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the OWNER'S REPRESENTATIVE.

2.9 SANITATION

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the OWNER'S REPRESENTATIVE. Such facilities will meet and conform to all applicable regulations of local and state of Texas governmental entities.

2.10 SHOP DRAWINGS

If necessary, the CONTRACTOR shall submit the OWNER'S REPRESENTATIVE, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, four checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the OWNER'S REPRESENTATIVE SHALL PASS UPON THEM WITH REASONABLE PROMPTNESS MAKING DESIRED CORRECTIONS. The CONTRACTOR shall make any corrections required by the OWNER'S REPRESENTATIVE'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing, called the OWNER'S REPRESENTATIVE'S attention to such deviation at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.
Such review by the OWNER'S REPRESENTATIVE shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being expressly understood and agreed that the OWNER'S REPRESENTATIVE does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

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2.11 PRELIMINARY APPROVAL

The OWNER'S REPRESENTATIVE shall not have the power to waive the obligations of this contract for the furnishing by the CONTRACTOR of good material, and of his performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the OWNER'S REPRESENTATIVE to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including, but without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the OWNER'S REPRESENTATIVE shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished, and in event the material has been once accepted by the OWNER'S REPRESENTATIVE and OWNER, such acceptance shall be binding on the OWNER, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered, taken up or removed for re-examination, by the OWNER'S REPRESENTATIVE, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; otherwise, the expense thus incurred shall be allowed as EXTRA WORK, and shall be paid for by the OWNER; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval he shall bear all expense of taking up, removing and replacing this work if so directed by the OWNER'S REPRESENTATIVE and/or OWNER.

2.12 DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part hereof, or any material brought on the site deemed by the OWNER'S REPRESENTATIVE as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the OWNER'S REPRESENTATIVE and OWNER forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract.

2.13 CHANGES AND ALTERATIONS

The CONTRACTOR further agrees that the OWNER may make such changes and alternations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quality or the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the work can

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fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done at the unit price, if any, established for such work under this contract, except as provided for unit price items under Section 5 "Measurement and Payment"; otherwise, such additional work shall be paid for as provided under "EXTRA WORK". In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall compensate the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3.0 GENERAL OBLIGATIONS AND RESPONSIBILITIES

3.01 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The OWNER'S REPRESENTATIVE shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications, including any addenda, without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

3.02 OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the OWNER'S REPRESENTATIVE shall not be reused, copied, or distributed except as necessary for completion of the Work and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

3.03 RIGHT OF ENTRY

The OWNER reserves the right to enter, at any and all time, property or locations on which the work herein contracted for is to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

3.04 COLLATERAL CONTRACTS

The OWNER agrees to provide by separate document or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.

3.05 DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate Contract Documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the specifications or drawings, the OWNER'S REPRESENTATIVE shall define which is intended to apply to the work.

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3.06 EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT

The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

3.07 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The CONTRACTOR shall, at all times, exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, actually taken and the adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.

3.8 PERFORMANCE AND PAYMENT BONDS

Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER.
Unless otherwise approved in writing by he OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States.
Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included on the CONTRACTOR'S proposal.

3.9 LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work shall be sustained and borne by the CONTRACTOR at his own cost and expense.

3.10 PROTECTION OF ADJOINING PROPERTY

The CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered which might be injured or seriously affected by any process of construction to be undertaken under this Agreement from any damage or injury by reason of said process of construction; and he shall be liable for any

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and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract; but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

3.11 PROTECTION AGAINST CLAIMS OF SUB-CONTRACTORS, LABORERS, MATERIAL MEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

The CONTRACTOR agrees that he will indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from all claims growing out of the lawful demands of Sub-contractors, laborers, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature herein above designated, have been paid, discharged or waived.

3.12 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION

The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner. The CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE harmless from any loss on account thereof, except that the OWNER shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer is specified or required by the OWNER; provided, however, if choice of alternate design, device, material or process is allowed to the CONTRACTOR, then CONTRACTOR shall indemnify and save OWNER harmless of any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly gives such information to the OWNER.

3.13 LAWS AND ORDINANCES

The CONTRACTOR shall, at all times, observe and comply with all Federal, State and Local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER, PROFESSIONAL, and OWNER'S REPRESENTATIVE against any claim arising from the violation of such laws, ordinances, and regulations whether by the CONTRACTOR or his employees. If the CONTRACTOR observes that the plans and specifications are at variance therewith, he shall promptly notify the OWNER and OWNER'S REPRESENTATIVE in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

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3.14 CERTIFICATE OF INSURANCE

Before commencing any of the work, CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER (for the Contractor and all subcontractors of the Contractor who enter the Project). Such Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the OWNER. The "Cancellation" notice of the Certificate shall be modified that the following text is deleted; the words "endeavor to " and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." CONTRACTOR shall file with the OWNER a Form B Additional Insured endorsement for the Contractor and all Subcontractors.
Contractor and Subcontractors will name each of the following entities as additional insured in the policies of insurance:
Avery Ranch Owner's Committee
R.D.W. Holdings, Inc., d/b/a Robert D. Wunsch Development,
An additional endorsement providing that he insurer waives it's rights of subrogation against Owner and any other named insured is also required.
The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all approved subcontractors providing for the same conditions listed above.

4.0 PROGRESS

4.01 TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the OWNER'S REPRESENTATIVE may direct the time and manner of constructing the work done under this contract, so that the conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the OWNER'S REPRESENTATIVE or OWNER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

4.02 EXTENSION OF TIME

Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER, PROFESSIONAL, or OWNER'S REPRESENTATIVE, or of any employee of either, or by other CONTRACTORS employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR'S control,

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or by any cause which the OWNER'S REPRESENTATIVE shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the OWNER'S REPRESENTATIVE and OWNER; provided, however, that the CONTRACTOR shall give the OWNER'S REPRESENTATIVE notice in writing of the cause of such delay.

Claims for extension of time must be made in writing within seven (7) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

In case of claims for extension of time because of inclement weather in excess of normal, such extensions shall be granted only because such inclement weather prevented the execution of major critical items of work that delayed the final completion of the Contract.

The OWNER, with the assistance of the OWNER'S REPRESENTATIVE, shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in its judgment, the findings justify such an extension of Contract Time.

Weekly construction progress meetings shall be held on site. Any requests for extensions of time for weather or other delays shall be requested in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE at that time.

5.0 MEASUREMENT AND PAYMENT

5.01 QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

5.02 ESTIMATED QUANTITIES

This Agreement, including the specifications, plans and estimates, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any indifferences which may be found between the quantities of work actually done, the material furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (25%) more than, or twenty percent

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(25%) less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (25%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total cost, computed on the basis of the proposal quantities and the contract bid prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under "Extra Work".

5.03 PRICE OF WORK

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole hereof in the manner and according to this Agreement.

5.04 PARTIAL PAYMENTS

The CONTRACTOR shall prepare on an OWNER approved form, and deliver to the OWNER'S REPRESENTATIVE, a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to the time payment requests are due to the OWNER. ~~The statement shall not include the value of any materials delivered to the site unless such a request is granted by the OWNER in writing prior to submitting a statement.~~

Request for payment delivered to the OWNER'S REPRESENTATIVE on or before five (5) working days prior to the first day of the month shall be paid by the 25th day of the same month.

The OWNER shall pay the CONTRACTOR the total amount of the CONTRACTOR'S statement less ten percent (10%) of the amount thereof, which ten percent (10%) shall be retained until final payment, and further less all previous payments, and further less all further sums that may be retained by the OWNER under the terms of the Agreement.

Upon substantially completion of each phase the CONTRACTOR may reduce retainage to five (5%) percent until the job is complete and accepted.

CONTRACTOR shall attach a legally notarized "Partial Release (Mechanic's Lien, Materialmen's Lien, Stop Notice, Equitable Lien and Labor and Material Bond Release)", form or similar form to each pay request submitted. Copies of this affidavit are available upon request from the OWNER'S REPRESENTATIVE.

Partial payments made by the OWNER to the CONTRACTOR are moneys advanced solely for the purpose of assisting the CONTRACTOR to expedite the progress of the construction and in no way constitutes acceptance or approval of any work. All

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completed work covered by such partial payment shall remain the property of the CONTRACTOR and he shall be responsible for the care and protection of all materials and work upon which the payments have been made. 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 in place, and to the satisfaction of the OWNER in all details.

No retainage will be released without written consent from the OWNER until the job is "completed" and accepted in writing Owner.

5.05 SUBSTANTIALLY COMPLETE

Prior to final payment, CONTRACTOR may, in writing to OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within a reasonable time thereafter, OWNER'S REPRESENTATIVE shall make an inspection of the Project to determine the status of completion. If OWNER'S REPRESENTATIVE does not consider the Project substantially complete, he will notify the CONTRACTOR in writing giving his reasons why the Project is not substantially complete.

If OWNER'S REPRESENTATIVE considers the Project substantially complete, he will prepare and deliver to the OWNER a tentative Certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the tentative certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected; said time to be within the Contract Time.

OWNER shall have seven (7) days after receipt of the tentative certificate during which time may make written objection to OWNER'S REPRESENTATIVE as to any provisions of the certificate or attached list. If, after considering such objections, OWNER'S REPRESENTATIVE concludes that the Project is not substantially complete, he will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing stating his reasons that the Project is not substantially complete.

If, after consideration of OWNER'S objections, OWNER'S REPRESENTATIVE considers the Project Substantially Complete, he will, within fourteen (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 he believes justified after consideration of any objections from OWNER. The failure of the OWNER'S REPRESENTATIVE to include any items on such tentative list of items to be completed does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

5.06 BENEFICIAL OCCUPANCY

Beneficial occupancy shall take place when OWNER notifies CONTRACTOR, in writing, that OWNER will occupy completed Work or portions thereof, for the purpose intended. OWNER'S beneficial occupancy of any facilities so identified in Contract

RECORDERS MEMORANDUM
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Documents and Plans will not be grounds for extension of Contract Time or change in Contract Price and will not be deemed an acceptance of work not completed in accordance with Contract Items or Plans.

OWNER'S beneficial occupancy of any facilities not specifically identified in Contract Documents and Plans will be in accordance with conditions agreed to prior to such use and any extra costs or delays in completion incurred and properly claimed by CONTRACTOR will be equitably adjusted with a Change Order.

Tests and instruction of OWNER'S personnel must be satisfactorily completed and OWNER shall assume responsibility for operations of facilities occupied or used except as may arise through portions of the Work not yet completed by CONTRACTOR. Facilities substantially completed in accordance with Contract Documents and Plans which are occupied or used by OWNER prior to substantial completion of the entire Work will be defined by OWNER in a written notice to CONTRACTOR fixing the responsibility for insurance, maintenance and utilities on that part of the Work, and including a tentative list of items (punch list) to be completed or corrected before final acceptance.

5.07 FINAL COMPLETION AND ACCEPTANCE

Contractor shall notify OWNER'S REPRESENTATIVE when Substantial Completion punch list items and work are complete. OWNER'S REPRESENTATIVE will arrange a final inspection with OWNER and CONTRACTOR, and if OWNER and OWNER'S REPRESENTATIVE find the work acceptable under the Contract, and the CONTRACTOR has submitted: (1) Release of Liens for himself and all subcontractors and supplies, and (2) Maintenance Bonds, if necessary, for street, drainage, water and wastewater improvements as required, , the OWNER'S REPRESENTATIVE will issue a Letter of Final Acceptance.

5.08 FINAL PAYMENT

After CONTRACTOR has satisfactorily completed all such corrections as identified by OWNER'S REPRESENTATIVE and/or OWNER and delivered all Maintenance Bonds, certificates of inspection and as-built reproducible documents, all as required by the Contract Documents, and the Work has been accepted in writing by the Owner's Representative, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by complete releases or waivers (satisfactory to OWNER) of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In addition to or in lieu thereof and in the Owner's discretion, CONTRACTOR may furnish receipts or releases in full including an affidavit of CONTRACTOR that the releases and receipts include all labor, services material and equipment for which lien could be field, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property in any way be responsible, have been paid or otherwise satisfied and also including consent of the surety, if any, to final payment. If any Subcontractor, materialman, fabricator or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify him against any lien.

RECORDERS MEMORANDUM
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If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, as all required by the Contract Documents, OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after receipt of the final Application for Payment, indicate in writing his approval for payment and present the Application to OWNER for payment. Thereupon, OWNER'S REPRESENTATIVE will give written notice to OWNER and CONTRACTOR that the Work is acceptable. Otherwise, he will return the Application to CONTRACTOR indicating in writing his reasons for refusing to approval final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the application. OWNER shall, within ten (10) days of presentation to him of an approved final Application for Payment, pay CONTRACTOR the amount approved by OWNER'S REPRESENTATIVE less previous payments made to the CONTRACTOR and less any Liquidated Damages for delay.

5.09 PAYMENTS WITHHELD

The OWNER may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

(a) Defective work not remedied.
(b) Claims filed or reasonable evidence indicating probably filing of claims.
(c) Failure of the CONTRACTOR to make payments properly to Sub-contractors or for material or labor.
(d) Damage to another contractor.
(e) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
(f) Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provided a Surety Bond satisfactory to the OWNER that will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

6.0 EXTRA WORK AND CLAIMS

6.01 CHANGE ORDERS

Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the OWNER'S REPRESENTATIVE for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the OWNER'S REPRESENTATIVE and executed by the OWNER, the OWNER'S REPRESENTATIVE may, in writing, instruct the CONTRACTOR to

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proceed with work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

6.02 MINOR CHANGES

The OWNER'S REPRESENTATIVE may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the CONTRACTOR believes that any minor change or alteration authorized by the OWNER'S REPRESENTATIVE involves Extra Work and entitles him to an increase in the Contract Price, CONTRACTOR shall make written request to the OWNER'S REPRESENTATIVE within ten (10) days of authorization by the OWNER'S REPRESENTATIVE for a written Field Order. In such case, the CONTRACTOR, by copy of his communication to the OWNER'S REPRESENTATIVE or otherwise in writing, shall advise the OWNER of his request to the OWNER'S REPRESENTATIVE for a written Field Order and that the work involved may result in an increase in the Contract Price.

Any request by the CONTRACTOR for a change in Contract Price shall be made prior to beginning the work covered by the proposed change.

6.03 EXTRA WORK

It is agreed that the basis for compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A) By agreed unit prices; or
Method (B) By agreed lump sum; or
Method (C) If neither Method (A), nor Method (B) are agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said Extra Work is to be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" are hereby timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, altogether with all power, fuel lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The OWNER'S REPRESENTATIVE and OWNER may direct the form in which records of the "actual field cost" shall be kept and the records of the accounts shall be made available to the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE or OWNER may also specify, in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one

RECORDERS MEMORANDUM
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hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Association of General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendent and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR'S Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the OWNER'S REPRESENTATIVE and OWNER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the OWNER'S REPRESENTATIVE or OWNER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and the OWNER'S REPRESENTATIVE insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to arbitration, as hereinbelow provided.

6.04 TIME OF FILING CLAIMS

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the OWNER'S REPRESENTATIVE and OWNER within ten (10) days after the OWNER'S REPRESENTATIVE has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The OWNER'S REPRESENTATIVE shall reply within ten (10) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should appeal the OWNER'S REPRESENTATIVE'S decision, any demand for arbitration shall be filed with the OWNER'S REPRESENTATIVE and the OWNER in writing within ten (10) days after the date of delivery to CONTRACTOR of the OWNER'S REPRESENTATIVE'S final decision. It is further agreed that final acceptance of the work by the OWNER and the acceptance by the CONTRACTOR of the final payment shall be a bar to any claims by the CONTRACTOR, except where noted otherwise in the Contract Documents.

6.05 ARBITRATION

Subject to the non-binding mediation requirement set forth in the Agreement, all questions of dispute under this Agreement or the Work shall be submitted to arbitration before a single arbitrator under the Commercial Rules of the American Arbitration Association. The award of the arbiters must be made in writing.

7.0 MISCELLANEOUS PROVISIONS

RECORDERS MEMORANDUM
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7.1. LIQUIDATED DAMAGES FOR DELAY

The OWNER may withhold permanently from the CONTRACTOR'S total compensation for the work under this Contract, the sum of $1,000.00 per day for every calendar day beyond the specified date per Phase agreed upon for the Substantial Completion and the Completion and Acceptance of the work herein specified and contracted for.

The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to:

(a) Any preference, priority, or allocation order duly issued by Owner or any regulatory authority;

(b) Unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and severe weather.

(c) Any delays of Subcontractors or suppliers occasioned by any of the causes specified in the subsections (a) and (b) of this article.

(d) It is understood that "Liquidated Damages" are not a penalty, but are intended to represent the actual costs per day the OWNER will incur as a result of the delay.

7.2 PERMITS

The CONTRACTOR for this project shall be responsible for obtaining all construction related permits required to complete the construction on any portion of the project covered by this contract. Owner will supply City Development permit and TNRCC Water Pollution Abatement Plan and/or Sewage Collection System Approval.

7.3 CONSTRUCTION STAKING

The construction staking will be provided by the CONTRACTOR as subsidiary to the contract.

7.4 TESTING

Testing required during the course of this project will be paid for by the OWNER, one time only. All testing and retesting required due to failure shall be paid for the CONTRACTOR.

7.5 PROTECTION OF PROPERTY AND RIGHT-OF-WAY

Before the CONTRACTOR commences work on the project, he shall inspect the site of the project to satisfy himself that all property corner pins and right-of-way pins are visible in place and clearly marked. Any pins disturbed or destroyed during the construction of improvements included in this document shall be replaced by the OWNER'S REPRESENTATIVE at the CONTRACTOR'S expense before the final payment is approved by the OWNER'S REPRESENTATIVE.

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7.6 CONTINUANCE OF THE COURSE OF WORK UNDER CONTRACT

The CONTRACTOR hereby agrees that he shall work diligently and continuously toward the completion of this contract and shall not remove the labor force or equipment required for this project site to work on any other project until all the work included in the contract is complete and accepted in writing by the City of Austin.

7.7 SUBLETTING OF CONTRACT

Other than the subcontractors previously approved by Owner or Owner's Representative, the CONTRACTOR on this project shall not sublet the work to be done under this contract or any portion thereof without the expressed written consent of the OWNER.

7.8 EXCAVATION

All excavation shall be unclassified. All excess excavation which is not incorporated into the Work shall become the property of the CONTRACTOR who shall then be responsible for the disposal of said excavation. All excess excavation shall be disposed of at an approved site or facility and will supply evidence of same to OWNER as directed by the OWNER or his OWNER'S REPRESENTATIVE.

RECORDER'S MEMORANDUM
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FILE
BLVD EAST

CONTRACT DOCUMENTS

FOR

PAVING AND DRAINAGE IMPROVEMENTS AVERY RANCH BOULEVARD EAST

Prepared for:

Avery Ranch Owner's Committee
2414 Exposition Boulevard, Suite 280
Austin, Texas 78703

Prepared by:

Cook-Steinman & Associates
3018 North Lamar, Suite 200
Austin, Texas 78705
(512) 454-6777

August 20, 2000
CSA Project No. 200-02b

Project Manual For

PAVING AND DRAINAGE IMPROVEMENTS
Avery Ranch Boulevard East

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August 20, 2000

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SPECIFICATIONS

City Standard Technical Specifications (not included in this manual)

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Series 1800 - Private Development

1800S	09/29/99	Construction Requirements and Procedures
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	Date
Special Provisions to City Standard Technical Specifications	06/25/00

Special Specifications

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Avery Ranch Boulevard East

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End

Sealed bids, in duplicate, addressed to **Avery Ranch Owner's Committee** will be received at Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705 until **2:00 p.m., Thursday September 14, 2000.** Any bid received after this time will be returned to bidder unopened. The bids will then be publicly opened and read for:

Construction of:

Paving and Drainage Improvements
Avery Ranch Boulevard East

Consisting of the installation of paving and drainage improvements associated with the construction of approximately 10,600 linear feet of four (4) lane divided roadway, associated drainage infrastructure, 1,000 lf of 8 inch wastewater line, one wet pond and six sedimentation filtration ponds.

Each BID shall be accompanied by a Bidder's Bond, Certified Check or Cashier's Check drawn on a bank in Travis County or counties bordering Travis County, in an amount no less than five percent of the total amount bid, as a guarantee that the successful bidder will enter into a proper Contract and execute Bonds and Guaranty on the forms provided within ten days after the date Contract Documents are received by the CONTRACTOR. **The envelope containing the bid shall be addressed to the Avery Ranch Owner's Committee and indicate clearly on the front that it is a bid for "AVERY RANCH BOULEVARD EAST, PAVING AND DRAINAGE IMPROVEMENTS".** *Submitted Bids shall be good for a period of ninety (90) calendar days.*

The successful bidder must furnish within ten calendar (10) days after the date of Notice of Award is received by the CONTRACTOR, PERFORMANCE and PAYMENT BONDS on the forms furnished with the BID DOCUMENTS in an amount at least equal to the Contract price, from a surety company holding a license from the State of Texas to act as a surety. The surety company must have a minimum Best Key Rating of "B".

State Statutes including wage and hour provisions and contract regulations must be adhered to as they relate to this project. Contractors will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

Bid documents may be obtained at the office of Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705, (512) 454-6777 ext. 27, upon payment of $100.00 (non-refundable) for each set, payable to Cook-Steinman & Associates, Inc..

Copies of the Bid Documents may be examined at the following locations:

- Cook-Steinman & Associates, 3018 North Lamar, Suite 200, Austin, Texas 78705

A MANDATORY PRE-BID CONFERENCE will be held at Cook-Steinman & Associates at the address shown above at **2:00 p.m., Wednesday August 30, 2000.** Attendance at this pre-bid conference is a prerequisite for having an acceptable bid and is limited to only responsible representatives of bona fide prospective bidders. All attendees must sign an attendance log giving individual name, firm represented, address and telephone number. No attendee may represent more than one firm for the purpose of satisfying this mandatory pre-bid conference attendance *requirement.* **ONLY BIDS RECEIVED FROM BIDDERS WHO HAVE ATTENDED THE PRE-BID CONFERENCE WILL BE CONSIDERED.** Proposals from firms not attending the mandatory pre-bid conference will be returned unopened and shall not be considered for the Contract award.

END

1. Defined Terms.

Terms used in these Instruction to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - One who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office - The office from which the Bid Document are to be issued and where the bidding procedures are to be administered.

1.3. Successful Bidder - The lowest, responsible and responsive Bidder to whom Owner (on the basis of the Owner's evaluation as hereinafter provided) makes an award.

2. Copies of Bid Documents.

2.1. Complete sets of the Bid Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the issuing office. If identified in the Invitation to Bid, as refundable, the deposit will be refunded to each document holder of record who returns a complete set of Bid Document in good condition within ten calendar days after opening the Bids.

2.2. Complete sets of Bid Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

2.3. Owner and Engineer in making copies of Bid Documents available on the above terms do so only for the *purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.*

3. Qualifications of Bidders.

3.1. Contractor shall submit with the Bid, the required Section 00110 Bidder Information.

3.2. If requested by the Owner, Contractor shall be prepared to submit, within five working days of the request, a notarized financial statement, financial data or other information and references sufficiently comprehensive to permit an appraisal of his current financial condition.

4. *Examination of Contract Documents and Site.*

4.1. It is the responsibility of each Bidder before submitting a Bid to:

4.1.1. Examine thoroughly the Contract Documents and other related data identified in the Bid Documents (including "technical data" referred to below);

4.1.2. Visit the site to become familiar with and satisfy Bidders as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3. Consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4. Study and carefully correlate Bidder's knowledge and observations with the Contract Documents and other such regulated data; and

4.1.5. Promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and other such related documents.

4.2. Reference is made to Section 00220 Geotechnical Data or the Special Conditions for identification of:

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by Engineering in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.3. Copies of such reports and drawings will be made available by Owner to any Bidder on request. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof.

4.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing and unanticipated conditions appear in paragraphs 4.2 of the General Conditions.

4.5. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bids for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6. On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former condition upon completion of such explorations, investigations, tests and studies.

4.7. Reference is made to the Supplementary General Conditions and/or Special Conditions for the identification of the general nature of work that is to be performed at the site by Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to or more copies of Contract Documents (other than portions thereof related to price) for such work.

4.8. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. Availability of Lands for Work

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. Interpretations and Addenda.

6.1. All questions about the meaning or intent of the Bid Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bid Documents. Questions received less than five working days prior to the date for opening Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2. Addenda may also be issued to modify the Bid Documents as deemed advisable by Owner or Engineer.

7. Bid Security.

7.1. Each Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of Bidder's maximum Bid price and in the form of a certified check, cashiers check or an acceptable bid bond with Power of Attorney.

7.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within ten days after the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the thirty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within five days after the Bid opening.

8. Contract Times.

The number of days within which, or the dates by which, the Work is to be substantially completed and/or ready for final completion are set forth in the Agreement or incorporated therein by reference to the attached Bid Form.

9. Liquidated Damages.

Provisions for liquidated damages, if any, are set forth in the Bid Form and/or Agreement.

10. Substitute and "Or-Equal" Items.

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.2.4. of the General Conditions .

11. Subcontractors, Suppliers and Others.

11.1. If the Supplementary General Conditions and/or Special Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner, then the apparent Successful Bidder, and any other Bidder so requested, shall within five days after request by Owner, submit to Owner, a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for

which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in the Bid price.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in the General Conditions.

11.2. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

12. Bid Form and Affidavits.

12.1. The Bid Form is included with the Bid Document; additional copies may be obtained from Engineer (or the Issuing Office).

12.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.

12.3. Bids by corporations must be executed in the corporate name by the president or a Vice-President (or other corporate office accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

12.5. All names must be typed or printed in black ink below the signature.

12.6. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12.7. The address and telephone number for communications regarding the Bid must be shown.

12.8. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 12.3 above. State contractor license number, if any, must also be known.

12.9 Section 00400, Non-Collusion Affidavit shall accompany the bid form.

13. Submission of Bids.

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

14. Modification and Withdrawal of Bids.

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

15. Opening of Bids.

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

16. Bids to Remain Subject to Acceptance.

All bids will remain subject to acceptance for ninety (90) days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. Award of Contract.

17.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is non responsible or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

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

17.3. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identify of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary General Conditions and/or Special Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to Notice of Award.

17.4. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5. If the contract is to be awarded, it will be awarded to lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

18. Contract Security.

Paragraph 5.1 of the General Conditions and paragraph 5.4.1 of the Supplementary General Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed agreement to Owner, it must be accompanied by the required performance and payment Bonds.

19. Signing of Agreement.

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and Certificate of Insurance. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. Prebid Conference.

A mandatory prebid conference will be held at the time and location specified in Section 00020 Invitation To Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

21. Sales and Use Taxes.

Project shall be considered as exempt from Texas State Sales and Use Taxes on materials and equipment for bid items relating to paving, water, wastewater, stormwater collection, erosion and sedimentation control, and water quality controls. Said taxes shall not be included in the Contract Price. Refer to Supplementary General Conditions for additional information (if any).

22. Retainage.

Provisions concerning Retainage and Contractor's rights to deposit securities in lieu of Retainage are set forth in Article 14 of the General Conditions.

23. Disqualification of Bidders.

The following causes may be considered as sufficient for the disqualification of a bidder and the rejection of their proposal:

a. More than one proposal for the same work from an individual, firm, partnership or corporation.
b. Evidence of collusion among bidders.
c. Poor performance in the execution of work under previous contracts.
d. For being in arrears on existing contracts, in litigation with the OWNER, or having defaulted on a previous contract.
e. Not filling out the Non-Collusion Affidavit, Section 00400.

END

The Bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name J. C. EVANS CONSTRUCTION CO. INC.
2. Address P. O. Box 9647, Austin Tx 78766
3. Phone Number (512) 244-1400
4. Type of Firm: ( ) Individual ( ) Partnership (✓) Corporation
5. Corporation organized under the laws of the State of Tx - 1955
6. List the names and addresses of all members of the firm or names and titles of all officers of the corporation.

   Blake A. Kuhlman, President

   Duane B. McGlauflin, Senior Vice President

7. Number of Years Experience 46
8. List at least three (3) projects completed of similar nature:

	$ Contract Amount	ENGINEER	Date Complete	Name & Address of Owner
a.	3.9 M	Huffcut & Assoc	7/99	Metrotech A&B c/o Quentin Corp.
b.	3.4 M	Burg & Partners	7/99	Harris Ridge Blvd c/o Parmer South 97 Stassney Lane - C.O.A
c.	3.8M	Camp Dresser McKee	12/97	

9. Has your firm completed all prior contracts? ✓ Yes ____ No

   If no, submit details. ____

10. Payment of taxes, in the State of Tx

11. List all jobs you performed in which a trench failure injury occurred:

NONE

12. List the name of the person, firm or corporation that will be executing the payment and performance bonds:

USF&G c/o Agent
SGP of Tx, Inc
P.O. Box 2291
Austin, Tx 78768-2291

13. If requested by the OWNER, the Bidder shall submit a notarized financial statement, financial data or other information and references sufficiently comprehensive to permit an appraisal of his current financial conditions.

END

Excavation/ Underground Utilities Recently Completed Projects

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
THE HILLS OF LAKEWAY PHASE 10	Toll Brothers, Inc. PBS & J	466,733	07/00
PARK WEST @ CIRCLE C	RH Development/ Park West CC Longaro & Clarke	1,692,439	08/00
SENDERA SOUTH 4A AND 4B	Continental Homes of TX LP Lockwood Engineers	1,223,233	08/00
THE VINEYARD AT BLOCKHOUSE STREETS	Continental Homes of TX LP Gray Jansing & Associates	277,758	09/00
GRANDVIEW HILLS UTILITY	Tomen-America Inc. Bury & Partners	1,835,000	08/00
STORAGE WORLD AUSTIN	ANDCO Construction	433,000	08/00
HEB PFLUGERVILLE SITE	Williams Development	1,165,209	08/00
SHORELINE VILLAGE APT SITE	Carleton Construction Inc. Cunningham Allen Inc.	1,347,276	08/00
SUN CITY MEGAHOOD 3 CLEARING	Del Webb of Texas LP Turner Collie & Braden	141,740	06/00
HARRIS BRANCH NE SECTOR	Austin HB Residential Cook Steinman & Associates, Inc.	674,062	07/00
CAT HOLLOW A5 AND A6	Great Oak Development Gray Jansing & Associates	1,536,000	06/00
MACONDA PARK OFFSITE	Highland Resources	302,449	04/00
STONE OAK PHASE 2, SECTION 2	Continental Homes of Texas LP KC Engineering	674,317	04/00
HORIZON PARK SECTION TWO	Centex Homes Carlson Brigance & Doering	1,502,764	04/00
LAKE POINT SECTION 7, PHS 1	West Travis County MUD 7 c/o SWTC, Ltd. Malone/ Wheeler, Inc.	1,180,000	03/00
SUNSET VALLEY MEADOWS	Sunset Valley Meadows LP Bury & Pittman	1,641,447	02/00
SENDERA SOUTH SECTION 3	Continental Homes of Texas LP Lockwood Engineers	627,266	01/00
STORAGE WORLD SITE	ANDCO Construction J.L. Wilson & Associates	420,000	01/00

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EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
THE PARKE AT TRAVIS COUNTRY	Morrison Homes Longaro & Clarke	1,033,000	01/00
OAK BROOK SECTION 4B	RH Homes of Texas LP Gray Jansing & Associates, Inc.	835,162	01/00
THE LODGE @ MERRILLTOWN	Ocampo Partners Ltd. Jungman & Laffere	412,780	12/99
GRAND MESA SUBDIVISION	The Lookout Group	1,185,260	01/00
HORIZON PARK SECTION ONE	Centex Homes Carlson Brigance & Doering	1,064,000	12/99
STONE OAK PHASE 1, SECTION 2	Continental Homes of Texas LP	500,000	12/99
STONE OAK PHASE 1, SECTION 3	KC Engineering, Inc.	428,674	12/99
STONE OAK PHASE 2, SECTION 1	KC Engineering, Inc.	896,187	01/00
STONE OAK PHASE 1, SECTION 4	KC Engineering, Inc.	1,014,000	02/00
STONE OAK AMENITY CENTER	KC Engineering, Inc.	155,435	01/00
WASSON MINI STORAGE SITE	Ramco Internantional c/o Ivan Williams	412,709	11/99
LAKEWIND ESTATES	Toll Brothers, Inc. Cunningham-Allen, Inc.	1,934,116	12/99
GO WEST APARTMENT SITE	Westwood Builders 25, LP Cunningham Allen, Inc.	2,339,000	12/99
WATERS EDGE APARTMENT SITE	Larry Peel Company Jungman - Laffere	1,188,382	12/99
SUMMIT AT WEST RIM	Penta Development Corporation Gray Jansing & Associates	2,100,000	12/99
HOLT TRUCK FACILITY	Hooker Contracting, Inc.	511,289	12/99
SENDERA SOUTH SECTION 2	Continental Homes of Texas Lockwood Engineering	1,134,163	12/99
FOUR POINTS DRIVE	P-WB Joint Venture Cook- Steinman & Associates	975,000	10/99
BRADFIELD SECTION 2	Capitol Pacific Holdings LLC Carter & Burgess Inc.	1,263,000	10/99
NORTHSHORE DEVELOPMENT	Silvercreek One Ltd. Loomis and Moore	1,880,000	10/99

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EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
SOUTHLAND OAKS 4F AND 4D	RH of Texas, LP	1,031,000	09/99
SOUTHLAND OAKS 4C	RH of Texas, LP Carlson, Brigance, & Doering	815,066	08/99
OAK BROOK TWO, PHASE B	RH of Texas LP Gray Jansing & Associates, Inc.	791,851	08/99
WESTMINSTER GLEN 1C,1D,1E Dry Utilities Included	MaBe, Inc. Cunningham-Allen, Inc.	1,483,000	08/99
PRESERVE AT STONE OAK 1, 5	KC Engineering, Inc.	1,058,000	07/99
METROTECH PHASES A & B	Quentin Corporation Huffcut and Associates, Inc.	3,900,000	07/99
CAT HOLLOW SECTION A-4	Great Oaks Development LP Gray Jansing & Associates, Inc.	1,500,000	06/99
PARMER SOUTH INFRASTRUCTURE 24-Inch WL/ Harris Ridge Improv.	Parmer South 97 Ltd Bury & Pittman, Inc.	3,400,000	07/99
MERRILLTOWN TOWN HOMES Site Grading and Utilities	Ocampo Partners, Ltd. Jungman & Laffere	2,965,000	05/99
MILLWOOD SECTION 40B	Continental Homes of Texas LP Carlson, Brigance & Doering, Inc.	772,000	03/99
RIVER OAKS @ WESTLAKE	Toll Brothers, Inc. Cunningham Allen, Inc.	1,300,000	03/99
ABIA TERMINAL ACCESS ROAD	City of Austin/ NAPT	11,000,000	04/99
OAKBROOK SECTION 3	Scott Felder Homes LP Gray Jansing & Associates Inc.	1,283,000	03/99
BRADFIELD VILLAGE ONE	Capitol Pacific Holdings	1,172,000	01/99
RANCH AT CYPRESS CREEK 9 Dry Utilities Included	Pulte Homes of Texas LP JadCo/ Randal Jones Engineering, Inc.	1,000,000	01/99
HILL COUNTRY PHASE 2B	Morrison Homes H. W. Curington/ RMD & Company	343,439	01/99
LAKE POINT PHASE 4 Includes dry utilties	Bon Terre-B, Ltd Bury & Pittman,, Inc.	2,000,000	11/98
HEB AUSTIN NO. 21 SITE	HEB Construction Group	2,507,039	11/98
SHADY HOLLOW WEST Includes dry utilities	Paratus/ Harker Shady Hollow West Ltd. Urban Design Group, Inc.	870,000	11/98

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
VISTA OAKS SECTION 4A Streets	Vista Development Associates Huffcut & Associates	187,000	07/98
THE PARKE SECTION 5 Includes dry utilites	Tomen-Parke, Inc. Bury & Pittman, Inc.	869,000	08/98
ABIA RUNWAY PAVING WEST	City of Austin/ NAPT	300,000	07/98
SUN CITY GOLF COURSE 2 Clearing	Del Webb Tx Ltd Partnership Turner Collie & Braden	640,000	07/98
LAKEWAY APARTMENT SITES Phase 10 Townhomes Green Garden Homes Enclave at Treehaven Garden at Lakeside	Toll Brothers, Inc. Cook Steinman & Associates	1,400,000	05/98
PARK CENTRAL DEVELOPMENT	The Palladium Group Baker Aiklen	1,900,000	04/98
PRESTON OAKS SECTION 3	Milburn Homes Carlson Engineering & Associates	442,000	04/98
NORTH POINT 1 SECTIONS 1 & 2	Pacifica Houston, Inc. Espey, Huston & Assoc.	463,000	04/98
SUN CITY N36/N37A (ROW Clearing , Utilities)	Del E. Webb Development Turner Collie & Braden	704,000	03/98
THE PRESERVE AT BARTON CREEK	Schmidt Construction Flanagan Engineering	190,377	03/98
OAK BROOK SECTION 4A streets/ telecommunications	Scott Felder, LP Gray Jansing & Associates	156,000	03/98
CYPRESS CREEK WATER LINE	City of Cedar Park Turner Collie & Braden	839,196	03/98
TRAVIS COUNTRY GREEN streets/ utilities/ telecommunications	By-Well/ Rathgeber Barry Campbell Engineering	2,426,534	01/98
VILLAGE AT WESTERN OAKS SECTIONS 12 AND 33	Village Joint Venture Carlson Engineering	1,900,000	12/97
VILLAGE AT WESTERN OAKS SECTIONS 18 AND 20	Village Joint Venture Carlson Engineering	718,000	12/97
CHERRY CREEK 16-2 AND 17-2 STREET IMPROVEMENTS	Milburn Homes Kirkjian Engineering	259,300	10/97

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EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
ROB ROY TRANSMISSION MAIN	Travis County WCID No. 10 Dannenbaum Engineering	767,760	08/97
RIVER PLACE SECTION. 11	First River Place Reserve Espey Houston & Associates	1,240,000	08/97
VILLAGE AT HEARTHSTONE	Johnson Communities, Inc. CSA Cook, Steinman & Assoc.	517,550	08/97
FOREST BLUFF 1C AND 1D	Kaufman and Broad of Texas	545,560	09/97
WEST PARK ESTATES	Kaufman & Broad Of Texas LTD	868,000	08/97
OAKS AT GEORGETOWN	Carleton Construction	1,200,000	07/97
CAT HOLLOW SEC A PHASE II	Great Oaks Development Gray Jansing & Associates	1,233,526	03/97
PARMER LANE EXTENSION	State of Texas Austin Bridge & Roads	700,000	06/97
SUN CITY NEIGHBORHOOD 9	Del E. Webb Development	1,490,466	12/97
SUN CITY NEIGHBORHOOD 12, 6, 10	Del E. Webb Development	5,576,688	03/97
SPRINGDALE ROAD WATER TRANSMISSION MAIN	City of Austin	5,657,000	01/98
STASSNEY LANE IMPROVEMENTS	City of Austin	3,800,000	12/97
WALNUT CREEK/ HORNSBY BEND 12" SLUDGE FORCE MAIN PHS. 1	City Of Austin Camp Dresser McKee	344,000	09/97
MOPAC WILLIAMSON CREEK LIFT STATION RELIEF MAIN	City of Austin	355,145	12/97
JOURDAN CROSSING 48" WATERLINE	Austin Jourdan Partners	2,300,000	12/96
SAMSUNG 24" WATER MAIN	Austin Jourdan Crossing Partners COA and Malone/ Wheeler, Inc.	46,853	06/97
OAKBROOK SECT. 2, PHS. A Streets/ Telecommunications	Scott Felder, Homes Gray, Jansing, & Associates	515,816	02/97
VILLAGE PARK 1 AND 2, PHASE A	Clark Wilson Homes RMD/ Randall Jones Engineering	1,001,249	01/97
LAKE POINTE PHASE 2	Bon-Terre-B Ltd. Bury and Pittman	2,512,997	03/97
STEINER RANCH 2, 3A	THL Ranch, Ltd.	716,645	03/97
STEINER RANCH 2 SEC 3B 16" & 12"	T.H.L. Ranch Limited	968,400	03/97
STEINER RANCH 2 SECTION 3B	T.H.L. Ranch, Ltd.	335,400	03/97
STEINER RANCH 1, SECTION 4B	521 Development, Inc.	896,619	02/97

EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
GAINES RANCH APARTMENTS	Larry Peel	1,091,000	04/97
ESTATES OF BRENTWOOD	Rockledge, Inc. Randall Jones Engineering	1,437,604	01/97
PROJECTS COMPLETED IN 1996 OVER $1 MILLION			
REATA TRAILS UNIT FOUR	Well V, Ltd. Steger & Bizzell Engineering, Inc.	1,415,200	11/96
RIVER PLACE SECTIONS 8 & 10	First River Place Reserve Limited Espey, Huston & Associates, Inc./RMD	1,158,700	11/96
HWY 290/BEN WHITE	McCarthy Brothers Construction	5,759,400	11/96
BALCONES GREENE	Centex Homes Carlson Engineering	1,245,500	9/96
SAN MARIN II APARTMENT SITE	Fairfield Development	993,000	9/96
JOLLYVILLE APARTMENT SITE	Fairfield Development	962,700	4/96
LAKE AT WELLS BRANCH SEC 1 & 2	Morrison Homes, Inc. Lockwood Engineers	1,388,000	10/96
RIATA TRACE PARKWAY	Riata Development, L.L.C.	3,765,600	11/96
GAINES RANCH P.U.D. Street, Water, Wastewater, Drainage	Walter Vackar Developments, Inc.	1,524,503	6/96
FORT HOOD VEHICLE MAINTENANCE FACILITY	Hensel Phelps Construction Carter & Burgess, Inc.	3,211,400	6/96
RIATA TRACE	Blue Star Austin Land Development Gray Engineering	3,250,700	6/96
DAVIS SPRING SECTIONS 3B-1 & 2	Standard Pacific of Texas, Inc. Huffcut & Associates, Inc.	1,658,800	11/96
STONE OAK SECTIONS 1 & 2	Doyle Wilson Homebuilder Jadco Development, Inc.	998,400	4/96
STEINER RANCH 1 SECTION 3B	T.H.L. Ranch, Ltd.	627,200	9/96
STEINER RANCH 1 SECTION 4A	521 Development Espey, Huston & Associates	727,300	4/96

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EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
SOUTHLAND OAKS Lift Station, Force Main	Scott Felder L.P./RMD & Co. Inc. Espey, Huston & Associates, Inc.	923,800	3/96
SOUTHLAND OAKS 4A	Scott Felder, L.P./Ryland Homes RMD/Carlson Engineering	1,378,300	3/96
SOUTHLAND OAKS 3A,B,C	Scott Felder, Ltd. Carlson Engineering	3,448,100	6/96
CAT HOLLOW SEC A PHASE II	Great Oaks Development Gray Engineering, Inc.	750,370	3/96
ARROWHEAD APARTMENTS	Arrowhead Equities, Ltd. Jungman/Laffere Company	1,053,500	3/96
SUN CITY NEIGHBORHOOD FOUR	Del E. Webb Development Co., L.P. Turner, Collie & Braden	3,220,800	9/96
SUN CITY NEIGHBORHOOD EIGHT	Del Webb of Texas., L.P.	771,100	9/96
SUN CITY - SCOTT & WHITE WW LN.	Del Webb of Texas, L.P.	625,600	8/96
SUN CITY – N-ONE AND BLVDS	Del Webb Development Co., L.P.	4,814,900	3/96
SUN CITY NEIGHBORHOOD THREE	Del Webb Development Co., L.P.	2,919,400	3/96
SUN CITY - GOLF COURSE I	Del Webb Development Co., L.P.	1,698,100	3/96
SUN CITY VILLAGE CENTER	Del Webb Development Co., L.P. White Construction/RTG Partners	1,100,000	6/96
SUN CITY SALES CENTER	Del Webb Development Co., L.P. White Construction/RTG Partners	1,114,700	3/96

Depending on project requirements, OWNER may have obtained geotechnical information, which may include subsurface data logs of soil borings and recommendations from geotechnical consultants. Any information obtained is solely for use by ENGINEER/ARCHITECT in design of project and are not part of Contract. If soil borings have been prepared, they will be included in this section or on plans. Any geotechnical information included is for information only. Owner does not guarantee accuracy or validity of soil investigation data, nor does OWNER assume any responsibility for CONTRACTOR interpretation or conclusions drawn from data.

End

November 30, 1999

GEOTECHNICAL ENGINEERING STUDY
Avery Ranch Boulevard
Williamson County, Texas

Prepared for:

COOK-STEINMAN & ASSOCIATES, INC.
Austin, Texas

Prepared by:

HBC ENGINEERING, INC.
Geotechnical Engineering Division
Austin, Texas

HBC Project No. 96995200

ENVIRONMENTAL, GEOTECHNICAL AND CONSTRUCTION MATERIALS SERVICES

HBC
ENGINEERING, INC.

November 30, 1999

Mr. James Cook, P.E
Cook-Steinman & Associates, Inc.
3018 N. Lamar Boulevard, Suite 200
Austin, Texas 78705

Re: Geotechnical Engineering Study
Avery Ranch Boulevard
Williamson County, Texas
HBC Project No. 96995200

Dear Mr. Cook:

Enclosed is our geotechnical engineering report for the above referenced project. We trust that this report is responsive to your project needs. Please contact us if you have any questions or if we can be of further assistance.

We appreciate the opportunity to work with you on this phase of the project, and look forward to the opportunity to provide additional services as the project progresses.

Sincerely,

HBC ENGINEERING, INC.

Patrick M. Beecher, E.I.T.
Geotechnical Engineering Division

James G. Bierschwale, P.E.
Manager of Engineering Services

PMB/JGB/sch

Copies Submitted: (4)

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Houston	Dallas	Fort Worth	Austin	Wichita Falls
11555 Clay Road	8901 Carpenter Frwy.	2301 E. Loop 820 North	3913 Todd Lane	3100 Seymour Hwy.
Suite 100	Suite 100	Flagstone & Loop 820	Suite 312	Suite 105
Houston, TX 77043	Dallas, TX 75247	Fort Worth, TX 76118	Austin, TX 78744	Wichita Falls, TX 76310
(713) 690-8989	(214) 630-1010	(817) 268-8600	(512) 442-1122	(940) 766-6092
Fax (713) 690-8787	Fax (214) 630-7070	Fax (817) 268-8602	Fax (512) 442-1181	Fax (940) 766-6093

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1.0 INTRODUCTION

This report presents the results of our geotechnical engineering study for Avery Ranch Boulevard in Williamson County, Texas. This project was authorized by Mr. James Cook, P.E. of Cook-Steinman & Associates, Inc., through signature of our "Agreement for Consulting Services" on October 10, 1999. The scope of services was performed as outlined in our proposal dated October 7, 1999.

2.0 PROJECT DESCRIPTION

The project is to involve the proposed construction of a roadway from O'Conner Drive in Round Rock west to just east of Highway 183 in Williamson County, Texas. The total length of the proposed roadway is approximately 3.8 miles. We understand that the roadway is to have a 90-foot right-of-way and is planned as a four-lane divided arterial roadway. The site location and project layout are located in the Appendix on Pages A-1 and A-2, respectively.

3.0 SCOPE OF SERVICES

Our scope of services for this project consisted of:

1. Drilling test borings at selected locations within the proposed roadway alignment to evaluate subsurface stratigraphy and groundwater conditions.

2. Performing geotechnical laboratory tests on recovered samples to evaluate the physical and engineering properties of the strata encountered.

3. Engineering analyses to develop design and construction recommendations with respect to:

   - Site, subgrade, and fill preparation; and
   - Pavement design guidelines (as per City of Austin design requirements).

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4.0 FIELD PROGRAM

4.1 Sampling Procedures

Subsurface conditions were evaluated by drilling thirty five test borings to depths of about 6 feet in the proposed roadway alignment. The three-inch nominal diameter borings were drilled with truck-mounted rotary drilling equipment at the approximate locations shown on Page A-2 of Appendix A. Boring depths were measured from existing ground surface at the time of our field activities.

The Logs of Borings, presenting the soil/rock descriptions, types of sampling used, and additional field data, are presented on Pages A-3 through A-37 of Appendix A. The Symbol Key Sheet, which defines the terms and descriptive symbols used on the logs, is presented on Page A-38 of Appendix A.

Soil samples were typically recovered using thin-walled, open-tube samplers (Shelby tubes) in general accordance with the procedures outlined in ASTM D 1587. All samples were removed from samplers in the field, visually classified, and sealed in sample containers to preserve their in-situ moisture contents. Pocket penetrometer tests were performed on samples of cohesive soils in the field to serve as a general measure of consistency.

Soils/rock for which good quality thin-walled tube samples could not be recovered were sampled by means of the Standard Penetration Test (SPT) in general accordance with ASTM D 1586. This test consists of measuring the number of blows required for a 140 pound hammer free falling 30 inches to drive a standard split-spoon sampler 12 inches into the subsurface material after being seated six inches. This blow count or SPT "N" value is used to evaluate the engineering properties of the stratum.

Many of the borings were advanced with Nx coring equipment once rock was encountered. During drilling, the bit pressure and drilling rate was monitored to detect voids and/or soil seams in the rock formation. Visual classification of the samples was performed in the field and

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percentages of recovery and Rock Quality Designation (RQD) were calculated from recovered rock cores. (Recovery is defined as the percentage of core recovered as a function of the length of core run drilled. The RQD is a modified measurement of core recovery which indirectly takes into account fractures and/or softening in the rock mass by summing up only pieces of sound core which are four inches or greater in length as a percentage of the total core run.) The rock samples were then placed in core boxes for transportation to the laboratory. Drilling and sampling procedures in the rock generally conformed to ASTM D 2113.

4.2 Sample Disposal

All samples were returned to our laboratory in Austin, Texas. Samples not tested in the laboratory will be stored for a period of 60 days subsequent to submittal of this report and will be discarded after this period, unless we are notified otherwise.

5.0 LABORATORY TESTING

Samples obtained during the field program were visually classified in the laboratory by a geotechnical engineer in general accordance with the procedures outlined in ASTM D 2488. A testing program was conducted on selected samples, as directed by the geotechnical engineer, to aid in classification and evaluation of engineering properties required for analyses. Laboratory tests were performed in general accordance with the indicated standard procedures:

LABORATORY TEST	APPLICABLE TEST STANDARD
Liquid Limit, Plastic Limit and Plasticity Index of Soil	ASTM D 4318
Moisture Content	ASTM D 2216
Unconfined Compressive Strength of Cohesive Soils	ASTM D 2166
Uniaxial Compressive Strength of Intact Rock Core Specimens	ASTM D 2938

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Results of the laboratory tests are presented on the Logs of Borings, located on Pages A-3 through A-37 of Appendix A, and are discussed in the following section. Laboratory test results were used to classify the soils encountered as outlined by the Unified Soil Classification System (ASTM D 2487).

6.0 SITE CONDITIONS

6.1 Surface Conditions

The ground surface generally consists of rolling terrain. Ground cover consists of native grasses and weeds with trees ranging in density from sparse to moderately wooded. Fences were observed across the roadway alignment. Gullies traverse the site in various locations. Parmer Lane and railroad tracks cross the site in a northwest to southeast direction.

6.2 Subsurface Conditions

The generalized subsurface stratigraphy at the site, as evaluated from our field and laboratory programs, is tabulated below:

STRATUM	RANGE IN DEPTH (FT) [1]	SOIL DESCRIPTION AND CLASSIFICATION
I[2]	0 – 3.5	Very stiff to hard dark brown to reddish brown to brown clay (CH) to silty clay (CL)
II[3]	0.5 – 6	Hard tan silty clay (CL)
III	0 – 6	Tan limestone (Edwards Group)

1 Approximate depth below ground surface.
2 Not observed at boring B-13.
3 Observed at borings B-6, B-8, B-16, B-21, B-23, B-24, B-26, B-27, B-29, B-30, B-31, and B-33.

The Stratum I dark brown to reddish brown to brown clayey soils generally exhibit a moderate to very high shrink/swell potential, as indicated by measured plasticity indices of 25 to 66 percent (At boring B-6, a plasticity index of 7 percent was recorded.). In-situ moisture contents ranged from 15 percent dry to 4 percent wet of the corresponding plastic limits. Measured undrained shear strengths from unconfined compression tests varied from 17,600 to 20,500 pounds per square foot (psf).

The Stratum II tan silty clay soils generally exhibit a low to moderate potential for volumetric change during moisture variation, as indicated by measured plasticity indices of one to 26 percent. In-situ moisture contents ranged from 7 to 11 percent dry of the corresponding plastic limits. Measured SPT "N" values for this stratum varied from approximately 61 blows per foot to 82 blows for nine inches of penetration.

Stratum III generally consists of tan limestone of the Edwards Group of Lower Cretaceous Age. Measured uniaxial compressive strengths of intact rock cores from this stratum ranged from 111 to 834 tons per square foot (tsf). Measured values of Recovery and RQD varied from 45 to 100 percent and zero to 82 percent, respectively. Lowered values of RQD were generally a result of clay seams and layers within the limestone.

6.3 Groundwater Conditions

The borings were dry augered to depths ranging from 0.5 to 6 feet in an attempt to observe groundwater conditions. Many of the borings were completed to depths of about 6 feet using wet rotary techniques to facilitate rock coring, making subsequent groundwater readings difficult. No groundwater was observed during dry augering of any of the boreholes. However we should note that groundwater is possible in this area, typically in the form of zones of water seepage travelling in seams/fissures of the soils/rock, as well as "perched" water travelling along the soil/rock interface. The frequency of such groundwater is expected to be more prevalent during and soon after periods of wet weather.

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7.0 ENGINEERING ANALYSES

The following analyses are based upon the data obtained in our field and laboratory programs, project information provided to us, and our experience with similar subsurface and site conditions.

7.1 Site Preparation

Construction areas should be stripped of all vegetation and loose topsoil. (We should note that site stripping could frequently loosen limestone rocks and boulders, which should be excavated and removed from the construction area.) Roots of trees to be removed within construction areas should be grubbed to full depths. The exposed subgrade should be proofrolled with at least a 15-ton pneumatic roller or equivalent to detect weak areas. Weak areas detected during proofrolling, as well as zones containing organics and voids resulting from removal of tree roots, should be removed and replaced with soils exhibiting similar classification, moisture content, and density as the adjacent in-situ soils. Subsequent to proofrolling, and just prior to placement of fill, the subgrade should be compacted to at least 95 percent of the TEX 113E maximum dry density at optimum to +4 percent of optimum moisture content. Exposed limestone subgrade areas should be cleaned sufficiently and any voids filled with crushed limestone base. Proper site drainage should be maintained during construction so that ponding of surface runoff does not occur and cause construction delays and/or inhibit site access. All aspects of site preparation should be in accordance with City of Austin (COA) Standard Specifications Item 201.

If voids or other significant solution features are encountered during site preparation/excavation operations, HBC should be contacted to evaluate the feature from a geotechnical engineering standpoint. For such features, filling or grouting the void with concrete would typically be appropriate to minimize the potential for water/material migration into the feature once construction has been completed.

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7.1.1 Fill Compaction Requirements

All fill material should be placed in uniform lifts (lift thicknesses are discussed below). Fill should be compacted to between 95 and 105 percent of the TEX 113E maximum dry density at a moisture content ranging between -3 and +3 percent of optimum moisture content, as specified in Item 132 of the COA Standard Specifications, unless otherwise noted.

7.1.2 Imported Select Fill

Imported fill to be used for grade adjustments in the pavement areas should meet the requirements of a "Class B" borrow material as outlined in Item 130 of the COA Standard Specification.

7.2 Pavement Design

Pavement thicknesses for the proposed roadways for this project were evaluated using the COA computerized pavement design program, MFPS-1, in accordance with the guidelines outlined in the COA Transportation Criteria Manual (TCM). The Stratum I clayey soils, which consist of a high to very high plasticity clay ranging in thickness at the boring locations between roughly 0.5 and 3.5 feet, will control the pavement design.

Although no dynaflect testing for subgrade stiffness was performed for correlation of the subgrade stiffness coefficient for use in the City of Austin's MFPS-1 pavement design program, our past experience with subgrade soils such as the high plasticity clays present at this site indicate that a Texas Triaxial Classification of approximately 5.9 is appropriate for such soils. This would correlate to a subgrade stiffness coefficient of about 0.18.

As stated previously, we understand that the pavement design for Avery Ranch Boulevard is for a roadway classification of a four-lane, divided arterial with a right-of-way of 90 feet. Listed below are pertinent traffic design criteria selected from the COA TCM for MFPS-1 based on the street classification.

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Classification	Four-lane, divided arterial
Initial Average Daily Traffic (vehicles per day)	9,000
Percent Trucks in Average Daily Traffic	11.42
18-kip Equivalency Factor for Std. City Truck	0.62
Total Equivalent 18-kip Single Axle Load Applications	3,020,000
Yearly Percent Growth	4.0

Listed on Pages B-1 though B-4 of Appendix B are the printouts of the MFPS-1 analysis for the above criteria. We should note that the above input values (along with other MFPS-1 input not discussed in this section) are based on inferred values or values recommended in the TCM. If any of the assumed values are known to be inaccurate, HBC should be contacted so that we may revise the program input.

Listed below are recommended pavement component thicknesses for the subgrade conditions observed at the site, assuming that the Stratum I clay soils will generally act as the pavement subgrade, and that the pavement subgrade is prepared as outlined in the "Site Preparation" subsection. Due to the fact that the highly plastic clay thickness was 2 feet or less in most cases, the measures outlined by the COA in the Transportation Manual for special measures to be utilized for high plasticity clay conditions are not applicable. We should note that these thicknesses were derived based on general characterization of the subgrade. No specific testing, such as CBR's, resilient modulus tests, etc., was performed for this project to evaluate the support characteristics of the subgrade. Based on the MFPS-1 analysis, along with our field and laboratory data and experience on similar projects, we recommend the following design section options for the proposed roadway.

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FOUR-LANE, DIVIDED ARTERIAL	
Component	**Material Thickness, Inches**
Asphaltic Concrete (Type D)	1.5
Asphaltic Concrete (Type C)	2.5
Crushed Limestone Base *	24.5
Moisture Conditioned Subgrade	6.0

* In pavement areas where the subgrade is cut to expose the underlying tan silty clay soils or limestone, as well as subgrade areas where at least 12 inches of select fill is placed above the clay subgrade, the recommended base thickness may be reduced to 14 inches of crushed limestone base.

The selection and placement of the asphalt and base should be in accordance with all applicable requirements of the City of Austin's Standard Specifications. Presented below are our recommended material requirements for the various pavement sections.

Hot Mix Asphaltic Concrete Surface Course - For both hot laid Type D (Fine Graded Surface Course) and Type C (Coarse Graded Surface Course), the HMAC should be plant mixed and should meet the requirements in the City of Austin (COA) Standard Specifications Item 340 or TxDOT Item 340. The asphaltic concrete surface course should have a minimum Hveem stability value of 35 and should be compacted to 91 to 96 percent of the theoretical maximum density determined by test method TEX-227-F

Crushed Limestone Base - Base material should be comprised of crushed limestone meeting the requirements of COA Standard Specifications Item 210 or TxDOT Item 247, Type A, Grade 1. The base should be compacted to a minimum of 100 percent of the maximum density as determined by TEX-113-E at -3 to +3 percent of optimum moisture content.

Moisture Conditioned Subgrade – The Stratum I soils should be scarified to a depth of six inches and moisture adjusted to between optimum and +4 percent of optimum moisture content. The subgrade should then be recompacted to 95 to 100 percent of the maximum dry density as determined by TEX-113-E. Exposed Stratum II tan silty clay soils should be scarified to a depth of six inches and moisture adjusted to between –3 and +3 percent of optimum moisture content. The subgrade should then be recompacted as stated above. Care should be taken to insure that the subgrade does not dry out or become saturated prior to pavement construction. Moisture conditioning is not required in exposed limestone subgrade areas.

It is important that proper perimeter drainage be provided so that infiltration of surface water from unpaved areas surrounding the pavement is minimized, or if this is not possible, curbs should extend through the base and into the subgrade. A crack sealant compatible with both asphalt and concrete should be provided at concrete-asphalt interfaces. We should note that post-construction subgrade movements and some cracking of asphaltic pavements is not uncommon for clay subgrade conditions such as those observed at this site.

8.0 DESIGN REVIEW

HBC should be provided the opportunity to review the final plans and specifications to check that these and subsequent recommendations are properly interpreted. HBC cannot be responsible for misinterpretations of our recommendations if we have not had an opportunity to review these documents.

9.0 CONSTRUCTION MONITORING

Construction monitoring services should be provided for subgrade preparation, fill compaction, and pavement construction. HBC should be retained to provide these services to check that construction is in accordance with the intentions of this report.

10.0 LIMITATIONS

We do not anticipate that subsurface conditions which differ significantly from those encountered in our borings exist at the site. However, variations may occur due to the geology of the area as well as filled areas which may not have been detected in the boring program. Should any subsurface conditions other than those described in this report be encountered, HBC should be immediately notified so that further evaluation and supplemental recommendations can be provided.

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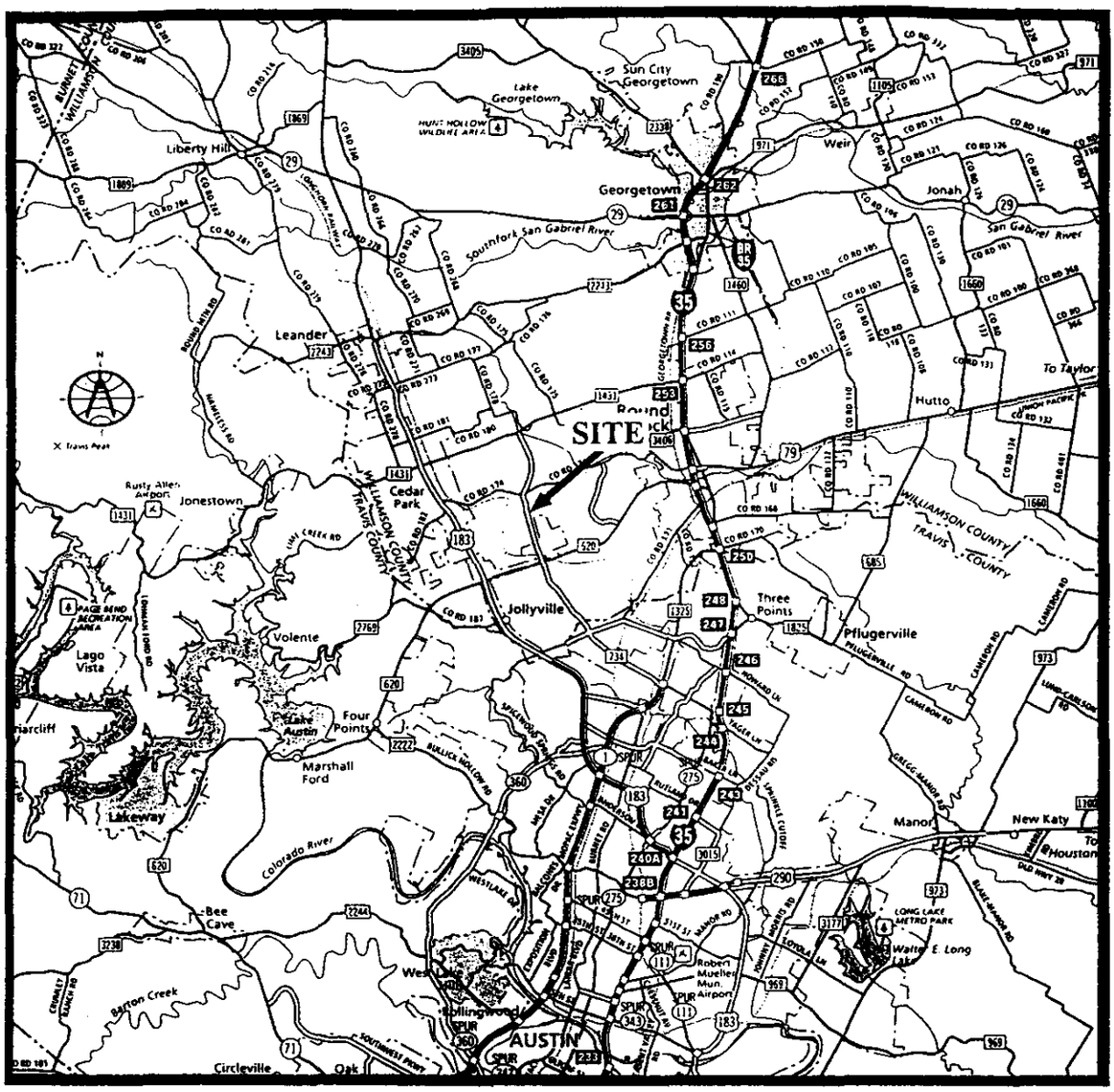
This study was performed in accordance with accepted geotechnical engineering practice. Determination of excavation trench safety, dewatering and trafficability requirements is the responsibility of others specializing in those areas. In the event that any changes in the nature, design or location of the improvements are made, the conclusions and recommendations in this report should not be considered valid until the changes are reviewed and the conclusions and recommendations modified or verified in writing by HBC Engineering, Inc.

HBC ENGINEERING, INC.

APPENDIX A

	PAGE
VICINITY PLAN	A-1
PROJECT LAYOUT	A-2
LOGS OF BORINGS	A-3 through A-37
SYMBOL KEY SHEET	A-38



RECORDERS MEMORANDUM
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VICINITY PLAN

Avery Ranch Boulevard
Williamson County, Texas

HBC Project No. 96995200

PROJECT LAYOUT

Avery Ranch Boulevard
Williamson County, Texas

HBC Project No. 96995200

A-2

HBC ENGINEERING, INC.

RECORDERS MEMORANDUM

All or parts of the text on this page was not clearly legible for satisfactory recordation.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-17
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	4	83	41	16	25					Hard brown silty clay (CL) with limestone fragments
2													Tan limestone (Edwards Group) with clay seams and solution channels
4			R=73 RQD=52										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1 foot, Wet Rotary 1 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 96995-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-18
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	9	80								Hard brown silty clay (CL) with limestone fragments
2			R=45 RQD=14										Tan limestone (Edwards Group) with clay seams and layers
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 0.5 foot; Wet Rotary 0.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry aguering

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-19
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N, BLOWS/FT T, INCHES/100 BLOWS P, TONS/SQ FT R, PERCENT RQD, PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	12									Hard dark brown clay (CH) with limestone fragments
2													Tan to light gray limestone (Edwards Group), vugular
					165					834			
4			R=100 RQD=80										
6													
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1 foot; Wet Rotary 1 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

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T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
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RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1 GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-20
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ.FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ.FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			P=4.5+	16	104	68	22	46		17.64	5		Hard dark brown clay (CH) with calcareous nodules and limestone fragments
			P=4.5+	17									
4													Tan limestone (Edwards Group)
6													
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-21
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0													Hard reddish brown clay (CH) with limestone fragments
2			P=4.5+	8									
			P=4.5+	16	111	91	25	66		20.51	15		
4			R=17 RQD=0										Hard tan silty clay (CL) with limestone seams
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 2.5 feet; Wet Rotary 2.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

RECORDERS MEMORANDUM
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LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-22
PROJECT NO. 96995200
DATE 10-13-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA					LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0			P=4.5+	15	83								Hard dark brown clay (CH) with limestone fragments
2													Tan limestone (Edwards Group)
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

RECORDERS MEMORANDUM
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T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

96995 GPJ 11/2

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-23
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ.FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)
2			P=4.5+	6								
			P=4.5+	10	107	72	20	52				
4												
6			N=72									
8												
10												
12												
14												
16												
18												
20												

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

DESCRIPTION OF STRATUM

Hard dark brown clay (CH) with limestone fragments

Hard tan silty clay (CL) with limestone fragments

Boring Terminated at 6 feet

RECORDERS MEMORANDUM
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RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/29/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-24
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			P=4.5+	10									Hard brown clay (CH) with limestone fragments
4													Hard tan silty clay (CL) with limestone fragments and seams
6			N=61	7									Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
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REMARKS:

HBC ENGINEERING, INC.

RECORDERS MEMORANDUM
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LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas

CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-25
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA					LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	ATTERBERG LIMITS (%) PLASTIC LIMIT PL	ATTERBERG LIMITS (%) PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	13									Hard brown clay (CH) with limestone fragments
2													Tan limestone (Edwards Group) with clay seams and layers and solution channels
4			R=56 RQD=0										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 2 feet. Wet Rotary 2 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-26
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	17		85	31	54					Hard dark brown clay (CH) with limestone fragments
2													Hard tan silty clay (CL) with limestone fragments
4													
6			N=75/10"	17		25	24	1					
													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/29/99

RECORDERS MEMORANDUM
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LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-27
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of

FIELD DATA					LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0			P=4.5+	8									Hard dark brown clay (CH) with limestone fragments
2			P=4.5	10	89	47	21	26					Hard tan silty clay (CL) with limestone seams
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas

CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-28
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%)			MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
						LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI					
0			P=4.5+	14									Hard dark brown clay (CH) with limestone fragments
2													Tan limestone (Edwards Group)
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas

CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-29
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0			P=4.5+	14	100								Hard brown silty clay (CL) with limestone fragments
2													Hard tan silty clay (CL) with limestone seams
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1 GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas

CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-30
PROJECT NO. 96995200
DATE 10-14-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0			P=4.5+	8									Hard reddish brown clay (CH) with limestone fragments
2													Hard tan silty clay (CL) with limestone seams
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

RECORDERS MEMORANDUM
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LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-31
PROJECT NO. 96995200
DATE 10-15-99
SURFACE ELEVATION

PAGE 1 of

FIELD DATA				LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)
2			P=4.5+	8		77	23	54				
4			R=14 RQD=0									
6												
8												
10												
12												
14												
16												
18												
20												

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

DESCRIPTION OF STRATUM

Hard reddish brown clay (CH) with limestone fragments

Hard tan silty clay (CL) with limestone seams

Boring Terminated at 6 feet

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-32
PROJECT NO. 96995200
DATE 10-15-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0			P=4.5+	7									Hard dark brown clay (CH) with limestone fragments
2													Tan limestone (Edwards Group) with clay seams and layers
4			N=50/0"										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC

LOG 969952-1.GPJ 11/24/99

RECORDERS MEMORANDUM
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LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-33
PROJECT NO. 96995200
DATE 10-15-99
SURFACE ELEVATION

PAGE 1 of

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			P=4.5+	12	98								Hard dark brown clay (CH) with limestone fragments
4													Hard tan silty clay (CL) with limestone seams
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drry augering.

RECORDERS MEMORANDUM
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REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-34
PROJECT NO. 96995200
DATE 10-15-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
													Hard reddish brown clay (CH) with limestone fragments
2					119					138			Tan limestone (Edwards Group) with solution channels -dolomitic below 1 foot
4			R=90 RQD=72										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1 foot; Wet Rotary 1 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

RECORDERS MEMORANDUM
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P - POCKET PENETROMETER RESISTANCE
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RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 96995-1.GPJ 11/29/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc
Austin, Texas

BORING NO. B-35
PROJECT NO. 96995200
DATE 10-15-99
SURFACE ELEVATION

PAGE 1 of

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LL	PL	PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	8									Hard brown clay (CH) with limestone fragments
2					126					111			Tan limestone (Edwards Group) with solution channels, vugular
4			R=83 RQD=47										-dolomitic below 3 feet
6													-void 5.5 to 6 feet
													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 0.5 foot; Wet Rotary 0.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

RECORDERS MEMORANDUM
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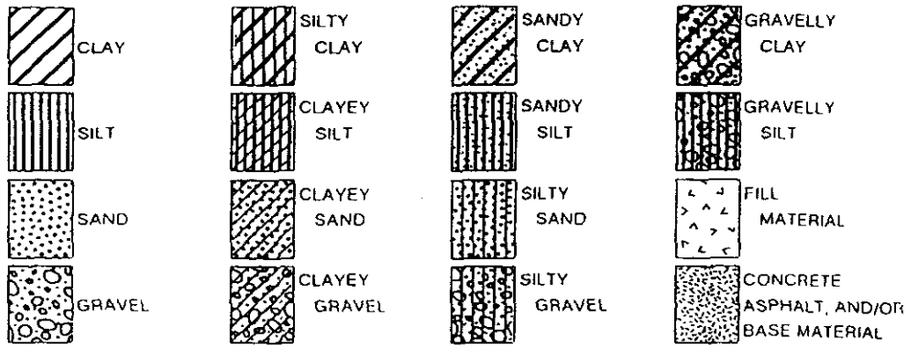
REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

KEY TO SOIL CLASSIFICATIONS AND SYMBOLS

SOIL TYPES



CONSISTENCY OF COHESIVE SOILS

Penetration Resistance (blows per foot)	Consistency	Undrained Compressive Strength (tsf)
0 - 2	Very Soft	0 - 0.25
2 - 4	Soft	0.25 - 0.5
4 - 8	Firm	0.5 - 1.0
8 - 15	Stiff	1.0 - 2.0
15 - 30	Very Stiff	2.0 - 4.0
> 30	Hard	> 4.0

PLASTICITY OF COHESIVE SOILS

Plasticity Index	Degree of Plasticity
0 - 5	None
5 - 10	Low
10 - 20	Moderate
20 - 40	Plastic
> 40	Highly Plastic

RELATIVE DENSITY OF COHESIONLESS SOILS

Penetration Resistance (blows per foot)	Relative Density
0 - 4	Very Loose
4 - 10	Loose
10 - 30	Medium Dense
30 - 50	Dense
> 50	Very Dense

TERMS CHARACTERIZING SOIL STRUCTURE

Slickensided	having inclined planes of weakness that are slick and glossy in appearance
Fissured	containing shrinkage cracks, frequently filled with fine sand or silt; usually more or less vertical
Laminated	composed of thin layers of varying color and texture
Interbedded	composed of alternate layers of different soil types
Calcareous	containing appreciable quantities of calcium carbonate

SAMPLER TYPES

HBC ENGINEERING, INC.

Avery Ranch Owner's Committee
Travis County, Texas

The undersigned, in compliance with your invitation for bids for construction of **Paving and Drainage Improvements: Avery Ranch Boulevard Boulevard East**, having examined the Project Manual, Drawings and Addenda, the site of the proposed Work and being familiar with all of the conditions surrounding construction of the proposed Project, having conducted all inquiries, tests and investigations deemed necessary and proper; hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment, and perform all Work required for construction of the Project in accordance with the Project Manual, Drawings and Addenda within the time indicated for the following prices in both words and figures of:

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
1	108	STA	Preparing 1/2 of Right of Way, including clearing and grubbing - Per station for two thousand seven hundred two dollars and no cents	$2,702.00	$291,816.00
2	380	LF	Sawcut Existing Pavement - Per Linear Foot for one dollars and no cents	$1.00	$380.00
3	139,420	SY	Street Excavation, ROW to ROW, including haul, grading and compaction, and embankment -per square yard for four dollars and thirty nine cents	$4.39	$612,053.80
4	75,825	SY	Subgrade Preparation, 1 foot behind curb, - per square yard for no dollars and ninety cents	$0.90	$68,242.50
5	0	SY	Flexible Base, 24.5 in. depth, 1 ft behind curb - per square yard for twelve dollars and five cents	$12.05	$0.00
6	75,825	SY	Flexible Base, 14. in. depth, 1 ft behind curb - per square yard for six dollars and thirty five cents	$6.35	$481,488.75
7	61,880	SY	Hot Mix Asphaltic Concrete Pavement 1.5 inch , Type D, including prime coat - per square yard for two dollars and eighty cents	$2.80	$173,264.00

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
8	61,880	SY	Hot Mix Asphaltic Concrete Pavement 2.5 inch , Type C, including prime coat - per square yard for four dollars and eighty cents	$ 4.80	$ 297,024.00
9	40,470	LF	Concrete Curb and Gutter, excluding inlets and transitions - per linear foot for six dollars and seventy five cents	$ 6.75	$ 273,172.50
10	126	LF	Concrete mountable Curb – TexDot Type 1 per linear foot for six dollars and seventy five cents	$ 6.75	$ 850.50
11	32	EA	Sidewalk Ramp, Type 1, including pavers - per each for five hundred thirty six dollars and sixty cents	$ 536.60	$ 17,171.20
12	1	EA	Concrete Valley Gutter for 60 ft. street, -per each for two thousand five hundred dollars and no cents	$ 2,500.00	$ 2,500.00
13	1	EA	Concrete Valley Gutter for 64 ft. street, -per each for two thousand eight hundred dollars and no cents	$ 2,800.00	$ 2,800.00
14	105,600	SF	Sidewalk, meandering - per square foot for two dollars and forty cents	$ 2.40	$ 253,440.00
15	1	EA	Street Barricade, 70 ft street -per each for fifteen hundred dollars and no cents	$ 1,500.00	$ 1,500.00

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
16	1	EA	Street Barricade, 64 ft street -per each for thirteen hundred fifty dollars and no cents	$ 1,350.00	$ 1,350.00
17	3	EA	Street Barricade, 60 ft street, -per each for eleven hundred nine dollars and no cents	$ 1,109.00	$ 3,327.00
18	1	EA	Street Barricade, 44 ft street, -per each for one thousand dollars and no cents	$ 1,000.00	$ 1,000.00
19	1	EA	Street Barricade, 40 ft street, -per each for nine hundred twenty five dollars and no cents	$ 925.00	$ 925.00
20	5,416	SF	Pavers , concrete, for Street crossings, including, concrete base, and conc. edge - per square foot for ten dollars and four cents	$ 10.04	$ 54,376.64
21	5,130	SF	Pavers , concrete, for medians, including concrete base - per square foot for eight dollars and twenty four cents	$ 8.24	$ 42,271.20
22	10	EA	Street Sign, intalled, - per each for two hundred fifty two dollars and no cents	$ 252.00	$ 2,520.00
23	1,500	LF	Pavement Markings 8 inch solid, white or yellow - per linear foot for no dollars and seventy cents	$ 0.70	$ 1,050.00
24	21,000	LF	Pavement Markings 4 in. x 10 ft. broken white - per linear foot of street for no dollars and sixty cents	$ 0.60	$ 12,600.00

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
25	22,000	LF	Schedule 40 PVC, 2 inch, electric conduit for street lighting, inc. pull string - per linear foot		
			for seven dollars and ten cents	$ 7.10	$ 156,200.00
26	5,000	LF	Schedule 40 PVC, 6 inch, conduit for irrigation sleeve - per linear foot		
			for eleven dollars and ninety two cents	$ 11.92	$ 59,600.00
27			(RESERVED)		
			for ____ dollars and ____ cents	$	$
28			(RESERVED)		
			for ____ dollars and ____ cents	$	$
29			(RESERVED)		
			for ____ dollars and ____ cents	$	$
30			(RESERVED)		
			for ____ dollars and ____ cents	$	$

PAVING IMPROVEMENTS

SUBTOTAL AMOUNT BID: $2,810,923.09
(in figures)

SUBTOTAL AMOUNT BID: two million eight hundred ten thousand nine hundred twenty three dollars and
(in words)

nine cents
(in words)

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
31	5	EA	Manhole 4 ft. diameter, all depths - per each for twenty nine hundred fifty dollars and no cents	$ 2,950.00	$ 14,750.00
32	13	EA	Manhole 5 ft. diameter , all depths - per each for thirty four hundred dollars and no cents	$ 3,400.00	$ 44,200.00
33	5	EA	Manhole 6 ft. diameter, all depths - per each for thirty eight hundred dollars and no cents	$ 3,800.00	$ 19,000.00
34	1	EA	Junction Box, 7 ft. x 4 ft. including manhole cone and ring and cover -per each for forty four hundred dollars and no cents	$ 4,400.00	$ 4,400.00
35	49	EA	Inlet 10 ft., all depths, including transitions - per each for twenty seven hundred seventy five dollars and no cents	$ 2,775.00	$ 135,975.00
36	1	EA	Headwall for 36 inch RCP/w dissipators - per each for thirty three hundred dollars and no cents	$ 3,300.00	$ 3,300.00
37	3,853	LF	Pipe, 18 in. Dia. RCP Cl. III, including excavation and backfill - per linear foot for forty four dollars and no cents	$ 44.00	$ 169,532.00
38	1,660	LF	Pipe, 24 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for fifty two dollars and no cents	$ 52.00	$ 86,320.00

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
39	2,553	LF	Pipe, 30 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for sixty three dollars and no cents	$ 63.00	$ 160,839.00
40	100	LF	Pipe, 36 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for ninety dollars and no cents	$ 90.00	$ 9,000.00
41	1,010	LF	Pipe, 42 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for one hundred seven dollars and no cents	$ 107.00	$ 108,070.00
42	252	LF	Pipe, 48 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for one hundred forty four dollars and no cents	$ 144.00	$ 36,288.00
43	511	LF	Pipe, 54 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for one hundred sixty eight dollars and no cents	$ 168.00	$ 85,848.00
44	176	LF	Pipe, 60 in. Dia., RCP Cl. III, all depths, including excavation and backfill - per linear foot for two hundred six dollars and no cents	$ 206.00	$ 36,256.00
45	112	LF	Multiple Box Culvert, 6 - 6 ft. x 4 ft., Sta 188+71 - per linear foot for seven hundred eighty nine dollars and ninety eight cents	$ 789.98	$ 88,477.76

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
46	108	LF	Multiple Box Culvert, 7 - 6 ft. x 4 ft., Sta 123+50 - per linear foot for nine hundred eight dollars and seventy five cents	$ 908.75	$ 98,145.00
47	109	LF	Multiple Box Culvert, 4 - 6 ft. x 4 ft., Sta 156+30 - per linear foot for six hundred six dollars and forty five cents	$ 606.45	$ 66,103.05
48	105	LF	Multiple Box Culvert, 3 - 6 ft. x 4 ft., Sta 169+76 - per linear foot for five hundred fifteen dollars and thirteen cents	$ 515.13	$ 54,088.65
49	1	LS	Upstream and Downstream headwalls, apron, debris fins, dissipators, toewall, paraphet, etc for MBC at Sta 188+71 -per lump sum for ten thousand forty seven dollars and seventy five cents	$ 10,047.75	$ 10,047.75
50	1	LS	Upstream and Downstream headwalls, apron, debris fins, dissipators, toewall, paraphet, etc for MBC at Sta 123+50 -per lump sum for twelve thousand six hundred twenty three dollars and seventy five cents	$ 12,623.75	$ 12,623.75
51	1	LS	Upstream and Downstream headwalls, apron, debris fins, dissipators, toewall, paraphet, etc for MBC at Sta 156+90 -per lump sum for eight thousand nine hundred twenty dollars and seventy five cents	$ 8,920.75	$ 8,920.75
52	1	LS	Upstream and Downstream headwalls, apron, debris fins, dissipators, toewall, paraphet, etc for MBC at Sta 169+76 -per lump sum for eight thousand three hundred fifty six dollars and seventy five cents	$ 8,356.75	$ 8,356.75
53	10,114	LF	Trench Safety Systems, including manholes and appurtenances - per linear foot for one dollars and no cents	$ 1.00	$ 10,114.00

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
54	24	EA	Adjust manhole frame and cover to finish grade -per each for two hundred eighty five dollars and no cents	$285.00	$6,840.00
55	na	na	(Reserved) for _____ dollars and _____ cents	$_____	$_____
56	1	LS	Wet Ponds, per plan sheets, C1-C6 excluding plantings, topsoil and seeding complete and in place - per Lump Sum one hundred seventy nine thousand for eight hundred eighty eight dollars and one cents	$179,888.01	$179,888.01
57	1	LS	Water Quality Pond C, per plan sheets, complete and in place - per Lump Sum one hundred six thousand four for hundred thirty three dollars and no cents	$106,433.00	$106,433.00
58	1	LS	Water Quality Pond D, per plan sheets, complete and in place - per Lump Sum forty one thousand nine hundred for eighty one dollars and no cents	$41,981.00	$41,981.00
59	1	LS	Water Quality Pond E, per plan sheets, complete and in place - per Lump Sum for fifty one thousand four hundred sixty six dollars and no cents	$51,466.00	$51,466.00
60	1	LS	Water Quality Pond F, per plan sheets, complete and in place - per Lump Sum fifty nine thousand seven hundred for thirty seven dollars and no cents	$59,737.00	$59,737.00
61	1	LS	Water Quality Pond G, per plan sheets, complete and in place - per Lump Sum seventy eight thousand five for hundred three dollars and no cents	$78,503.00	$78,503.00
62	1	LS	Water Quality Pond H, per plan sheets, complete and in place - per Lump Sum for ninety thousand one hundred fifty five dollars and no cents	$90,155.00	$90,155.00

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
63	2,460	LF	Temporary Diversion Berm/Swale -per linear foot for six dollars and no cents	$ 6.00	$ 14,760.00
64	800	LF	Handrail for multiple box culverts, -per linear foot for forty seven dollars and four cents	$ 47.04	$ 37,632.00
65			(RESERVED) for _____ dollars and _____ cents	$	$
66			(RESERVED) for _____ dollars and _____ cents	$	$
67			(RESERVED) for _____ dollars and _____ cents	$	$
68			(RESERVED) for _____ dollars and _____ cents	$	$

DRAINAGE IMPROVEMENTS

SUBTOTAL AMOUNT BID: $1,938,050.47
(in figures)

SUBTOTAL AMOUNT BID: one million nine hundred thirty eight thousand fifty dollars and forty seven cents
(in words)

(in words)

EROSION AND SEDIMENTATION CONTROL & TREE PROTECTION

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
69	5	EA	Stabilized Construction Entrance -per each for six hundred fifty dollars and no cents	$ 650.00	$ 3,250.00
70	400	LF	Rock Berm, High Service - per linear foot for fifteen dollars and no cents	$ 15.00	$ 6,000.00
71	13,000	LF	Silt Fence - per linear foot for one dollars and sixty five cents	$ 1.65	$ 21,450.00
72	6,000	LF	Tree Protection Fencing, Type A - per linear foot for two dollars and twenty five cents	$ 2.25	$ 13,500.00
73			(RESERVED) for dollars and cents	$	$
74			(RESERVED) for dollars and cents	$	$

EROSION AND SEDIMENTATION CONTROL AND TREE PROTECTION

SUBTOTAL AMOUNT BID: $44,200.00
(in figures)

SUBTOTAL AMOUNT BID: forty four thousand two hundred dollars
(in words)

(in words)

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
75	1	EA	manholes 4 ft. diameter,0 -8 ft. including bolted and watertight cover -per each		
			for twenty eight hundred fifty dollars and no cents	$ 2,850.00	$ 2,850.00
76	4	EA	manholes 4 ft. diameter,0 -8 ft. including cover -per each		
			for twenty seven hundred fifty dollars and no cents	$ 2,750.00	$ 11,000.00
77	22	VF	Manhole Riser Section. - per vertical foot		
			for two hundred twenty five dollars and no cents	$ 225.00	$ 4,950.00
78	113	LF	8 inch, PVC SDR 26, 0-8 ft. -per linear foot		
			for thirty six dollars and no cents	$ 36.00	$ 4,068.00
79	557	LF	8 inch, PVC SDR 26, 8-10 ft. -per linear foot		
			for thirty eight dollars and no cents	$ 38.00	$ 21,166.00
80	315	LF	8 inch, PVC SDR 26, 10-12 ft. -per linear foot		
			for forty dollars and no cents	$ 40.00	$ 12,600.00
81	35	LF	8 inch, PVC SDR 26, 12-14 ft. -per linear foot		
			for forty three dollars and no cents	$ 43.00	$ 1,505.00
82	123	LF	8 inch, PVC SDR 26, 14-16 ft. -per linear foot		
			for forty eight dollars and no cents	$ 48.00	$ 5,904.00
83	224	LF	8 inch, PVC SDR 26, 16-18 ft. -per linear foot		
			for fifty one dollars and no cents	$ 51.00	$ 11,424.00

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
84	25	LF	8 inch, PVC SDR 26, 18-20 ft. -per linear foot		
			for fifty four dollars and no cents	$ 54.00	$ 1,350.00
85	1,392	LF	Trench Safety Systems, including manholes - per linear foot		
			for one dollars and twenty five cents	$ 1.25	$ 1,740.00
86			(RESERVED)		
			for dollars and cents	$	$
87			(RESERVED)		
			for dollars and cents	$	$
88			(RESERVED)		
			for dollars and cents	$	$
89			(RESERVED)		
			for dollars and cents	$	$

WASTEWATER IMPROVEMENTS

SUBTOTAL AMOUNT BID: $78,557.00
(in figures)

SUBTOTAL AMOUNT BID: seventy eight thousand five hundred fifty seven dollars
(in words)

(in words)

Summary of Proposed Bid Amount

PAVING IMPROVEMENTS: TOTAL AMOUNT BID: $2,810,923.09 (in figures)

DRAINAGE IMPROVEMENTS: TOTAL AMOUNT BID: $1,938,050.47 (in figures)

EROS. AND SED. CONT. AND TREE PROT.: TOTAL AMOUNT BID: $44,200.00 (in figures)

WASTEWATER IMPROVEMENTS: TOTAL AMOUNT BID: $78,557.00 (in figures)

TOTAL IMPROVEMENTS:

TOTAL AMOUNT BID: $4,871,730.56 (in figures)

TOTAL AMOUNT BID: four million eight hundred seventy one thousand seven hundred thirty dollars and fifty (in words)

six cents (in words)

STATEMENT OF MATERIALS INCORPORATED INTO REALTY IMPROVEMENTS

As per House Bill 11, and Chapter 151 of the Texas Tax Code, and as outlined in the Instruction to Bidders, the Contractor separates material and other charges comprising his total bid as follows:

MATERIALS INCORPORATED INTO THE PROJECT	$ 1,146,000.00
ALL OTHER CHARGES	$ 3,725,730.56
TOTAL (Shall equal total amount Bid)	**$ 4,871,730.56**

BID GUARANTY: Enclosed with this Bid is a cashier's or certified check or bid bond to Avery Ranch Owner's Committee, in the amount of not less than five percent (5%) of the total amount bid, BID BOND (~~Dollars~~) ($ 5%) as bid guaranty. Following the Bid opening, submitted Bids may not be withdrawn for a period of (90) Calendar Days. Award of Contract will occur within this period, unless mutually agreed between the parties. If a submitted Bid is withdrawn within said period, or bidder fails to execute the Contract and furnish the prescribed documentation (bonds, insurance, etc.) needed to complete execution of the Contract within ten (10) calendar days after notice of award, the bid guaranty may become the property of the OWNER or the OWNER may pursue any other action allowed by law.

TIME OF COMPLETION: The undersigned bidder agrees to commence work within ten (10) calendar days after written notice as specified in a written "Notice to Proceed" to be issued by the OWNER and to be at **"Final Completion"** of the construction of ALL the improvements, as required by the Project Manual, Drawings and Addenda for the Work within **two hundred forty (270) Calendar days " in accordance with the following phasing:**

Phase One and Four:	**180 calender days**	**(Sta. 100+00 to 132+00, Sta 190+50 to end)**
Phase Two:	**225 Calendar days**	**(Sta. 132+00 to 162+00)**
Phase Three:	**270 Calendar days**	**(Sta. 162+00 to 190+50)**

"**Final Completion**, for the purposes of satisfiying the conditions of Time of Completion, shall be the completion of the Contractor responsible punchlist items prepared by the City of Austin under item 1806S.2 Final Inspection. The bidder further agrees that should the bidder fail to **finally** complete the Work within each phase in the number of days indicated above or as subsequently adjusted, bidder shall pay the liquidated damages for each consecutive day thereafter as provided below; unless the OWNER elects to pursue any other action allowed by law.

LIQUIDATED DAMAGES: The bidder understands and agrees that the timely completion of the described Work is of the essence. The bidder and the OWNER agree that for each and every **Calendar** Day the Work or any portion thereof, remains incomplete after the **Final** completion date as established by the above paragraph, "Time of Completion", the bidder shall pay the amount of **$1,500.00 dollars per Calendar day** as liquidated damages, not as a penalty, but for delay damages to the OWNER. Such amount shall be deducted by the OWNER from any payment due to the bidder.

CERTIFICATION OF INTEREST IN OTHER BID PROPOSALS FOR THIS WORK: By signing this bid form, the bidding firm and the signer, certify that the following information, as indicated by checking "Yes" or "No", below is true, accurate and complete.

A. Quotation(s) have been issued in this firm's name to other firm(s) interested in this work for consideration for performing a portion of this work.

✓ YES _____ NO

B. If this proposal is the low bid, the bidder agrees to provide the following information prior to award of the contract.

1. Identify firms which bid as a prime contractor and from which the bidder received quotations for work on this project.

2. Identify all the firms which bid as a prime contractor to which the bidder gave quotations for work on this project.

OWNER reserves the right to reject any or all Bids and to waive any informalities and irregularities in Bids received.

The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated 9/6/2000 Received 9/6/2000
Addendum No. 2 dated 9/11/2000 Received 9/12/2000
Addendum No. 3 dated _____ Received _____

Denise Laird
Secretary, *if bidder is a Corporation

J. C. EVANS CONSTRUCTION CO. INC.
Legal Firm Name

Authorized Signature

Blake A. Kuhlman, President
Title

9/21/2000
Date

(Seal)

* Copy of Corporate Resolution and minutes with certificate of officer of bidder as to authority of signatory to bind bidder is to be signed and dated no earlier than one week before Bid date, and attached to this document.

End

P. O. Box 9647
Austin, Tx 78766
Inc. 1955 - State of Tx
Address

(512) 244-1400

J.C. EVANS CONSTRUCTION

J. C. EVANS CONSTRUCTION CO., INC.
September 18, 2000

Let it be known that the persons whose names are herein below listed by, and each of them hereby is, elected to and declared qualified to sign and approve all contract documents, occupy the corporate office or offices set forth opposite their respective names; and that such persons shall occupy such offices until their respective successors shall be duly elected and qualified, unless they shall sooner resign or be removed in accordance with the Bylaws of each corporation:

Blake A. Kuhlman, Chief Executive Officer/President
Duane B. McGlauflin, Senior Vice President
Zane Hudson, Vice President
Johnny Odell, Vice President
Denise Laird/ Secretary

Blake A. Kuhlman, President

P.O. Box 9647 • Austin, Texas 78766 • (512) 244-1400 • Fax (512) 244-1900
3324 Roy Orr Blvd. • Grand Prairie, Texas 75050 • (972) 313-1339 • Fax (972) 313-0525

UNITED STATES FIDELITY GUARANTY COMPANY

(A Stock Company)

BID BOND

BOND NUMBER .....

KNOW ALL MEN BY THESE PRESENTS:

THAT J.C. Evans Construction Co., Inc.

..... of Austin, Texas

....., as Principal , and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Maryland corporation, as Surety, are held and firmly bound unto Avery Ranch Owners Committee

.....

as Obligee, in the full and just sum of Five Per-Cent of the Greatest Amount Bid by Principal (5% of amt bid) ..... Dollars, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is herewith submitting its proposal for Avery Ranch Blvd East Paving and Drainage associated with construction of 2 miles of 4-lane divided roadway, drainage infrastructure, one wet pond and 6 filtration ponds.

THE CONDITION OF THIS OBLIGATION is such that if the aforesaid Principal shall be awarded the contract the said Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract, then this obligation to be void; otherwise the Principal and Surety will pay unto the Obligee the difference in money between the amount of the bid of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof. PROVIDED, HOWEVER, NEITHER Principal nor Surety shall be bound hereunder unless Obligee shall, prior to execution of the contract furnish evidence satisfactory to the Surety of the Obligee's ability to make payment to the Principal in accordance with the terms of the contract.

Signed, sealed and delivered September 21, 2000
(Date)

Denise Jarid

J.C. Evans Construction Co., Inc. (SEAL)

..... (SEAL)

UNITED STATES FIDELITY AND GUARANTY COMPANY

John W. Wagner

John W. Wagner Attorney-in-fact

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 21130 Certificate No. 280338

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Rose Marie Boriskie, Glenn Richards, Emily Mikeska and Roberta Jones

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 1st day of December, 1999.

WARNING
THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

John F. Phinney

JOHN F. PHINNEY, Vice President

Michael R. McKibben

MICHAEL R. MCKIBBEN, Assistant Secretary

State of Maryland
City of Baltimore

On this 1st day of December, 1999, before me, the undersigned officer, personally appeared John F. Phinney and Michael R. McKibben, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

Rebecca Easley-Onokala

REBECCA EASLEY-ONOKALA, Notary Public

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for the work.

The undersigned affirms the truth and accuracy of this certification.

J. C. EVANS CONSTRUCTION CO. INC.
Legal Firm Name

Signature

Address:
P. O. Box 9647
Austin, Tx 78766

Before me, the undersigned authority a Notary Public on this day personally appeared Blake A. Kuhlman, President who, being by me duly sworn, upon oath says: that he is qualified and authorized to make this affidavit for and on behalf of J. C. EVANS CONSTRUCTION CO. INC. of Travis County, Texas, and is fully cognizant of the facts herein set out and affirms to the truth and accuracy of the certification made herein by signing above.

Subscribed and sworn to before me by the said Blake A. Kuhlman, President
this 21 day of Sept, 2000, to certify which witness my hand and seal

Notary Public in and for Travis County, Texas

DENISE LAIRD NOTARY PUBLIC STATE OF TEXAS EXPIRES DEC. 5, 2003

End

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

THIS AGREEMENT is made and entered into this the 18 day of January in the year 2001 by and between Avery Ranch Owner's Committee (herein-after called OWNER) and J.C. Evans Construction Co. Inc. (herein-after called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

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

Paving and Drainage Improvements
Avery Ranch Boulevard East

Article 2. ENGINEER

The Design Engineer and/or his Designate shall hereinafter be called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME

3.1. The Work associated with Avery Ranch Boulevard East will be ready for "Final Completion", in accordance with the definition under Time of Completion in the Bid Form, within **two hundred seventy calendar days** after the date when the Contract Time commence to run as provided in paragraph 2.3. of the General Conditions. Contractor is entitled to assume the number of raindays as outlined in Section 12.2 of the General Conditions. No additional raindays beyond those outlined in Section 12.2 of the General Conditions will be granted.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in paragraph 3.1 above, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. They 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 ready for final acceptance 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 One Thousand Dollars ($1,000.00) for each calendar day that expires after the time specified in paragraph 3.1 for Final Acceptance until the Work is Finally Accepted. However, the Owner reserves the right to waive liquidated damages.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the BID FORM.

TOTAL OF ALL UNIT PRICES **$4,871,730.56**
(in figures)
four million eight hundred seventy one thousand seven hundred thirty dollars and fifty six cents
(use words)

As provided in paragraph 11.6 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Owner's Representative.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or, if applicable, as amended in the Supplementary General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions or, if applicable, as amended in the Supplementary General Conditions.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. 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, performance or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Special Conditions and Section 00220 Geotechnical Data. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5. 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.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7. 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

7.1. This Agreement (pages 1 to 4, inclusive).

7.2. Exhibits to this Agreement (not applicable).

7.3. Performance, Payment, and other Bonds.

7.4. Project Manual generally consisting of:

a. Introductory information.
b. Bidding requirements.
c. Contract Forms.
d. General, Supplementary General and Special Conditions of the Contract.
e. Specifications: The City of Austin Standard Specifications and Standard Details; and Series 1800.
f. Special Specifications.

7.5. Notice of Award.

7.6. Drawings consisting of the following:

a. Paving and Drainage Improvements, Avery Ranch Boulevard East.

7.7. Addenda No. 1, dated 09/06/00.
Addenda No. 2, dated 09/11/00.
Addenda No. 3, dated 09/17/00.

7.8. CONTRACTOR'S Bid Form.

The Exhibits listed in paragraph 7.2 above, if any, are attached to this Agreement.

There are no Contract Documents other than those listed in this Article 7. The Contract Documents may only be amended or supplemented as provided in Article 3 of the General Conditions.

Article 8. MISCELLANEOUS

8.1. Terms listed in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents 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 are due but 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.

8.3. 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.

8.4. Any provision or part of the Contract Documents held to be void or enforceable 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 hereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed three (3) copies of this Agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, AND DESIGN ENGINEER.

OWNER

By: Avery Ranch Owner's Committee
Travis County, Texas

By: _____ 1-18-01
Date

ATTEST:
By: _____

Printed Name

Date

§ **CONTRACTOR**
§
§ By: _____
§ Printed Name of Signatory
§
§ Duane B. McGlauflin, Senior Vice President
§ Title of Signatory
§
§ ATTEST:
§
§ _____
§ *Secretary, if CONTRACTOR is a
§ Corporation or otherwise
§ registered with Secretary of State

*Copy of Corporate Resolution and minutes with certificate of officer of CONTRACTOR as to authority of signatory to bind CONTRACTOR is to be attached to this document.

Owner Address for giving notices:

Avery Ranch Owner's Committee
2414 Exposition Boulevard
Suite 280
Austin, Texas 78703

Contractor Address for giving notices:

J. C Evans Construction Co. Inc.
P.O. Box 9647
Austin, Texas 78766

END

STATE OF TEXAS

COUNTY OF _____

Bond No._____

CSA. No._____

Project No._____

Know All Men By These Presents: That _____

of the City of _____, County of _____, and

State of _____, as Principal, and _____,

a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and

firmly bound unto Avery Ranch Owner's Committee, (OWNER), in the penal sum of

_____

_____ U.S. Dollars ($ _____ U.S.)

for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated

the _____ day of _____, 2000, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular convenants, conditions and agreements in and by said contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____

day of _____, 20_____.

Principal	Surety
By_____	By _____
Title_____	Title _____
Address_____	Address _____
_____	_____
_____	_____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

STATE OF TEXAS

Bond No. SC0461

COUNTY OF Travis

CSA. No. Project No. 200-02b

Project No.

Know All Men By These Presents: That J.C. Evans Construction Co., Inc.

of the City of Austin, County of Travis, and

State of Texas, as *Principal*, and United States Fidelity and Guaranty Company,

a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and

firmly bound unto Avery Ranch Owner's Committee, (OWNER), in the penal sum of

Four Million Eight Hundred Seventy One Thousand Seven Hundred Thirty and 56/100

U.S. Dollars ($ 4,871,730.56 U.S.)

for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated

the _____ day of _____, 2000, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular convenants, conditions and agreements in and by said *contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said* Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this 10th

day of January, 2001.

J.C. Evans Construction Co., Inc.	United States Fidelity and Guaranty Company
Principal	Surety
By Duane B. McGlauflin	By
Title Duane B. McGlauflin, Senior Vice President	Title Glenn Richards Attorney-in-Fact
Address P.O. Box 9647	Address P.O. Box 3623
Austin, TX 78766	Temple, TX 76505

Name and address of Resident Agent of Surety:

Summit Global Partners of Texas, Inc.

P.O. Box 3623, Temple, TX 76505

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 22230 **Certificate No.** [illegible]

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Glenn Richards, Emily Mikeska and Stephen R. Smith

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 24th day of October, 2000.

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

John F. Phinney

JOHN F. PHINNEY, Vice President

Thomas E. Huibregtse

THOMAS E. HUIBREGTSE, Assistant Secretary

State of Maryland
City of Baltimore

On this 24th day of October, 2000, before me, the undersigned officer, personally appeared John F. Phinney and Thomas E. Huibregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

REBECCA EASLEY-ONOKALA NOTARY PUBLIC BALTIMORE CITY MD

Rebecca Easley-Onokala

REBECCA EASLEY-ONOKALA, Notary Public

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

RESOLVED FURTHER, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Huibregtse, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this 10th day of January, 2001.

Thomas E. Huibregtse, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.

IMPORTANT NOTICE

To obtain information or make a complaint:

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

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax # (512) 475-1771

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR POLICY:

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

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

STATE OF TEXAS Bond No. SC0461

COUNTY OF Travis CSA No. Project No. 200-02b

Project No.

Know All Men By These Presents: That J.C. Evans Construction Co, Inc.

of the City of Austin, County of Travis and

State of Texas, as principal, and United States Fidelity and Guaranty Company
a solvent corporation authorized under laws of the State of Texas to act as surety on bonds for principals, are held and

firmly bound unto Avery Ranch Owner's Committee (Owner), and all Subcontractors, workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to sue upon this bond in

the penal sum of Four Million Eight Hundred Seventy One Thousand Seven Hundred Thirty

and 56/100 U.S. Dollars ($ 4,871,730.56 U.S.),
for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with Owner; dated

the _____ day of _____, 2000 to which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied in length herein.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this 10th

day of January, ~~2000~~ 2001

Principal	Surety
J.C. Evans Construction Co., Inc.	United States Fidelity and Guaranty Company
By Duane B. McGlanflin	By Glenn Richards
Title Duane B. McGlanflin, Senior Vice President	Title Glenn Richards Attorney-in-Fact
Address P.O. Box 9647	Address P.O. Box 3623
Austin, TX 78766	Temple, TX 76505

Name and address of the Resident Agent of Surety:
Summit Global Partners of Texas, Inc.
P.O. Box 3623, Temple, TX 76505

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 22230 **Certificate No.**

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Glenn Richards, Emily Mikeska and Stephen R. Smith

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 24th day of October 2000.

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

JOHN F. PHINNEY, Vice President

THOMAS E. HUIBREGTSE, Assistant Secretary

State of Maryland
City of Baltimore

On this 24th day of October, 2000, before me, the undersigned officer, personally appeared John F. Phinney and Thomas E. Huibregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

REBECCA EASLEY-ONOKALA, Notary Public

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

RESOLVED FURTHER, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Huibregtse, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this 10th day of January, 2001.

Thomas E. Huibregtse, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.

IMPORTANT NOTICE

To obtain information or make a complaint:

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

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You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax # (512) 475-1771

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR POLICY:

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

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

CERTIFICATE OF INSURANCE

The insurance evidenced by this Certificate shall conform to the Supplemental General Conditions, Section 5.3 Insurance:

Name and Address of Agency:
Summit Global Partners
P. O. Box 2291
Austin, TX 78768

Phone: 512 / 451-7555

Name and Address of Insured:
J. C. Evans Construction Co., Inc.
P O Box 9647
Austin, TX 78766
Phone: 512 / 244-1400

Prime or Sub-Contractor?: Prime

Owner Reference:
Project Name: Paving and Drainage Improvements
Avery Ranch Boulevard East

Project Location: Austin, Texas
Williamson County
CSA Project No.: 200-02a
Contract No.:
Project Mgr. James M. Cook, P.E.
Companies Affording Coverages:
Company A Letter St. Paul Fire & Marine
Company B Letter St. Paul Mercury Ins.
Company C Letter St. Paul Insurance Co.
Company D Letter

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (M/D/Y)	POLICY EXPIRATION DATE (M/D/Y)	LIMITS OF LIABILITY IN THOUSANDS (000) EACH	
	Commercial General Liability Policy	KK09101 115	4/01/00	4/01/01		
	X Blanket Contractural Liability				General Aggregate	$ 2,000
	X Completed Operations/ Products				Completed Operations/ Products - Aggregate	$ 1,000
	X Explosion, Collapse, Underground				Personal & Advertising Injury	$ 1,000
	X Independent Contractor's Coverage				Each Occurrence	$ 1,000
	X Aggregate Limits Per Project					
	X Additional Insured Form -CG 2010					
	X 30 Day Notice of Cancellation Form - CG 0205 (Except 10 days for non-pay)				Deductible or Self Insured Retention	$ 10
	X Waiver of Subrogation Form - CG 2404					
	___ Transportation of Asbestos or Lead					
	___ Asbestos Abatement					
	___ Lead Abatement					

Certificate of Insurance

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (M/D/Y)	POLICY EXPIRATION DATE (M/D/Y)	LIMITS OF LIABILITY IN THOUSANDS (000) EACH	
A	Auto Liability Policy ___All Owned Autos X Non-Owned Autos X Hired Autos X Waiver of Subrogation-TE2046A X 30 Day Notice of Cancellation - TE0202A (Except 10 days for non-pay) X Additional Insured-TE9901B X MCS 90	KK09101 115	04/01/00	04/01/01	CSL Bodily Injury (Per Person) Bodily Injury (Per Accident) Property Damage (Per Accident) Deductible or Self Insured Retention	$ 1,000 $ $ $ $ 25
A	Excess Liability X Umbrella Form ___Excess Liability Follow Form	KK09101 115	04/01/00	04/01/01	Each Aggregate Occurrence	$ 5,000
B	Worker's Compensation and Employers' Liability X Waiver of Subrogation - WC420304 X 30 Day Notice of Cancellation - WC420601 (Except 10 days for non-pay)	WVK9101 258			Statutory (Each Accident) (Disease - Policy Limit) (Disease - Each Employee)	$ 1,000 $ 1,000 $ 1,000
	___Builders Risk or Installation Insurance					$
	Professional Liability ___30 Day Notice of Cancellation Retro-Active Date:_____				Each Claim Deductible or Self Insured Retention	$ $

This is to certify that policies of insurance listed above have been issued to insured named above and are in force at this time. Not withstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, insurance afforded by policies described herein is subject to all terms, exclusions and conditions of such policies.

CERTIFICATE HOLDER:
Avery Ranch Owner's Committee
2414 Exposition Boulevard
Suite 280
Austin, Texas 78703

DATE ISSUED: 04/01/00

William H. Letts Jr.
AUTHORIZED REPRESENTATIVE

End

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly sworn, upon oath deposed and stated:

"My name is Duane B. McGlauflin, Senior Vice President, hereinafter known as Affiant. I am over the age of 18 years. I am the _____, herein after known as CONTRACTOR.

I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are true and correct. WHEREAS CONTRACTOR has submitted a bid to the Avery Ranch Owner's Committee, hereinafter known as OWNER, as the Prime CONTRACTOR and anticipates being awarded a Contract for the construction of:
Paving and Drainage Improvements, Avery Ranch Boulevard East located in Williamson County, Austin, Texas, hereinafter known as Project, and

WHEREAS asbestos in a dust form is a recognized health hazard, and WHEREAS the OWNER desires not to have any asbestos containing materials used or incorporated into the construction of the Project; THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR shall not cause or allow any material to be incorporated into the construction of the Project, or allow any building material on the Project site that is an asbestos containing material defined as containing asbestos by any laws, rules or regulations promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.
2. Realizing that there might be materials required in which a satisfactory non-asbestos containing material cannot be obtained, the Consultant has received approval from the OWNER before specifying any such asbestos containing material. Those approved materials are the only asbestos containing materials that are exempt from the above prohibition.
3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the CITY OF AUSTIN for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the construction of the Project, or brought onto the site of the Project the OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or abatement of said asbestos containing materials.
4. CONTRACTOR further understands that OWNER shall also look to CONTRACTOR for any and all damages to OWNER which results from the inability of the OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by the CITY OF AUSTIN.
5. CONTRACTOR further understands that OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within OWNER's right and power."

Signature of Affiant: Duane B. McGlauflin

STATE OF TEXAS
COUNTY OF TRAVIS

ON 1-10-2001, ~~2000~~, personally appeared Duane B. McGlauflin, Senior Vice President and been duly sworn by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

Denise Laird
Notary Public, State of Texas

Denise Laird
Printed Name of Notary

My Commission Expires: 12/5/03

END

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly swom, upon oath deposed and stated:

"My name is_____, hereinafter known as Affiant. I am over the age of 18 years. I am the _____, herein after known as CONTRACTOR.

I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are true and correct. WHEREAS CONTRACTOR was awarded a contract for, and was the Prime CONTRACTOR for the construction of: Paving and Drainage Improvements, Avery Ranch Boulevard East located in Williamson County, Austin, Texas, hereinafter known as Project, and

WHEREAS asbestos in a dust form is a recognized health hazard, and WHEREAS the CITY OF AUSTIN and OWNER desire not to have any asbestos containing materials used or incorporated into the construction of the Project; THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR has not caused or allowed any material to be incorporated into the construction of the Project, or allowed any building material on the Project site that is an asbestos containing material defined as containing asbestos by any laws, rules or regulations promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.
2. Realizing that there might be materials required in which a satisfactory non-asbestos containing material cannot be obtained, the Consultant has received approval from the CITY OF AUSTIN before specifying any such asbestos containing material. Those approved materials were the only asbestos containing materials incorporated into the construction of the project and are listed below with their locations:

   _____
   _____
   _____
   _____

3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the CITY OF AUSTIN for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the construction of the Project, or brought onto the site of the Project the CITY OF AUSTIN and OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or abatement of said asbestos containing materials.
4. CONTRACTOR further understands that CITY OF AUSTIN and OWNER shall also look to CONTRACTOR for any and all damages to CITY OF AUSTIN and OWNER which results from the inability of the CITY OF AUSTIN and OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by the CITY OF AUSTIN.
5. CONTRACTOR further understands that CITY OF AUSTIN and OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within CITY OF AUSTIN's and OWNER'S right and power."

Signature of Affiant: _____

STATE OF TEXAS
COUNTY OF TRAVIS

ON _____, 2000, personally appeared _____
and been duly swom by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

_____
Notary Public, State of Texas

_____
Printed Name of Notary

My Commission Expires: _____

END

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding requirements or the Contract Documents.

1.2 Agreement - Prescribed form, Section 00500.

1.3 Alternative Dispute Resolution - The process by which a disputed Claim may be settled if the OWNER and the CONTRACTOR cannot reach an agreement between themselves, as an alternative to litigation.

1.4 Bid - Proposal of bidder on prescribed forms setting forth prices for performing the Work described in the Contract Documents.

1.5 Bid Documents - The advertisement or invitation for bids, instructions to bidders, the bid form, the Contract Documents and Addenda.

1.6 Calendar Day - Any day of the week; no days being excepted.

1.7 Change Directive - A written directive to CONTRACTOR, signed by OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

1.8 Change Orders - Executed agreements entered into between CONTRACTOR and OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.

1.9 Claim - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

1.10 Contract - The Contract represents the entire and integrated agreement between OWNER and CONTRACTOR for performance of the Work, as evidenced by the Contract Documents.

1.11 Contract Amount - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents.

1.12 Contract Documents - Project Manual, Drawings, Addenda and Change Orders.

1.13 Contract Time - The number of days allowed for completion of the Work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period. A day of twenty-four hours measured from midnight to the next midnight will constitute a day.

1.14 CONTRACTOR - The individual, firm, corporation, or other business entity with whom OWNER has entered into the Contract.

1.15 Drawings - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been approved by OWNER. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.

see 00810

1.16 Engineer/Architect (E/A) - The OWNER's design professional identified as such in the Contract. The titles of "Architect/Engineer," "Architect" and "Engineer" used in the Contract Documents shall read the same as Engineer/Architect (E/A). Nothing contained in the Contract Documents shall create any contractual or agency relationship between E/A and CONTRACTOR.

1.17 Equal - The terms "equal" or "approved equal" shall have the same meaning.

1.18 Execution Date - Date of last signature of the parties to the Agreement.

1.19 Field Order - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.

1.20 Final Completion - The point in time when OWNER determines that all Work has been completed and final payment to CONTRACTOR will be made in accordance with the Contract Documents.

1.21 Inspector - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.

1.22 Legal Holidays

see 00810

1.22.1 The following are recognized by the OWNER:

Holiday	*Date Observed*
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

1.22.2 If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.22.3 Christmas Eve is observed *only* if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

1.23 Milestones - A significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.24 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 CONTRACTOR's obligations under the Contract Documents.

1.25 OWNER - ~~City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.~~

1.26 Owner's Representative - The designatec representative of the OWNER.

1.27 Partial Occupancy or Use - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided OWNER and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any security, maintenance, utilities, corrective work insurance and warranties.

1.28 Project - The total construction of which the Work to be provided under the Contract Document may be the whole, or a part, as indicated elsewhere in the Contract Documents.

1.29 Project Manual - That portion of the Contract Documents which may include the following introductory information; bidding requirements Contract forms and General and Supplemental General Conditions; General Requirements Specifications; Drawings; MBE/WBE Participation Packet; Project Safety Manual; and Addenda.

1.30 Resident Project Representative - The authorized representative of E/A who may be assigned to the site or any part thereof.

1.31 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 as required by the Contract Documents.

1.32 Specifications - Those portions of the Contract Documents consisting of written technical descriptions as applied to the Work, which set forth to CONTRACTOR, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship,

equipment and services in order to render a completed and useful project.

1.33 Substantial Completion - The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so OWNER can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by OWNER.

1.34 Subcontractor - An individual, firm, or corporation having a direct contract with CONTRACTOR for the performance of a part of the Work.

1.35 Sub-subcontractor - A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work.

1.36 Superintendent - The representative of CONTRACTOR authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.

1.37 Supplemental General Conditions - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.

1.38 Supplier - An individual or entity having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.39 Time Extension Request - An approved request for time extension on a form acceptable to OWNER.

1.40 Work - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

1.41 Working Day - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CONTRACTOR's control will permit work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. Upon agreement with Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.

1.42 Working Hours - Under a Working Day Contract, all Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CONTRACTOR's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.

1.43 Written Notice - Written communication between OWNER and CONTRACTOR. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CONTRACTOR's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CONTRACTOR's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Agreement, Bonds, Insurance, etc.:

Within ten Calendar Days after written notification of award of Contract, CONTRACTOR shall deliver to OWNER signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.

2.2 Copies of Documents: See 00810

OWNER shall furnish to CONTRACTOR up to ~~ten~~ copies of the Contract Documents unless otherwise specified. Additional copies will be furnished, upon request, at the cost specified in the Supplemental General Conditions.

2.3 Commencement of Contract Times; Notice to Proceed:

The Contract Time(s) will begin to run on the day indicated in the Notice to Proceed. Notice to Proceed will be given at any time within sixty calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.

2.4 Before Starting Construction:

2.4.1 No Work shall be done at the site prior to the preconstruction conference without OWNER's approval. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CONTRACTOR knew or reasonably should have known.

2.4.2 CONTRACTOR shall submit the following to Owner's Representative for review and approval no later than the preconstruction conference:

.1 a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, and taking into consideration any limitations on Working Hours;

.2 a preliminary schedule of Shop Drawing and sample submittals;

See 00810

.3 ~~a preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work;~~

.4 a letter designating CONTRACTOR's Superintendent;

See 00810

.5 ~~a letter from CONTRACTOR and Subcontractor(s) listing salaried specialists;~~

.6 if applicable, a letter designating the "Competent Person(s)" on general safety and trench safety measures;

.7 if applicable, a trench safety system plan;

.8 if applicable, a plan illustrating proposed locations of temporary facilities; and

.9 a completed Non-Use of Asbestos Affidavit (Prior to Construction).

2.5 Preconstruction Conference:

Prior to commencement of Work at the site, a preconstruction conference attended by CONTRACTOR, Owner's Representative and others will be held as set forth in Division 1.

2.6 Initially Acceptable Schedules:

Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain approval of Owner's Representative on final versions of the schedules submitted in accordance with paragraph 2.4.2 and Division 1 before the first progress payment will be made to CONTRACTOR. The progress schedule must provide for an orderly progression of the Work to completion within any specified Milestones and Contract Times. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility for the sequencing scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawings and sample submissions must provide an arrangement agreeable to the parties for reviewing and processing the required submittals. CONTRACTOR's schedule of values must conform to the requirements set forth in Division 1.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

3.1.1 The intent of the Contract Documents is to include all information necessary for the proper execution and completion of the Work by CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

3.1.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

3.2 **Reporting and Resolving Discrepancies:**

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 any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CONTRACTOR shall report it to Owner's Representative in writing at once, and CONTRACTOR shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.3.1 or 3.3.2. CONTRACTOR shall be liable to OWNER for failure to report any such conflict, error, ambiguity or discrepancy of which CONTRACTOR knew or reasonably should have known.

3.3 **Amending and Supplementing Contract Documents:**

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

.1 Change Order.

.2 Change Directive.

.3 *Time Extension Request.*

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

.1 Field Order.

.2 review of a Shop Drawing or sample.

.3 written interpretation or clarification.

3.4 **Reuse of Documents Prohibited:**

CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 E/A or E/A's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and E/A.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 **Availability of Lands:**

OWNER shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If OWNER fails to furnish these lands, rights-of-way or easements in a timely manner, CONTRACTOR may make a Claim for adjustments in the Contract Amount or the Contract Times. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 *Subsurface and Physical Conditions:*

4.2.1 CONTRACTOR hereby covenants that it has examined the site of the proposed Work and is familiar with all of the conditions surrounding construction of the Project, having conducted all inquiry, tests and investigation deemed necessary and proper.

4.2.2 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions. Owner's Representative will promptly investigate such conditions with E/A and, if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of any part of the Work, will

recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the CONTRACTOR shall be notified in writing, stating the reasons. Any disputes arising from Owner's Representative's determination shall be resolved in accordance with Article 16.

4.2.3 Notwithstanding any other provision of this Contract, CONTRACTOR shall be solely responsible for the location and protection of any and all public lines and utility customer service lines in the Work area. For the purposes of this section, "public lines" means the utility distribution and supply system within public rights-of-way or easements, and "utility customer service lines" (service) means any utility line connecting a utility customer to the utility distribution system. Generally, existing service connections within right-of-way or easements are not shown on the Drawings. CONTRACTOR shall notify "One Call" and exercise due care to locate and to mark, uncover or otherwise protect all such lines in the construction zone and any of CONTRACTOR's work or storage areas. CONTRACTOR's obligation hereunder shall be primary and nondelegable. CONTRACTOR shall indemnify or reimburse such expenses or costs (including fines that may be levied against OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the Work area. OWNER reserves the right to repair such damage CONTRACTOR may cause, at CONTRACTOR's expense.

4.2.4 CONTRACTOR shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and Texas Department of Antiquities Protection. When such objects are uncovered unexpectedly, CONTRACTOR shall stop all Work in close proximity and notify Owner's Representative and Texas Department of Antiquities Protection of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on OWNER's property shall remain property of State of Texas, Texas Department of Antiquities Protection conforming to Texas Natural Resources Code. If it is determined by OWNER, in consultation with Texas Department of Antiquities Protection, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CONTRACTOR shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time will be equitably adjusted.

4.3 Reference Points:

Unless otherwise specified, all control lines and bench marks suitable for use in layout will be furnished by OWNER. Lay out of the Work shall be performed in accordance with Division 1. Controls and bench marks shall be carefully preserved by CONTRACTOR by use of flags, staffs or other visible devices and in case of destruction or removal by CONTRACTOR or its employees, such controls and bench marks shall be replaced by a Registered Public Land Surveyor at CONTRACTOR's expense. City of Austin survey monuments damaged by CONTRACTOR will be reestablished by OWNER at CONTRACTOR's expense.

4.4 Hazardous Materials:

4.4.1 OWNER shall be responsible for any hazardous material uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CONTRACTOR shall immediately notify Owner's Representative of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

4.4.2 CONTRACTOR shall be responsible for any hazardous materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.4.3 No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of OWNER.

4.4.4 Refer to Division 1 for hazardous material definitions and procedures.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies:

All bonds and insurance required by the Contrac Documents shall be obtained from solvent surety o insurance companies that are duly licensed by th State of Texas and authorized to issue bonds o

insurance policies for the limits and coverages required by the Contract Documents.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.2 Duration of the Project - includes the time from the beginning of the Work on the Project until the CONTRACTOR's/ person's Work on the Project has been completed and accepted by OWNER.

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

5.2.2 CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.

5.2.3 CONTRACTOR must provide a certificate of coverage to OWNER prior to being awarded the Contract.

5.2.4 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with OWNER showing that coverage has been extended.

5.2.5 CONTRACTOR shall obtain from each person providing service on the Project, and provide to OWNER:

.1 a certificate of coverage, prior to that person beginning Work on the Project, so OWNER will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.2 no later than seven days after receipt by CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the Project.

5.2.6 CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

5.2.7 CONTRACTOR shall notify OWNER in writing by certified mail or personal delivery, within 10 days after CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

5.2.9 CONTRACTOR shall contractually require each person with whom it contracts to provide services on a Project, to:

.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor

Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.2 provide to CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.3 provide CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 obtain from each other person with whom it contracts, and provide to CONTRACTOR:

a) a certificate of coverage, prior to the other person beginning Work on the Project; and

b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.5 retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 notify OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 contractually require each person with whom it contracts, to perform as required by paragraphs 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

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

5.2.11 CONTRACTOR's failure to comply with any of these provisions is a breach of Contract by CONTRACTOR which entitles OWNER to declare the Contract void if CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from OWNER.

5.3 Other Bond and Insurance Requirements:

See 00810

~~For specific bond requirements and additional insurance requirements, refer to the Supplementary General Conditions.~~

5.4 See 00810

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

6.1.1 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 be responsible to see that the completed Work complies accurately with the Contract Documents.

6.1.2 CONTRACTOR shall keep on the Work at all times during its progress a competent English-speaking Superintendent, who shall not be replaced without Written Notice to Owner's Representative except under extraordinary circumstances. The Superintendent will be the CONTRACTOR's representative at the site and shall have the authority to act on behalf of the CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. CONTRACTOR shall replace Superintendent upon OWNER's request in the event that the Superintendent is unable to perform to OWNER's satisfaction.

See 00810

6.2 **Labor, Materials and Equipment:**

6.2.1 CONTRACTOR agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR and its employees shall hold all licenses required to do the Work. CONTRACTOR shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project. ~~CONTRACTOR shall pay workers no less than the wage rates established in Section 00830, and submit weekly payroll reports as evidence thereof.~~

6.2.2 Unless otherwise specified in Division 1, CONTRACTOR shall provide and pay for all 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 furnishing, performance, testing, start-up and completion of the Work.

6.2.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Owner's Representative, CONTRACTOR shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.2.4 Substitutes and "Approved Equal" Items:

6.2.4.1 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 and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted to E/A through Owner's Representative under the following circumstances:

.1 "Approved Equal": If in E/A'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 E/A as an "approved equal" item, in which case review of the proposed item may, in E/A's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CONTRACTOR shall provide E/A with the documentation required for E/A to make its determination.

.2 Substitute Items: If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "approved equal" item under subparagraph 6.2.4.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided in Division 1 to allow E/A to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.

6.2.4.2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may with prior approval of E/A furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CONTRACTOR shall submit sufficient information to Owner's Representative to allow E/A, in E/A's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by E/A will be same as that provided for substitute items in Division 1.

6.2.4.3 E/A's Evaluation: E/A will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to subparagraphs 6.2.4.1.1 and 6.2.4.1.2. E/A will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until E/A's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute. OWNER shall not be responsible for any delay due to review time for any "approved equal" or substitute.

6.2.4.4 CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "approved equal" or substitute item will be at CONTRACTOR's expense.

6.2.5 CONTRACTOR agrees to assign to OWNER any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CONTRACTOR further agrees to cooperate with OWNER should OWNER wish to prosecute suits against Suppliers for illegal price fixing.

6.3 Progress Schedule:

Unless otherwise provided in Division 1, CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.6 as it may be adjusted from time to time as provided below:

.1 CONTRACTOR shall submit to Owner's Representative for acceptance proposed adjustments in the progress schedule that will not change the Contract Times or Milestones. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of Division 1 applicable thereto.

.2 Proposed adjustments in the progress schedule that will change the Contract Times or Milestones shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Time Extension Request in accordance with Article 12.

6.4 Concerning Subcontractors, Suppliers and Others:

6.4.1 Assignment: CONTRACTOR agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CONTRACTOR agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of OWNER.

6.4.2 Award of Subcontracts for Portions of the Work: CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom OWNER may have reasonable objection. OWNER will communicate such objections by Written Notice. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish any of the Work against whom CONTRACTOR has reasonable objection. If OWNER requires a change without good cause of any Subcontractor, person or organization previously accepted by OWNER, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CONTRACTOR shall not substitute any Subcontractor, person or organization that has been accepted by OWNER, unless the substitute has been accepted in writing by OWNER. No acceptance by OWNER of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER to reject defective Work.

6.4.3 CONTRACTOR shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and E/A. The OWNER reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a portion of the agreement between CONTRACTOR and Subcontractor or Supplier.

6.4.4 CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or E/A to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.

6.4.5 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CONTRACTOR.

6.4.6 The divisions and sections of the Specifications and the identifications of any

Drawings shall not control CONTRACTOR in dividing or delineating the Work to be performed by any specific trade.

6.5 Patent Fees and Royalties:

6.5.1 CONTRACTOR shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

6.5.2 CONTRACTOR shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.

6.5.3 CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright and shall save OWNER harmless from any loss or liability, direct or indirect, arising with respect to CONTRACTOR's process in the formulation of its bid or the performance of the Work or otherwise arising in connection therewith. OWNER reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CONTRACTOR shall indemnify and save harmless OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against OWNER.

6.5.4 OWNER shall have the right to stop the Work and/or terminate this Agreement at any time in the event CONTRACTOR fails to disclose to OWNER that CONTRACTOR's work methodology includes the use of any infringing design, device, material or process.

6.6 Permits, Fees:

Unless otherwise provided in the Supplemental General Conditions, CONTRACTOR shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.6.1 → See 00810

6.7 Laws and Regulations:

6.7.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work. Except where otherwise expressly required by applicable laws and regulations, neither OWNER nor E/A shall be responsible for monitoring CONTRACTOR's compliance with any laws and regulations.

6.7.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CONTRACTOR shall plan and execute its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution.

6.7.3 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 arising therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with laws and regulations, but this does not relieve CONTRACTOR of CONTRACTOR's obligations under Article 3.

6.7.4 → See 00810

6.8 Taxes:

6.8.1 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 State of Texas.

6.8.2 OWNER is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.9 Use of Premises:

6.9.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises 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. 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. CONTRACTOR shall indemnify, defend and hold harmless OWNER, E/A, E/A's consultants and

anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorneys' fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, E/A or any other party indemnified hereunder to the extent caused by or based upon performance of the Work or failure to perform the Work.

6.9.2 During the progress of the Work and on a daily basis, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall, at a minimum, restore to original condition all property not designated for alteration by the Contact Documents.

6.9.3 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.

6.10 Record Documents:

CONTRACTOR shall maintain in a safe place at the site, or other location acceptable to OWNER, one record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to OWNER and E/A for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.11 Safety and Protection:

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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 Work 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, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

6.11.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of underground facilities, and 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. All damage, injury or loss to any property referred to in paragraph 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish 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 E/A, or E/A's consultant or anyone employed by any of them or anyone whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to OWNER and CONTRACTOR in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.11.3 Safety Representative: 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. Upon request of OWNER, CONTRACTOR shall provide certifications

or other documentation of the safety representative's qualifications.

6.11.4 Hazard Communication Programs: 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 and regulations.

6.11.5 Emergencies:

6.11.5.1 In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or E/A, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CONTRACTOR shall give Owner's Representative prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise OWNER will not be responsible for CONTRACTOR's emergency action.

6.11.5.2 Authorized agents of CONTRACTOR shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CONTRACTOR or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CONTRACTOR and/or their agent fail to respond and take action to alleviate such an emergency situation, OWNER may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CONTRACTOR under this Contract.

6.11.5.3 In the event there is an accident involving injury to any individual on or near the Work, CONTRACTOR shall notify Owner's Representative within twenty-four hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for OWNER's and E/A's records, within forty-eight hours of the event.

6.12 Continuing the Work:

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 OWNER and CONTRACTOR may otherwise agree in writing.

6.13 CONTRACTOR's General Warranty and Guarantee:

6.13.1 CONTRACTOR warrants and guarantees to OWNER that all Work will be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. 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 or Suppliers; or

.2 normal wear and tear under normal usage.

6.13.2 CONTRACTOR's obligation to perform and complete the Work in a good and workmanlike manner 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 Owner's Representative and/or E/A;

.2 recommendation of any progress or final payment by Owner's Representative;

.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

.4 use or occupancy of the Work or any part thereof by OWNER;

.5 any acceptance by OWNER or any failure to do so;

.6 any review of a Shop Drawing or sample submittal;

.7 any inspection, test or approval by others; or

.8 any correction of defective Work by OWNER.

6.14 Indemnification:

6.14.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER, E/A, E/A's consultants and subconsultants and their respective officers, directors, partners, employees, agents and other consultants 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 resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

.1 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, and

.2 is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, ~~regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws and regulations regardless of the negligence of any such person or entity.~~

6.14.2 The indemnification obligation under paragraph 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.14.3 The obligations of CONTRACTOR under paragraph 6.14.1 shall not extend to the liability of OWNER, E/A, E/A's consultants, and their officers, directors, partners, employees or agents caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of OWNER's, E/A's or E/A's consultant's officers, directors, partners, employees or agents.

6.14.4 In the event CONTRACTOR fails to follow OWNER's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CONTRACTOR shall indemnify OWNER against all costs resulting from such claims.

6.14.5 In the event CONTRACTOR unreasonably delays progress of the work being done by others on the site so as to cause loss for which OWNER becomes liable, then CONTRACTOR shall reimburse OWNER for such loss.

6.15 Survival of Obligations:

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 and termination or completion of the Agreement.

6.16 Losses from Natural Causes:

Unless otherwise specified, all loss or damage to CONTRACTOR arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CONTRACTOR at its own cost and expense.

6.17 Notice of Claim:

Should CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of OWNER or of any of OWNER's employees, agents or others for whose acts OWNER is liable, Claim will be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph 6.17 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 7 - OTHER WORK

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other contracts therefor, or have other work performed by utility owners. If CONTRACTOR believes that delay or additional cost is involved because of such action by OWNER, CONTRACTOR may make a Claim as provided in Article 11 or 12.

7.2 CONTRACTOR shall afford other contractors who are in a contract with OWNER and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. CONTRACTOR shall promptly remedy damage wrongfully caused by CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

7.3 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 Owner's Representative 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 report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.

7.4 OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate with them. CONTRACTOR shall participate with other separate contractors and Owner's Representative in reviewing their construction schedules when directed to do so. CONTRACTOR shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by CONTRACTOR, separate contractors and OWNER until subsequently revised.

7.5 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Prior to the start of construction, OWNER will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through Owner's Representative.

8.2 OWNER 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. OWNER is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to furnishing or performing the Work. OWNER is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.3 OWNER is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

8.4 Information or services under the OWNER's control shall be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work.

8.5 The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CONTRACTOR and Completion).

8.6 **Notice of Claim:**

Should OWNER suffer injury or damage to person or property because of any error, omission or act of CONTRACTOR or of any of CONTRACTOR's employees or agents or others for whose acts CONTRACTOR is liable, a Claim will be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The

Receiving notice of

provisions of this paragraph 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION

9.1 E/A's Authority and Responsibilities:

9.1.1 The duties and responsibilities and the limitations of authority of E/A during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and E/A. The assignment of any authority, duties or responsibilities to E/A under the Contract Documents, or under any agreement between OWNER and E/A, or any undertaking, exercise or performance thereof by E/A, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.

9.1.2 E/A 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. E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. E/A is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.1.3 E/A is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.1.4 If OWNER and E/A agree, E/A will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only 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.

9.1.5 The limitations upon authority and responsibility set forth in this paragraph 9.1 shall also apply to E/A's Consultants, Resident Project Representative and assistants.

9.2 E/A as Owner's Representative:

9.2.1 E/A may be designated as the Owner's Representative under paragraph 8.1.

9.3 Visits to Site:

If OWNER and E/A agree, E/A will make visits to the site at intervals appropriate to the various stages of construction as E/A 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, E/A will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. E/A'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 on-site observations, E/A will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. E/A's visits and on-site observations are subject to all the limitations on E/A's authority and responsibility set forth in paragraph 9.1.

9.4 Project Representative:

If OWNER and E/A agree, E/A will furnish a Resident Project Representative to assist E/A in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in paragraph 9.1 and in the Supplemental General Conditions. OWNER may designate another representative or agent to represent OWNER at the site who is not E/A, E/A's consultant, agent or employee.

9.5 Clarifications and Interpretations:

E/A may determine that written clarifications o interpretations of the requirements of the Contrac Documents (in the form of drawings or otherwise are necessary. Such written clarifications o interpretations will be consistent with the intent o and reasonably inferable from the Contrac Documents, will be issued with reasonabl promptness by Owner's Representative and will b binding on OWNER and CONTRACTOR. I

OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in Article 11 or 12.

9.6 Rejecting Defective Work:

E/A will recommend that OWNER disapprove or reject Work which E/A believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.7 Shop Drawings:

Refer to Division 1 for E/A's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

10.1.1 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. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order.

10.1.3 CONTRACTOR shall not be entitled to an increase in the Contract Amount or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.3.1 and 3.3.2, except in the case of an emergency as provided in paragraph 6.11.5 or in the case of uncovering Work as provided in paragraph 13.4.

10.1.4 Except in the case of an emergency as provided in paragraph 6.11.5, a Change Order or Change Directive is required before CONTRACTOR commences any activities associated with a change in the Work which, in CONTRACTOR 's opinion, will result in a change in the Contract Amount and/or Contract Times.

10.1.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Amount, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

10.3 Change Directives:

10.3.1 OWNER may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order.

10.3.2 If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in paragraph 11.5.

10.3.3 A Change Directive signed by CONTRACTOR indicates the agreement of CONTRACTOR with proposed basis of adjustment, if any, in Contract Amount and Contract Time. Such agreement shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.

10.3.4 Upon execution of a Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved.

10.4 Field Order:

10.4.1 Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These shall

be accomplished by Field Order and shall be binding on OWNER and on CONTRACTOR who shall perform the Work involved promptly.

10.4.2 If CONTRACTOR believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, CONTRACTOR shall make written request to Owner's Representative for a Change Order. Any request by CONTRACTOR for an adjustment in Contract Amount and/or Contract Times shall be made prior to beginning the work covered by the Field Order.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.1 The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by OWNER to CONTRACTOR for performance of the Work under the Contract Documents.

11.2 The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CONTRACTOR to such decrease.

11.3 The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

11.4 Determination of Value of Work:

11.4.1 The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Amount will be determined by one or more of the following methods:

.1 by application of unit prices contained in the Contract Documents to the quantities of the items involved.

.2 by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

.3 by cost of Work plus CONTRACTOR's fee for all overhead costs and profit (determined as provided in paragraph 11.5).

11.4.2 Before using the method described in paragraph 11.4.1.3, OWNER and CONTRACTOR agree to negotiate a Change Order using the methods identified in paragraphs 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.

See 00810

11.5 Cost of Work:

If neither of the methods defined in paragraphs 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive and payment will be made as follows:

.1 For all personnel, CONTRACTOR will receive the rate or wage specified in the prevailing wage rates established in Section 00830 for each hour that said personnel are actually engaged in such Work, to which will be added an amount equal to twenty-five percent (25%) of the sum thereof as compensation for CONTRACTOR's and any effected Subcontractor's total overhead and profit. No separate charge will be made by CONTRACTOR for organization or overhead expenses. For the cost of premiums on public liability insurance, workers' compensation insurance, social security and unemployment insurance, an amount equal to 55% of the wages paid personnel, excluding the 25% compensation provided above, will be paid to CONTRACTOR. The actual cos of CONTRACTOR's bond(s) on the extra Work will be paid based or invoices from surety. No charge fo superintendence will be made unless considered necessary and ordered b OWNER.

.2 CONTRACTOR will receive the actua cost, including freight charges, of th materials used on such Work, to whic costs will be added a sum equal t twenty-five percent (25%) thereof a compensation for CONTRACTOR's an any effected Subcontractor's tota

overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.

.3 For machinery, trucks, power tools, or other similar equipment agreed to be necessary by OWNER and CONTRACTOR, OWNER will allow CONTRACTOR the rate as given in the latest edition of the Associated General Contractors of America "Contractor's Equipment Cost Guide" as published by Dataquest for each hour that said tools or equipment are in use on such work, which rate includes the cost of fuel, lubricants and repairs. No additional compensation will be allowed on the equipment for CONTRACTOR's overhead and profit.

.4 The compensation, as herein provided for, shall be received by CONTRACTOR and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CONTRACTOR and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by OWNER and signed by both Owner's Representative and CONTRACTOR, with one copy being retained by OWNER and one by CONTRACTOR. Refusal by CONTRACTOR to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.6 Unit Price Work:

11.6.1 Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. 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 Amount. Determinations of the actual quantities and classifications of unit price work performed by CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

11.6.2 When "plan quantity" is indicated for a bid item, CONTRACTOR shall be paid amount specified in the Contract Documents without any measurements.

11.6.3 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.

11.6.4 A Major Item is any individual bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or $50,000, whichever is greater, computed on the basis of bid quantities and Contract unit prices.

11.6.5 OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:

.1 the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or

.2 CONTRACTOR presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Working Day and Calendar Day Contracts:

12.1.1 The Contract Times (or Milestones) shall only be changed by Change Order or Time Extension Request duly executed by both CONTRACTOR and Owner's Representative. Any claim for an adjustment of the Contract Times (or Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the delay and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which

claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Times (or Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

12.1.2 When CONTRACTOR is at fault and OWNER stops the Work, so that corrections in the Work can be made by CONTRACTOR, no extension in time will be allowed.

12.1.3 When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.1.4 OWNER will consider time extension requests and may grant CONTRACTOR an extension of time because of:

.1 Changes ordered in the work which justify additional time.

.2 Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CONTRACTOR's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CONTRACTOR's control, including, but not limited to, CONTRACTOR's efforts to overcome such delays documented as follows:

a) Copy of purchase order for delayed item(s) indicating date ordered by CONTRACTOR/ Subcontractor and date purchase order received by Supplier.

b) If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CONTRACTOR, and date submittal(s) forwarded to Supplier.

c) Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).

d) Copies of all correspondence between CONTRACTOR/ Subcontractor and Supplier indicating CONTRACTOR/ Subcontractor's efforts to expedite item(s).

e) If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CONTRACTOR's efforts with the Subcontractor to expedite delivery of the item(s).

.3 When acts of OWNER, E/A, utility owners or other contractors employed by OWNER delay progress of work through no fault of CONTRACTOR.

.4 When CONTRACTOR is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CONTRACTOR's control.

12.2 Calendar Day Contracts:

Under a Calendar Day Contract, CONTRACTOR may also be granted an extension of time because of unusual inclement weather which is beyond the normal weather recorded and expected for Austin, Texas. Normal rainfall compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the Calendar Day Contract, and is <u>not</u> a justification for an extension of time. Listed as follows are the mean number of days in which there occurred 0.01 inch or more of precipitation:

January	8 days
February	8 days
March	7 days
April	7 days
May	9 days
June	6 days
July	5 days
August	5 days
September	7 days
October	7 days
November	7 days
December	7 days

Rain days per month in amounts exceeding the number of days shown above may be credited as a Rain Day if a Claim is made in accordance with paragraph 12.1.1 and meets the following definition: a "Rain Day" is any day in which a rain event occurs at the site and is sufficient to prevent CONTRACTOR from performing units of Work critical to maintaining the project schedule, ~~for at least seven (7) hours between the hours of 7:00 a.m. and 6:00 p.m.~~ see 00810

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

13.1 Notice of Defects:

Prompt notice of all defective Work of which OWNER or E/A has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in Article 13.

13.2 Access to Work:

OWNER, E/A, E/A's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access, and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections:

13.3.1 CONTRACTOR shall give 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.

13.3.2 OWNER shall employ and pay for 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 paragraph 13.3.3 below;

.2 that costs incurred with tests or inspections conducted pursuant to paragraph 13.4.3 below shall be paid as provided in paragraph 13.4.3;

.3 for reinspecting or retesting defective Work; and

.4 as otherwise specifically provided in the Contract Documents.

All testing laboratories shall meet the requirements of ASTM E-329.

13.3.3 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 Owner's Representative the required certificates of inspection or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and E/A's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CONTRACTOR's expense.

13.4.2 Uncovering Work as provided in paragraph 13.4.1 shall be at CONTRACTOR's expense unless CONTRACTOR has given Owner's Representative timely notice of CONTRACTOR's intention to cover the same and Owner's Representative has not acted within five (5) working days to such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CONTRACTOR shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims,

costs, losses and damages caused by, arising out of or resulting from 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 Amount, and may make a Claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Amount or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CONTRACTOR may make a Claim therefor as provided in Articles 11 and 12.

13.5 OWNER May Stop the Work:

13.5.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or 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 or any surety or other party.

13.5.2 If CONTRACTOR persistently fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work:

If required by OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Warranty period:

13.7.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents (e.g. paragraph 14.11.2), any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions:

(i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and

(ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If 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, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

13.8 Acceptance of Defective Work:

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating OWNER for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.9 OWNER May Correct Defective Work:

If CONTRACTOR fails within a reasonable time after Written Notice of OWNER to correct defective Work, or to remove and replace rejected Work, 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 (7) calendar days' Written Notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and 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, 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, its agents and employees, OWNER's other contractors, E/A and E/A's consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies 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. 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. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment:

14.1.1 No more often than once a month, CONTRACTOR shall submit to Owner's Representative 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.

14.1.2 Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.

14.1.3 Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.

14.1.4 ~~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 data substantiating OWNER's ~~title~~ to such materials and equipment or otherwise protecting ~~OWNER~~'s interest. see addendum

14.1.5 ~~Where the original Contract Amount is less than $400,000~~, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less ten percent (10%) of amount thereof, which ten percent (10%) will be retained until final payment, less all previous payments and less all sums that may be retained by OWNER under the terms of this Agreement. ~~Where the original Contract Amount is $400,000 or more,~~ OWNER will pay CONTRACTOR total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five (5%) will be retained until final payment, less all previous payments and less all sums that may be retained by OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of CONTRACTOR, OWNER may pay a portion of the retained amount to CONTRACTOR. CONTRACTOR, at OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, CONTRACTOR shall receive payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2. Prior to issuance of substantial completion by owner there after,

14.1.6 Applications for Payment shall include the following documentation:

.1 updated progress schedule;

.2 monthly subcontractor report; and

.3 any other documentation required under the Supplemental General Conditions.

14.2 CONTRACTOR's Warranty of Title:

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 to CONTRACTOR free and clear of all Liens.

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by OWNER, or return the Application to CONTRACTOR indicating Owner's Representative's reasons for refusing to recommend payment. In the later case, CONTRACTOR may make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

.1 the Work has progressed to the point indicated; and

.2 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

.1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;

.2 examination has been made to ascertain how or for what purpose CONTRACTOR has used money previously paid on account of the Contract Amount;

.3 CONTRACTOR's construction means, methods, techniques, sequences or procedures have been reviewed; or

.4 that 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.

14.4 Decisions to Withhold Payment:

14.4.1 OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

.1 defective Work not remedied;

.2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;

.3 failure of CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;

.5 damage to OWNER or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 failure of CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;

.8 failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;

.9 failure of CONTRACTOR to submit and update a construction schedule in accordance with the Contract Documents;

.10 failure of CONTRACTOR to maintain a record of changes on drawings and documents;

.11 failure of CONTRACTOR to submi weekly payroll reports;

.12 failure of CONTRACTOR to submi monthly subcontractor reports;

.13 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up; or

.14 failure of CONTRACTOR to comply with any provision of the Contract Documents.

14.4.2 When the above reasons for withholding payment are removed, CONTRACTOR shall resubmit a statement for the value of Work performed. Payment will be made within ~~thirty (30)~~ calendar days of receipt of approved Application for Payment.

See 00810

14.5 Delayed Payments:

Should OWNER fail to make payment to CONTRACTOR of sum named in any Application for Payment within ~~thirty (30)~~ calendar days after the day on which OWNER received the mutually acceptable Application for Payment, then OWNER will pay to CONTRACTOR, in addition to sum shown as due by such Application for Payment, interest thereon at the rate of one percent (1%) per month from date due until fully paid, which shall fully liquidate any injury to CONTRACTOR growing out of such delay in payment.

14.6 Arrears:

No money shall be paid by OWNER upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of OWNER to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.7 Substantial Completion:

14.7.1 When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, the CONTRACTOR shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CONTRACTOR giving reasons therefor. CONTRACTOR shall then submit another request for Owner's Representative to determine substantial completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CONTRACTOR shall finish the punch list, and shall establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by OWNER and CONTRACTOR to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER will allow CONTRACTOR reasonable access to complete or correct items on the punch list.

14.8 Partial Utilization:

Use by OWNER, at OWNER's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER 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, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

.1 OWNER at any time may request CONTRACTOR to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify Owner's Representative that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. The provisions of

paragraphs 14.7.1 and 14.7.2 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.

.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection:

Upon Written Notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with CONTRACTOR and provide Written Notice 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.

14.10 Final Application for Payment:

CONTRACTOR may make application for final payment following the procedure for progress payments after CONTRACTOR has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

see 00810

~~.1 Payroll data;~~

.2 Affidavit by CONTRACTOR certifying the payment of all debts and claims;

.3 Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

.4 Record documents (as provided in paragraph 6.10);

.5 Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to OWNER) of all claims arising out of or filed in connection with the Work;

.6 Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment;

.7 Non-Use of Asbestos Affidavit (After Construction); and

.8 Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

14.11.1 If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the OWNER, who will pay to CONTRACTOR the balance due CONTRACTOR under the terms of the Contract.

14.11.2 If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CONTRACTOR which establishes the Final Completion date and initiates the one year warranty period.

14.11.3 Final payment is considered to have taken place when CONTRACTOR or any of its representatives negotiates OWNER's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.

14.12 Waiver of Claims:

The making and acceptance of final payment will constitute:

.1 a waiver of claims by OWNER against CONTRACTOR, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contrac Documents or the terms of any warranty specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

.2 a waiver of all claims by CONTRACTOF against OWNER other than thos previously made in writing and sti unsettled.

and Contractor's failure to cure or initiate substantial corrective action within such, time,

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause:

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim therefor as provided in Articles 11 and 12.

15.2 OWNER May Terminate Without Cause:

Upon seven (7) calendar days' Written Notice to CONTRACTOR, OWNER may, without cause and without prejudice to any right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;

.2 for all claims incurred in settlement of terminated contracts with Subcontractors, Suppliers and others. CONTRACTOR agrees to negotiate in good faith with Subcontractors, Suppliers and others to mitigate OWNER's cost; and

.3 for anticipated profits on entire Contract not previously paid.

15.3 OWNER May Terminate With Cause:

15.3.1 Upon the occurrence of any one or more of the following events: see 00810

.1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents;

.2 if CONTRACTOR disregards laws or regulations of any public body having jurisdiction;

.3 if CONTRACTOR disregards the authority of Owner's Representative; or

.4 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven (7) calendar days' Written Notice, terminate the services of CONTRACTOR. OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, OWNER may under these circumstances exclude CONTRACTOR from the site and take possession of the Work (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, CONTRACTOR or surety shall pay the difference to OWNER.

15.3.2 Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4 CONTRACTOR May Stop Work or Terminate:

If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) calendar days by OWNER or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within ~~thirty (30)~~ calendar days after it is submitted, or (except during disputes) OWNER fails for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, then CONTRACTOR may, upon seven (7) calendar days' Written Notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without

prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER has failed for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, CONTRACTOR may upon seven (7) calendar days' Written Notice to OWNER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.4 are not intended to preclude CONTRACTOR from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims: Receiving Notice

16.1.1 Claims arising from the circumstances identified in paragraphs 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after ~~the start~~ of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled.

16.1.2 Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CONTRACTOR shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with *the proposal presented, claimant shall have thirty* (30) calendar days in which to:

.1 submit additional supporting data requested by the other party;

.2 modify the initial Claim; or

.3 request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. OWNER reserves the right to include the E/A as a party.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker empowered to negotiate on behalf of their organization. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

16.2.3.1 If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The parties agree to select within thirty (30) calendar days one (1) mediator trained in mediation skills, to assist with resolution of the dispute. OWNER and CONTRACTOR agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection shall be binding on the parties.

16.2.3.2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for 1) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, 2) a meeting of all parties for the exchange of points of view and 3) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate i

mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

~~Notwithstanding any provisions contained herein or in any other document or instrument to the contrary, the sole remedy which may be asserted against the Owner shall be a suit to enforce specific performance of this Contract. Any such lawsuit must be brought no later than one (1) year after the occurrence giving rise to such lawsuit or be forever barred.~~ Under no circumstances whatsoever shall the Contractor or any other party to this Contract be entitled to sue the Owner for damages, such right hereby expressly being waived.

consequential

ARTICLE 17 - MISCELLANEOUS

17.1 Venue:

In the event of any suit at law or in equity involving the Contract, venue shall be in Travis County, Texas and the laws of the state of Texas shall apply to the interpretation and enforcement of the Contract.

17.2 Extent of Agreement:

This Contract represents the entire and integrated agreement between the OWNER and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

17.3 Cumulative Remedies:

The rights and remedies available to the parties 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 guarantees or by other provisions of the Contract Documents, and 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.

17.4 Severability:

If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

End

THE PARTIES TO THIS CONTRACT ACKNOWLEDGE THAT THEY ARE NOT IN A DISPARATE BARGAINING POSITION VIS-A-SIS THE OWNER, AND SAID PARTIES HEREBY KNOWINGLY WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS, BENEFITS, AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT SET FORTH IN SUB-CHAPTER E OF CHAPTER 17 IN THE TEXAS BUSINESS AND COMMERCE CODE WITH RESPECT TO ANY MATTERS PERTAINING TO THIS CONTRACT AND THE TRANSACTION CONTEMPLATED HEREBY. TO THAT END, SAID PARTIES HEREBY STATE, ADOPT, ACKNOWLEDGE, AND REPRESENT THAT THEY WAIVE THEIR RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMER SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THEIR OWN SELECTION, SAID PARTIES HEREBY VOLUNTARILY CONSENT TO THIS WAIVER AS TO THE OWNER.

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

ARTICLE 1 - DEFINITIONS

1.16 Engineer/Architect (E/A) - Add the following:

Cook-Steinman & Associates, Inc.
3018 North Lamar, Suite 200
Austin, Texas 78705
(512) 454-6777 Fax (512) 454-2999

Delete 1.25 OWNER and **replace** with the following:

"1.25 OWNER – AVERY RANCH OWNERS COMMITTEE

ARTICLE 2 - PRELIMINARY MATTERS

2.2 Copies of Documents:

Add the following:

"Additional copies of the Project Manual and Drawings may be obtained from Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705 on the following basis:

Complete set of Paving and Drainage Drawings and Project Manual: $100.00.
Individual set of Construction Drawings: $50.00 per set.
Project Manual $50.00 each.
Partial set of Drawings $3.00 per sheet."

2.4 Before Starting Construction:

Replace 2.4.2.3 with the following:

" .3 Not used this Contract

Replace 2.4.2.5 with the following:

.5 Not used this Contract"

ARTICLE 5 - BONDS AND INSURANCE

Replace 5.3 with the following:

"5.3 Insurance

5.3.1 CONTRACTOR Provided Insurance.

5.3.1.1 General Requirements.

.1 CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.

.2 CONTRACTOR must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

.3 CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

.4 All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

.5 The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.

.6 If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

.7 OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

.8 OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

.9 CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

.10 CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

.11 CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

.12 If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

.13 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

5.3.1.2 Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement TE 2046A;

b) 30 day Notice of Cancellation endorsement TE 0202A; and

c) Additional Insured endorsement TE 9901 B.

Provide coverage in the following types and amounts:

.1 A minimum combined single limit of $600,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability each accident.

5.3.1.3 Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation, form WC 420304; and

b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

.1 $100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

5.3.1.4 Commercial General Liability Insurance. The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project, endorsement CG 2503.

f) OWNER listed as an additional insured, endorsement CG 2010.

g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

.1 A combined bodily injury and property damage limit of $600,000 per occurrence.

5.3.1.5 Additional Requirements:

a) Contractor shall name Owner, and it's contracted representatives, as additional insured.

b) All insurance coverages required as herein set forth, shall be at the sole cost and expense of Contractor, Subcontractor or those providing their party services, and deductible shall be assumed by, for the account of, and at their sole risk.

c) Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery of subrogation against Owner, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, Contractors, Subcontractors, and their insurers."

Add the following:

"5.4 Bonds:

5.4.1 General.

.1 Bonds, when required, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. The surety company and the agency or agent issuing the PAYMENT AND PERFORMANCE BONDS must be authorized to issue PAYMENT AND PERFORMANCE BONDS in Texas in an amount equal to or greater than the contract price. These bonds shall remain in effect at least until one year after the date when final payment becomes due.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

.2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

.3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

5.4.2 Performance Bond.

.1 If the Contract Amount exceeds $100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610.

.2 If the Contract Amount exceeds $25,000 but is less than or equal to $100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

.3 If the Contract Amount is less than or equal to $25,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

.4 If a Performance Bond is required to be furnished, it shall extend for the one year warranty period.

5.4.3 Payment Bond.

.1 If the Contract Amount exceeds $25,000, CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out in Section 00620.

.2 If the Contract Amount is less than or equal to $25,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the terms and conditions specified in paragraph 5.4.2.3."

5.4.4 These bonds shall remain in effect until final acceptance by the Engineer and until a Maintenance Bond is provided by the Contractor.

5.4.5 Warranty Bond

.1 The Contractor shall provide a maintenance bond, in a form approved by the City's legal representative, in the amount of 10% of the final construction value, as agreed by the City (see 1806S.4 and 1806S.5) which will run for a period of one (1) year from the date of final acceptance of the construction work by the CITY.

.2 The bond shall guarantee the city that: the required funds are and will remain available to the city at a sound and reputable banking or financial institution authorized to do business in the State of Texas for a period of one year from the date of final acceptance by the OWNER; the improvements are free of defects and/or faulty workmanship; and such security may be called upon by the city to remedy construction defects and/or faulty workmanship of the improvements during the term of the warranty bond.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1.2 **Add** the folowing:

"The superintendent shall be available to be reached 24 hours per day and shall carry a pager or be available by radio at all times."

6.6 **Permits, Fees: Add** the following:

"OWNER will obtain and pay for the following permits, licenses and/or fees:

.1 none.

6.7 **Laws and Regulations: Add** the following:

"6.7.4 This Project is subject to the Environmental Protection Agency (EPA) National Pollution Discharge Elimination System (NPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls throughout the construction period. OWNER is responsible for provision of the Owner's Notice of Intent and Notice of Termination to the EPA. CONTRACTOR's responsibilities are as follows:

.1 Maintain a set of construction plans with the temporary erosion and sediment control plan at the Work site at all times.

.2 Post a copy of OWNER's EPA permit at the Work site.

.3 File a Notice of Intent with the EPA (form can be obtained from Owner's Representative).

.4 Post a copy of CONTRACTOR's EPA permit at the Work site.

.5 Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion and sediment control measures. This statement shall indicate that the Subcontractor understands the permit requirements.

.6 Perform normal site inspection of temporary sediment and erosion controls. Maintain records that indicate any problems and CONTRACTOR's efforts to repair the controls.

.7 Note in CONTRACTOR's records the E/A's or OWNERS Representative's comments on the temporary erosion and sediment controls.

.8 In response to the E/A's or OWNERS Representative's comments, note in CONTRACTOR's records CONTRACTOR's response to repair the temporary erosion and sediment controls.

.9 Upon completion of the Work, provide NPDES records to OWNER.

.10 File a Notice of Termination with the EPA once the Work has been accepted."

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.4 Determination of Value of Work: Add the following to paragraph 11.4.1.2:

"The R.S. Means Co., Inc. ' Construction Cost Data' - latest edition - shall be used as a basis for evaluating the cost of labor, material and equipment to be incorporated in the Work and the cost of tools, equipment and facilities necessary to accomplish the Work described in the change. The costs of payroll taxes and insurance, Liability and Builder's Risk Insurance, and bonds shall be calculated as follows:

- Payroll taxes and Workers' Compensation Insurance.....25% of payroll

- Liability and Builder's Risk Insurance.....2% of total costs
- Performance and Payment Bond according to the following table:

DOLLAR VALUE OF CONTRACT			% OF TOTAL COST OF CHANGE ORDER ADDED FOR BOND EXPENSE
100,000	or	less	2.5
100,001	thru	500,000	1.5
500,001	thru	2,500,000	1.0
2,500,001	thru	5,000,000	0.75
5,000,001	thru	7,500,000	0.70
OVER 7,500,000			0.65

Overhead and profit shall be calculated as follows:

- For Subcontractors and for those portions of the Work performed by CONTRACTOR's own forces:
  15% of the first $10,000.00 of costs.
  10% of the balance over $10,000.00.
- For the CONTRACTOR for Work performed by Subcontractors:
  10% of the first $10,000.00 of costs.
  7.5% of the balance over $10,000.00.

The total costs for the change, whether additive or deductive shall be the sum total of:

- cost of labor, material and equipment.
- cost of tools, equipment and facilities.
- cost of payroll taxes and insurance, Liability and Builder's Risk Insurance, and bonds.
- overhead and profit (for additive changes only)."

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.2 **Calendar Day Contracts: Delete** the last part of the last sentence reading:

"...for at least seven (7) hours between the hours of 7:00 a.m. and 6:00 p.m."

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1.4 **Delete** this paragraph and **Replace** with the following:

"OWNER shall pay for ninety (90) per cent of materials on hand and stored at the site at CONTRACTOR's invoiced amount by material supplier in accordance with the monthly estimate procedure stipulated in the General Conditions of the Contract. An Affadavit of Bills Paid shall accompany said request."

14.4.2 **Replace** "thirty (30)" with "thirty (30)".

14.5 **Replace** "thirty (30)" with "thirty (30)".

14.10 **Final Application for Payment:**

Replace 14.10.1 with the following:

".1 The required Warranty Bond."

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.4 **Replace** "thirty (30)" with "forty-five (45)".

End

These Special Conditions shall govern over any discrepancies that may occur with the General or Supplementary General Conditions and shall be considered as part of the Contract Documents.

1. Subsurface and Physical Conditions

Reports of explorations and tests of subsurface conditions at the site of the work are as follows:

a) Geotechnical Pavement Investigation
Avery Ranch Boulevard
Williamson County, Texas

Prepared by:
HBC Engineering, Inc..
November 30, 1999

Project No. 96995200

Drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the work are as follows:

a) None for this project.

OWNER does not guarantee accuracy or validity of the technical data contained in the above reports or drawings, nor does OWNER assume any responsibility for CONTRACTOR interpretation or conclusions drawn from the technical data.

2. Interpretation of "Day" or "Days"

All references to "day" or "days" in the Bidding Documents shall be interpreted to mean "calendar day" or "calendar days" unless specifically referred to as "working day" or "working days".

3. Testing

3.1. Testing and Control of Materials

Testing of all materials, material placement, construction items or products incorporated in the work shall be performed as required by the Specifications, Construction Plans and/or Section 01400 Quality Control Services, at the direction and expense of the OWNER, through the City of Austin Department of Public Works. An independent testing laboratory shall be approved in advance by the OWNER, ENGINEER and/or CITY OF AUSTIN. Monitoring of the foundation installation shall be performed at the direction and expense of the OWNER through an independent testing laboratory.

In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove-out test shall be made as directed by the ENGINEER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER or ENGINEER to make any tests of materials shall in no way relieve the CONTRACTOR of his responsibility of furnishing materials conforming to the Contract Documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the City of Austin Standard Specifications in place at the time of the bid. CONTRACTOR shall provide such facilities as are required for collecting

and forwarding samples and shall not use the materials represented by the samples until tests have been made. CONTRACTOR shall furnish adequate samples without charge.

Retesting after failure to pass tests shall be at the expense of the CONTRACTOR. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and test resulting therefrom shall be borne by the CONTRACTOR.

3.2. Underground Facilities

CONTRACTOR shall perform all tests in accordance with the latest City of Austin Construction Standards Manual in place at the time of the bid. All tests not assisted (including use of City of Austin equipment) or performed by the City of Austin shall be the responsibility of the CONTRACTOR and at no expense to OWNER. Retesting after failure to pass tests shall be at the expense of the CONTRACTOR.

3.3. Reports

Promptly submit 3 copies of reports of observations and tests to Owner/City of Austin including but not limited to:

1. Date Issued.
2. Project Title and Number.
3. Testing Laboratory name and address.
4. Name and signature of technician and testing engineer.
5. Date of sampling.
6. Record of temperature and weather.
7. Date of test.
8. Identification of product and specification section.
9. Location of product.
10. Type of test.
11. Observations regarding compliance with Contract Documents.

4. Existing Utilities

The CONTRACTOR shall notify the various water, irrigation, gas, power, telephone, or other utility companies 72 hours in advance of his intention to begin work so that they may take any necessary protective measures around their facilities. The CONTRACTOR is responsible for the protection of any utility and for damage to any such utility during the prosecution of the work. Any damage to a utility shall be repaired at the CONTRACTOR'S expense to the satisfaction of the owner of facility at the expense of the CONTRACTOR.

Unless otherwise indicated on the contract drawings, the CONTRACTOR shall maintain in service all drainage, water, irrigation, gas and sewer lines, including house services; power, lighting, and telephone conduits; and any other surface or subsurface utility. CONTRACTOR, for his convenience, may arrange with the utility company or homeowner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities will be borne by the CONTRACTOR and no extension of time will be allowed for this type of relocation.

5. Use of Public Roads and Streets

In the hauling of construction materials, excavation, equipment or other items required in the completion of this Project, the attention of the CONTRACTOR is directed to ordinances and regulations of local municipal or county governments, and State Governments which limit the type or gross weight of motor vehicles or construction equipment operating on public roads and streets or which restrict the use of such equipment on certain streets.
The CONTRACTOR shall keep haul routes clean at all times to the satisfaction of the ENGINEER and the local governing body having jurisdiction over the haul routes. It will be responsibility of the CONTRACTOR to investigate any limitations in routing, size of equipment or gross weight which may be subject to regulations by governmental jurisdictions.

It shall be the responsibility of the CONTRACTOR to provide for the safety and convenience of traffic so as to comply with all existing traffic regulations and ordinances that may apply.

Care of existing pavement (all types) shall be the responsibility of the CONTRACTOR. He will be held liable for any damage to the existing pavement which will be used by construction equipment or suppliers while construction is in progress. Upon completion of the construction, the pavement shall be restored to its original condition or better at no cost to OWNER.

Any bonds, permits or fees required for use of roadways will be the sole obligation of the CONTRACTOR.

6. Cooperation Between Contractors

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

The OWNER and ENGINEER shall under no circumstances be liable or responsible for guaranteeing or assuring that any claims among Contractors shall be paid; and any representation, expressed or implied, that any Contractor to whom a Contract is awarded is responsible or will be able to respond for damages is expressly negated.

7. Archeological or Historical Material

If any materials are discovered which might be of archeological or historical significance, all construction shall immediately cease and the CONTRACTOR shall notify the ENGINEER and OWNER. The OWNER shall then consult with a professional archeologist and the Texas Historical Society to determine the significance of the find.

8. Protection of Trees, Plants and Shrubs

All trees indicated on the drawings or designated by the Owner to remain shall be protected from damage. Substantially constructed guards or barricades shall be provided as required to protect tree trunks from moving equipment. No trees shall be cut or pruned without the Owner's approval.

The Contractor shall exercise special care to minimize damage to other trees, plants and shrubs along the route of the work. The owners of trees, plants and shrubs which lie outside the property line and within the normal limits or work shall be notified by the Contractor before beginning construction operations. The Owners shall be allowed to remove and protect their property, and all such trees, plants and shrubs not so protected by their owners shall be removed and replaced by the Contractor.

Compensation for Plant Loss - Any tree that is to remain which is damaged or destroyed due to the Contractor's negligence or failure to provide adequate protection shall be compensated for in accordance with the following schedule of values, using the "tree caliper" method (greatest trunk diameter measured six feet above the ground).

A. For trees or shrubs with diameters up to and including six inches, the actual cost of replacement with an item similar in species, size, and shape, including:

   1. Actual cost of item boxed out of ground.
   2. Transportation or delivery of boxed item to site.
   3. Planting and staking.
   4. Maintenance of watering, fertilizing, pruning, pest control and other care to bring replacement to same general condition of original item.

B. For trunks up to: Penalty:

7 inches	$1,200
8 inches	$1,700
9 inches	$2,200
10 inches	$2,600
11 inches	$3,100
12 inches	$3,600
13 inches	$4,100
14 inches	$4,600
15 inches	$5,000
16 inches	$5,500
17 inches	$6,000

18 inches and larger: add $500 for each caliper inch.

9. Staging Areas/Spoils Disposal

Staging areas are subject to the following conditions:

Owner and Contractor will agree on the exact location of the site access point prior to the installation of a stabilized construction entrance.

Owner and Contractor will agree on exact limits of the staging area prior to any clearing or occupancy.

Contractor will fence the area using metal t-posts at 15' o/c and rope or single strand smooth wire or other fencing approved by Owner, and will strictly adhere to area limits.

Contractor will provide any erosion control devices required by the City of Austin, Texas.

Contractor will provide sanitary facilities.

Contractor will provide trash receptacles, perform daily clean-up, and keep the area in a neat and orderly manner.

Contractor may not remove any vegetation without the Owner's approval.

Contractor will remove all fences and revegetate areas (at Contractors expense) not previously disturbed in accordance with City of Austin requirements.

Owner must approve all uses of the staging areas.

Contractor will remove and replace any soil contaminated with oils, fuels, or chemicals.

The working operations of the Contractor shall at all times be conducted so as to create a minimum of inconvenience to the Owner or to the public. Stock-piling of materials, etc., will be allowed only where no inconvenience is caused and only in amounts that can be readily used by the Contractor.

All excavated earth in excess of that required for project shall be removed from the job site and deposited in the designated spoil disposal area. Disposal of excess material to area creeks and drainageways will not be allowed.

Spoil removal must be accomplished PRIOR TO RELEASE OF ANY RETAINAGE.

Additional staging, storage or spoils disposal areas not identified on the plans, whether on-site or off-site, deemed necessary by the CONTRACTOR to perform the work shall be the responsibility of the CONTRACTOR. All necessary permits, environmental approvals, and compliance with local City, County, State or Federal laws and regulations shall be the responsibility of the CONTRACTOR.

10. Occupational Safety

The Contractor shall comply with the provisions of the Occupational Safety and Health Act and the standards and regulations issued thereunder and warrant that all work, materials, and products furnished under this Contract will conform to and comply with said standards and regulations which are in existence on the date of this Contract. The Contractor further agrees to indemnify and hold harmless the Owner and the Engineer for all damages suffered by the Owner and the Engineer as a result of the contractor's failure to comply with the Act and the Standards issued thereunder and for the failure of any material and/or equipment furnished under this Contract to so comply.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his equipment and employees, and for any damage which may result from their failure or their improper construction, maintenance or operation.

11. Visual Records of Site

Prior to the start of construction, the Contractor shall record the existing work area with either photographs or using video tape recording equipment and supply such records to the Owner.

12. Protection of Existing Survey Controls

The CONTRACTOR shall be responsible for protecting all temporary and permanent survey controls, property lines markers, monuments, and construction stakes. Damaged or obliterated stakes will be reset by the ENGINEER and at the CONTRACTORS expense.

13. Sanitary Facilities and Daily Clean-Up

Contractor shall provide sanitary facilities at sufficient locations to service the worker's as directed by the Owner. Contractor shall provide DAILY CLEAN-UP and at all times keep the work areas neat and free from litter and debris.

14. Construction Layout

All work under this Contract shall be constructed in accordance with the lines and grades shown on the plans. The full responsibility for the holding to alignment and grade shall rest upon the Contractor.

The Contractor, shall at his own expense, protect all property corner markers and reference points as established by the Owner in accordance with Sec. 4.3 of the General Conditions, and when any such markers, reference points, or monuments are in danger of being disturbed, they shall be properly referenced and, if disturbed, shall be reset at the expense of the Contractor.

15. Liquidated Damages

If after Final Inspection the only remaining work to be performed is the establishment of the permanent erosion control, then the Contractor shall be relieved of his obligation to pay liquidated damages, relative to readiness for final payment, as outlined in paragraph 3.2 of the AGREEMENT.

16. Removal of Topsoil; Clay Sources and; Clay Material Testing

Contractor shall not remove topsoil from the Project site. All topsoil excavated from the Project site must be used as set forth herein.
Contractor may use topsoil excavated from the Project site in the performance of its Work for purposes of revegetation and finish grading behind curbs and surrounding wet ponds.
All topsoil excavated by Contractor and not used for purposes set forth above, shall be stockpiled in a location mutually agreed with Owner.
Owner and Contractor will further cooperate regarding known sites where clay is located to be used as liners for wet ponds. Prior to use of such clay, the clay must be tested and approved by the Engineer.

End

ADDENDUM NO. 1

Date: September 6, 2000

Avery Ranch Owner's Committee

Project: Paving and Drainage Improvements
Avery Ranch Boulevard East

CSA Project No. 200-02b

Original Bid Date and Time: September 14, 2000, 2:00 pm.

This Addendum forms a part of the Contract and clarifies, corrects or modifies original Bid Documents, dated August 20, 2000. Acknowledge receipt of this addendum in space provided on bid form. Failure to do so may subject bidder to disqualification.

A. Project Manual Revisions:

1. Replace Special Specification Item No. SS-9400, dated 08/20/00, with the attached Special Specification Item No. SS-9400, dated 09/06/00.

B. Construction Plan Revisions:

1. Replace Sheets 5, 6, 7, 8, 15 through 36, 52, and 53, with the attached construction plan sheets.
2. Sheet 54: Remove the "Cross Walk W/Pavers in Concrete" detail.
3. Sheet 55: Remove the "Detectable Warning Grooved Surface " detail (432S-2B).
4. Sheet 55: Replace the "Pedestrian Handrail Detail" with the attached detail.
5. Sheet 55: Replace the "Type III Barricade" detail (804-5B), with "Street End Barricade" detail (803 S-1).
6. Sheet 55: Add the "General Trench Detail" attached.
7. Sheet 55: Add the "Sidewalk " detail (432S-1).

This addendum consists of 1 page plus attachments.

Approved by ENGINEER

End

9400.1 Description

This item shall consist of construction of the Water Quality or Wet Pond Facility and appurtenances as shown in the construction drawings, for "Paving and Drainage Improvements".

9400.2 References

In general, unless described otherwise in this specification, the materials, construction methods and testing required to accomplish the work for this item, except measurement and payment, shall be performed in accordance with the following specifications:

a. City of Austin Standard Technical Specifications
b. Special provisions to City of Austin Standard Specifications
c. SS-9001 Preservation and Restoration of Property Pins
d. SS-9900 Restoration

9400.3 Requirements

Prior to construction all erosion and sedimentation controls shall be installed. CONTRACTOR shall salvage and stockpile topsoil and remove all brush, unprotected trees, stumps, roots, vegetation, rubbish and other objectionable materials. CONTRACTOR shall coordinate grading of the pond with consideration to subcontractors and other utility construction. CONTRACTOR shall construct pond to the lines and grades shown on the Water Quality or Wet Pond Plan included in the "Paving and Drainage Improvements" construction drawings. **The impermeable liner shown on the "Filtration Pond Sand Bed" detail shall also be required in the sedimentation basin. Additionally, all splitter boxes shall have a minimum reinforcing steel of #4 bars - 12 inch O- C each way. Retaining walls shall be built in accordance with the details on sheet C-4. Finish grade in the sediment basin shall include 4 inches of topsoil and the establishment of grass.** Embankments in fill areas shall be accomplished by placing loose lifts not to exceed 8 inches and compacted in accordance with Specification No. 132, Embankment. Upon completion CONTRACTOR shall install permanent erosion controls in accordance with Item No. 604, Seeding for Erosion Control, as soon as practical to insure the timely acceptance of revegetation by the City of Austin, and Travis County.

9400.4 Measurement

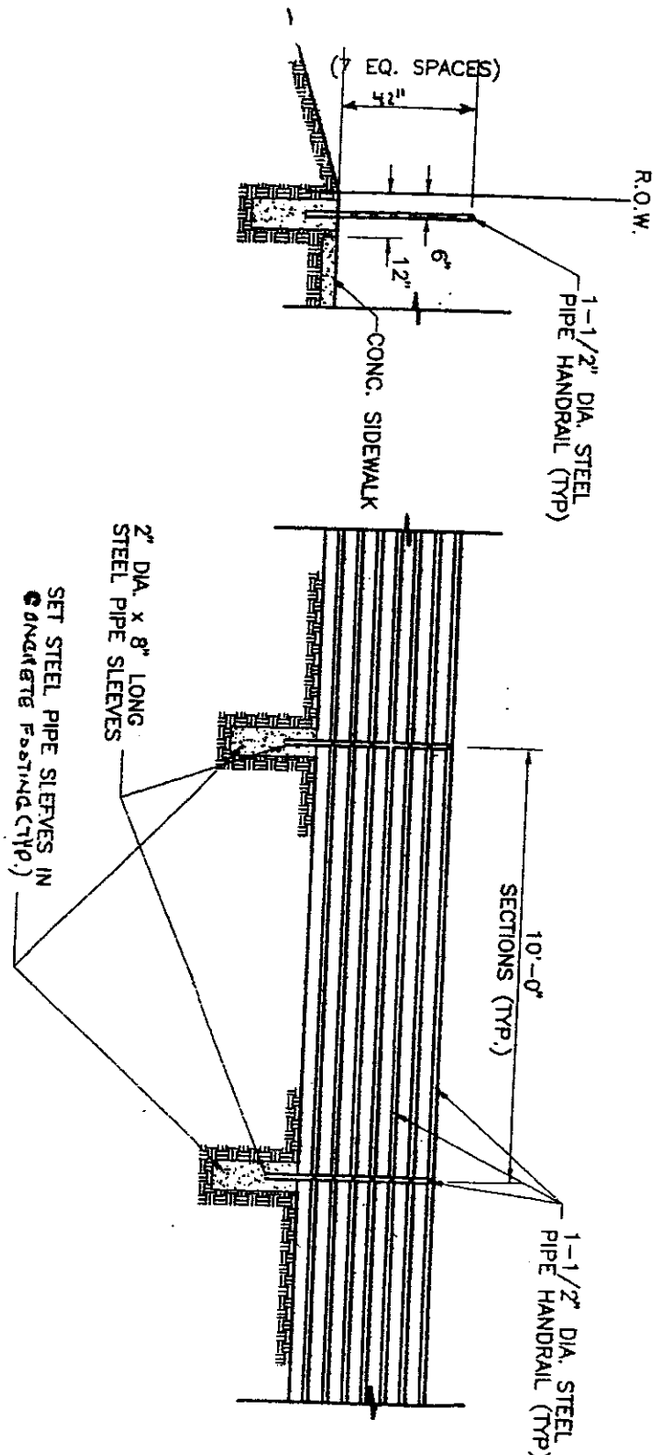
Work and acceptable material for "Water Quality or Wet Pond West #2" will be measured per lump sum, except for the following items which will be measured as separate bid items:

1. na.
2. Silt Fence.
3. Rock Berms.
4. Wetlands Planting Plan

9400.5 Payment

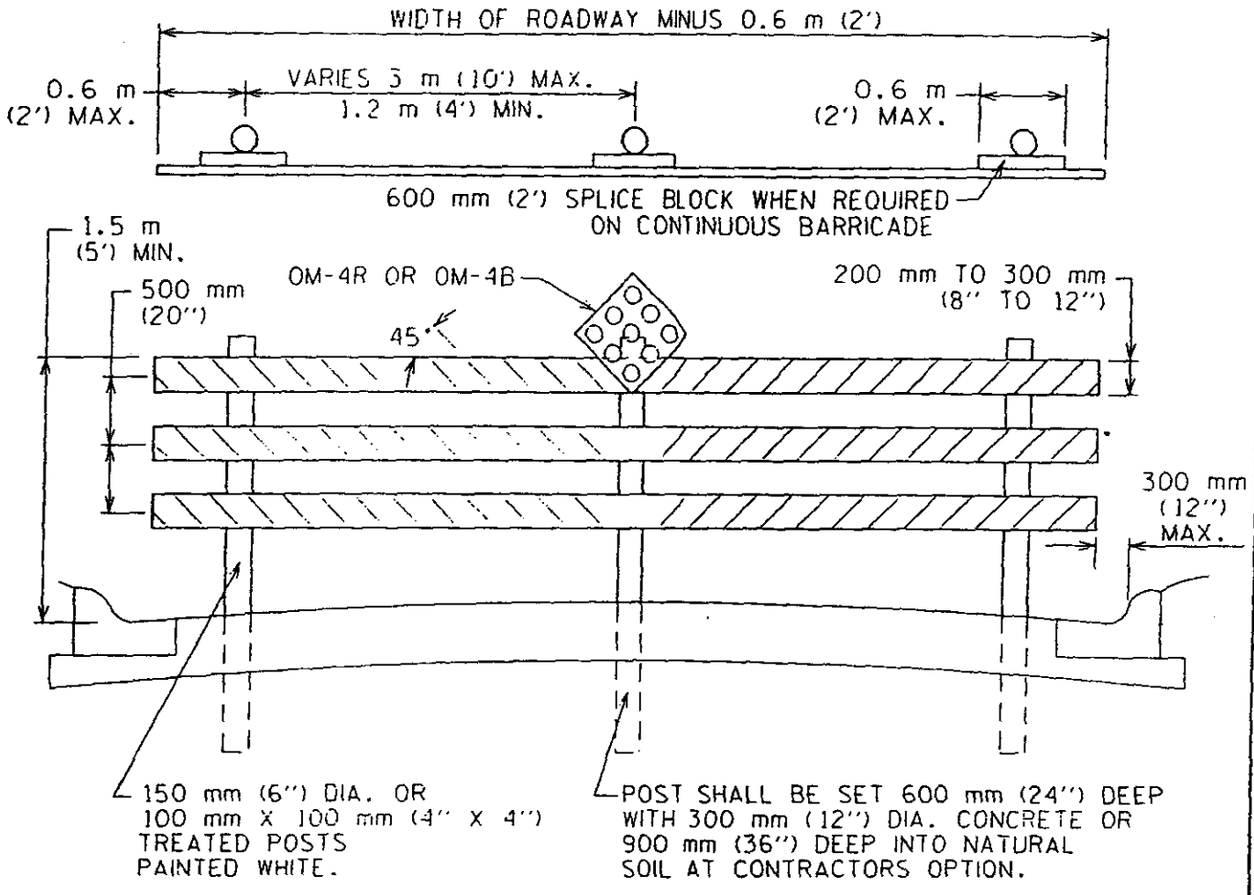
This item will be paid for on a lump sum basis and shall be full compensation for all work herein described and as indicated in the drawings, including the furnishing of all materials, compaction, excavation, embankment, grading, splitter boxes, sand filtration system, gabions, riprap, piping(excluding stormsewer entering the splitter box), retaining walls, trickle channels, fencing, landscaping, equipment, tools, labor, water, borrow, and other incidentals and appurtenances as may be necessary to complete the work.

END



PEDESTRIAN HANDRAIL DETAIL

N.T.S.



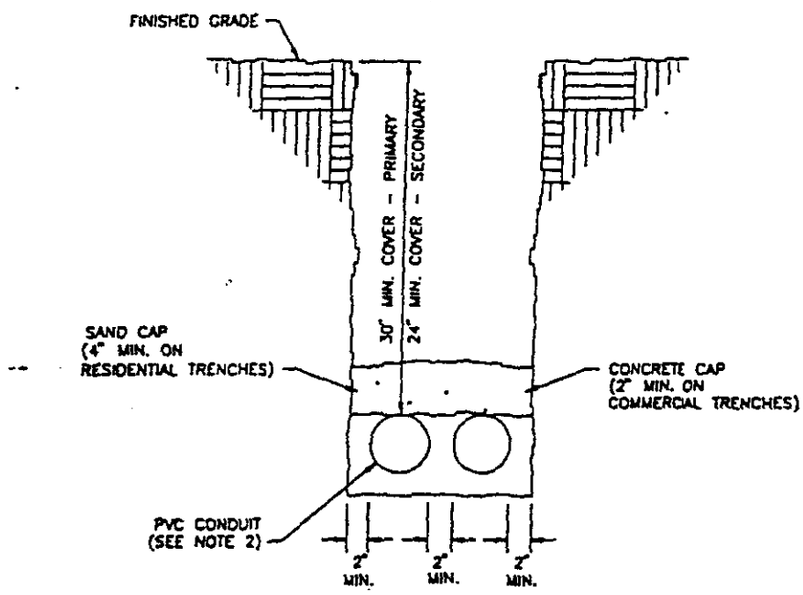
NOTES:

1. WIDTH OF RAIL SHALL BE A MINIMUM OF 200 mm (8") AND MAY BE UP TO A MAXIMUM OF 300 mm (12"), 50 mm (2") NOMINAL SMOOTH LUMBER.
2. RAILS SHALL BE FASTENED TO EACH POST WITH 6 mm (1/4") STEEL BOLTS WITH WASHERS ON EACH SIDE. BOLT THREADS SHALL BE PEENED.
3. THE RAILS SHALL RECEIVE TWO COATS OF WHITE OIL BASE OUTSIDE PAINT, THEN SHALL HAVE 150 mm (6") WIDE REFLECTORIZED RED STRIPES OF TAPE PLACED ON 45 DEGREE SLOPES, DOWN AND TOWARD THE CENTER OF THE BARRICADE.
4. BARRICADES MAY BE CONSTRUCTED IN SECTIONS OR MAY BE CONTINUOUS ACROSS ROADWAY WIDTH. SPLICES ON CONTINUOUS RAIL BARRICADES SHALL BE AT POSTS AND SHALL HAVE A 600 mm (2') SPLICE BLOCK ON BACK SIDE OF THE SAME MATERIAL AS RAIL.
5. 450 mm (18") DIAMOND REFLECTORIZED RED PANEL OR 450 mm (18") DIAMOND RED OR BLACK PANEL WITH 9-75 mm (3") DIAMETER RED REFLECTORS SYMMETRICALLY PLACED AT CENTER POSTS. A MINIMUM OF 1.2 m (4') ABOVE GROUND SHALL BE USED FOR END OF ROAD MARKERS.

CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION	STREET-END BARRICADE	
Luis Rivera 9/29/99 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 803S-1

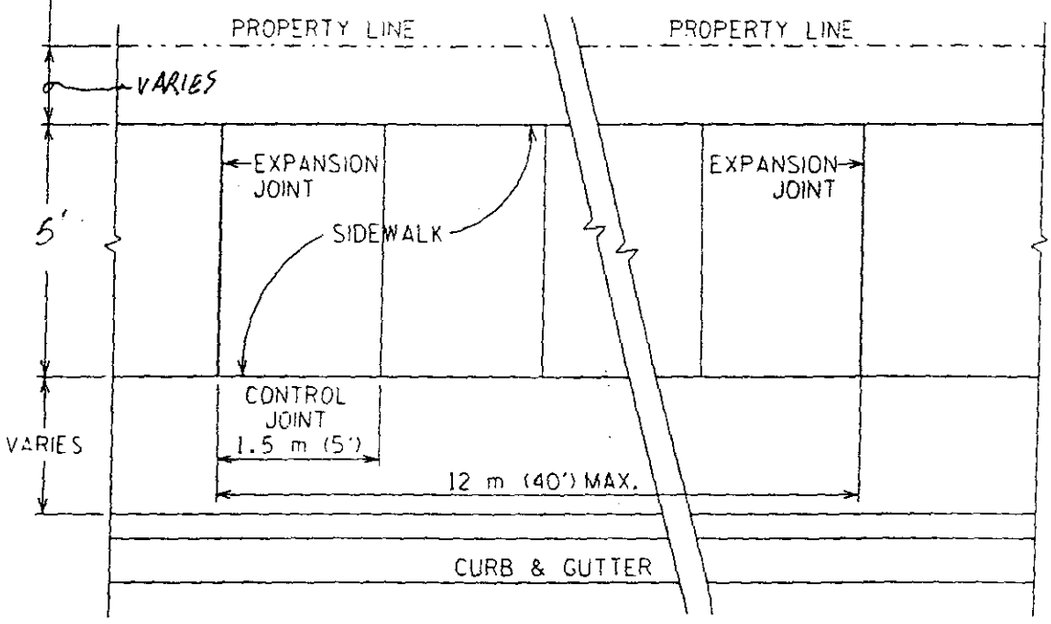
GENERAL TRENCH DETAIL

(COMMERCIAL & RESIDENTIAL)

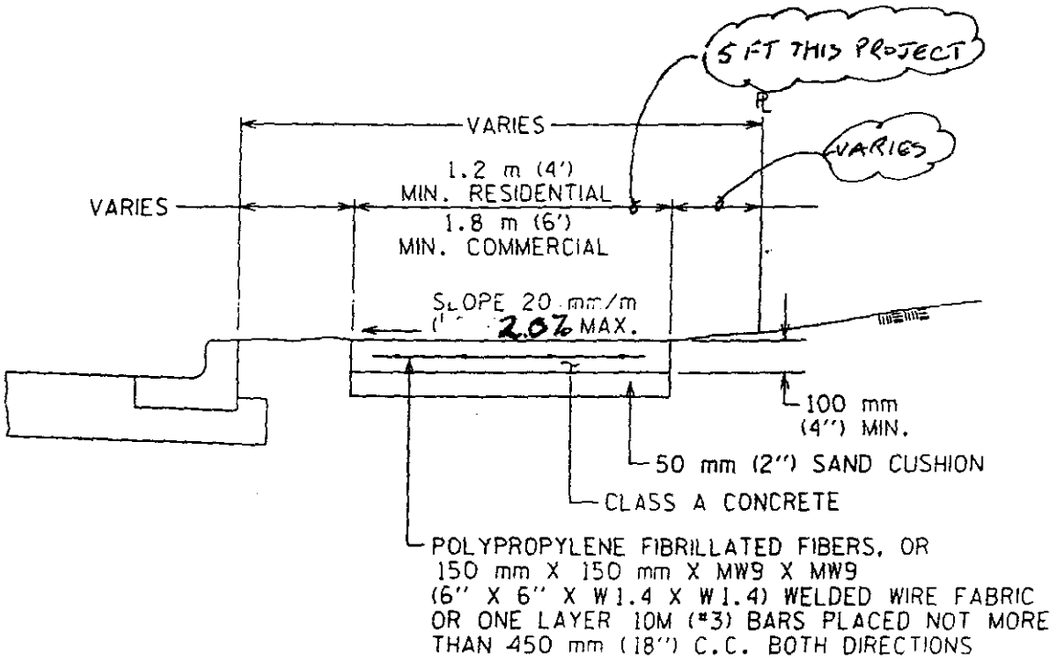


NOTES:

1. SCHEDULE 40 PVC CONDUIT ON STREET CROSSINGS.
2. TYPE, SIZE AND NUMBER OF CONDUITS, AND INSTALLATION SPECIFICATIONS SHALL BE DETERMINED BY THE ELECTRIC DISTRIBUTION ENGINEERING SECTION.
3. CONDUIT IN WHICH THE CITY INSTALLS THE WIRE SHALL BE INSPECTED BY THE UNDERGROUND DISTRIBUTION CONSTRUCTION SECTION.
4. CONDUIT IN WHICH THE CUSTOMER/ELECTRICIAN INSTALLS THE WIRE SHALL BE INSPECTED BY THE SERVICE INSPECTION SECTION, OR ITS DESIGNEE (DEVELOPMENT REVIEW & INSPECTION DEPARTMENT, ELECTRIC INSPECTION SECTION). (PVC CONDUIT SHALL BE SCHEDULE 40.)



PLAN



SECTION

CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION	SIDEWALK	
Lino Lucio 9/29/99 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 432S-1

ADDENDUM NO. 2

Date: September 11, 2000

Avery Ranch Owner's Committee

Project: Paving and Drainage Improvements
Avery Ranch Boulevard East

CSA Project No. 200-02b

Original Bid Date and Time: September 14, 2000, 2:00 pm.
Revised Bid Date and Time: September 21, 2000, 2:00 pm.

A. Project Manual Revisions:

a. Replace the First paragraph of Section 00020, 'Invitation for Bids', with the following:

Sealed bids, in duplicate, addressed to **Avery Ranch Owner's Committee** will be received at Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705 until **2:00 p.m., Thursday September 21, 2000**. Any bid received after this time will be returned to bidder unopened. The bids will then be publicly opened and read for:

b. In Section 00300, 'Bid Form', Delete Bid Item No. 55, under Drainage Improvements

B. Drawing Revisions:

This addendum consists of one page.

Approved by ENGINEER:

James M. Cook, P.E.

End

ADDENDUM NO. 3

Date: September 11, 2000

Avery Ranch Owner's Committee

Project: Paving and Drainage Improvements
Avery Ranch Boulevard East

CSA Project No. 200-02b

Original Bid Date and Time: September 14, 2000, 2:00 pm.
Revised Bid Date and Time: September 21, 2000, 2:00 pm.

A. Project Manual Revisions:

a. Add the attached Geotechnical Report, by Raba-Kistner, dated May 10, 2000, to Section 00220, Geotechnical Data.
b. In Section 00300, 'Bid Form', replace sheets 11 and 12 with the attached sheets 11 and 12.

B. Drawing Revisions:

a. Replace Wastewater Sheets 50 and 52 of 62, with the attached Sheets 1 and 2 of 2 and Sheet 5b of 62.
b. Replace Sheets 60-63 of the plans with the attached sheets 60-63.
c. Delete Reinforced Concrete Note No. 16 on Sheet C-4.

C. Drawing Clarifications:

a. The clay liner for the wet pond shall extend one foot above the Permanent Pool Elevation.
b. Material suitable for the clay liner and wet pond embankment, is available on site within 1 mile of the pond site. Contractor will have to excavate and haul to site, should he choose to use this material.
c. The 'six foot typical keyway cut' shown on sheet C-2 is not required.
d. The embankment (see Section A-A, sheet C-2) for the Wet pond, shall be constructed in accordance with the construction guidelines outlined in the Geotechnical report referenced in A.a. above.
e. Contractor will not be responsible for the limestone facing for the concrete retaining wall for the wet pond.
f. Water Quality Ponds C-H, shall have galvanized chain link fence as indicated on the plans. A 10 foot gate will be required for each pond.
g. Contractor shall be required to perform a reasonable amount of grading (to the satisfaction of the design Engineer) upstream and downstream of the culverts to ensure positive drainage.

This addendum consists of one page plus attachments.

Approved by ENGINEER:

James M. Cook, P.E.

End

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
75	1	EA	manholes 4 ft. diameter,0 -8 ft. including bolted and watertight cover -per each for _____ dollars and _____ cents	$_____	$_____
76	4	EA	manholes 4 ft. diameter,0 -8 ft. including cover -per each for _____ dollars and _____ cents	$_____	$_____
77	22	VF	Manhole Riser Section, - per vertical foot for _____ dollars and _____ cents	$_____	$_____
78	113	LF	8 inch, PVC SDR 26, 0-8 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____
79	557	LF	8 inch, PVC SDR 26, 8-10 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____
80	315	LF	8 inch, PVC SDR 26, 10-12 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____
81	35	LF	8 inch, PVC SDR 26, 12-14 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____
82	123	LF	8 inch, PVC SDR 26, 14-16 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____
83	224	LF	8 inch, PVC SDR 26, 16-18 ft. -per linear foot for _____ dollars and _____ cents	$_____	$_____

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
84	25	LF	8 inch, PVC SDR 26, 18-20 ft. -per linear foot		
			for _____ dollars and _____ cents	$_____	$_____
85	1,392	LF	Trench Safety Systems, including manholes - per linear foot		
			for _____ dollars and _____ cents	$_____	$_____
86			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
87			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
88			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
89			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____

WASTEWATER IMPROVEMENTS

SUBTOTAL AMOUNT BID: $_____
(in figures)

SUBTOTAL AMOUNT BID: _____
(in words)

_____
(in words)

May 10, 2000

GEOTECHNICAL STUDY
AVERY RANCH NORTH WET PONDS 3A & 3B
WILLIAMSON COUNTY, TEXAS

Prepared For:
Robert D. Wunch Development, Inc.
2414 Exposition Boulevard, Suite 280
Austin, Texas 78703

Attn: Mr. Charles Wirtanen, P.E.

Prepared By:
Reba-Kistner-Brytest Consultants, Inc.
8200 Cameron Road, Suite C-154
Austin, Texas 78754-3822

John S. Landwermeyer, P.E.

RKBCI Project No. AAA00-019-00

Distribution: Robert D. Wunch Development, Inc. (3)

Engineers, Geologists, Hygienists and Environmental Scientists

Raba Kistner

Raba-Kistner-Brytest Consultants, Inc.
8300 Cameron Rd., Suite C-154
Austin, Texas 78754
(512) 339-1745 • FAX (512) 339-8174

AAA00-019-00
May 10, 2000

Robert D. Wunch Development, Inc.
2414 Exposition Boulevard, Suite 280
Austin, Texas 78703

Attn: Mr. Charles Wirtanen, P.E.

RE: Geotechnical Study
Avery Ranch North Wet Ponds 3A & 3B
Williamson County, Texas

Submitted here is our report of our Geotechnical Study conducted at the site of the proposed north wet ponds 3A and 3B west of Parmer Lane and south of South Brushy Creek in Williamson County, Texas. This report addresses geotechnical design criteria, materials, and construction recommendations for the construction of the proposed wet ponds.

This geotechnical report has been prepared for use by Robert D. Wunch Development, Inc. and their consultants for design purposes in accordance with accepted Geotechnical Engineering practices.

We appreciate the opportunity to be of service to you on this project. If we may be of further assistance on the materials testing-quality control program during construction, please call.

Very truly yours,

RABA-KISTNER-BRYTEST CONSULTANTS, INC.

Anthony C. Apple, E.I.T.
Graduate Engineer

John S. Landwermeyer, P.E.
Regional Manager

JSL/JSL:kmm

G:\common\geotech\projects\2000\aaa00-019-00 avery ranch north wet ponds 3a &3b

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GEOTECHNICAL STUDY
AVERY RANCH NORTH WET PONDS 3A & 3B
WILLIAMSON COUNTY, TEXAS

RKBCI Project No. AAA00-019-00

INTRODUCTION

General: On April 17, 2000, a geotechnical study was initiated at the site of the proposed wet ponds 3A and 3B at Avery Ranch in Williamson County, Texas. The purpose of this study was to determine subsurface materials and conditions present at the site and to establish geotechnical design and construction criteria for the proposed earthen dams. Construction and material specifications have also been developed and are included in this report.

Scope of Services: The following scope of services were performed in connection with the preparation of this report.

1) Thirteen sample borings were drilled in order to:
   a) Evaluate the engineering characteristics of the subsurface strata present within the areas of the proposed earthen dams, and upstream of wet pond 3A;
   b) Formulate recommendations for the design of the earthen dams; and
   c) Investigate groundwater conditions at the site.
2) Samples of subsurface materials from the 13 borings were analyzed in the laboratory by several laboratory tests, including:
   a) Visual examination and classification;
   b) Atterberg limits tests;
   c) Natural moisture content tests;
   d) Dry unit weight determinations;
   e) Unconfined compressive strength tests;
   f) Percent passing the #200 sieve; and
   g) Hydrometer analyses.
3) The information obtained by subsurface exploration and laboratory tests was used in engineering studies to establish recommendations regarding earthen dam materials and construction. Details and results of the study are discussed in the following paragraphs.

SUBSURFACE EXPLORATION AND LABORATORY TESTS

The location of the project is shown on the attached Site Location Map, Figure 1. Subsurface materials and conditions at the site were evaluated by 13 sample borings drilled at the approximate locations shown on the attached Plan of Borings, Figure 2. The boring locations were selected by the client and marked in the field by the client's surveyor. The borings were drilled to depths ranging from 10 to 25 feet below the existing ground surface using a rotary drilling rig. Three borings (D-1 through D-3) were drilled along the proposed downstream earthen embankment, three borings (D-4 through D-6) were drilled along the upstream retaining wall, and 7 borings (P-1 through P-7) were drilled within the wet pond area.

All samples of subsurface materials from the borings were examined and classified in the laboratory. Laboratory classifications of the subsurface materials are shown on the attached Logs of Borings. A key to classification terms and symbols used on the logs follows the Logs of Borings.

The geotechnical engineering properties of the subsurface strata were evaluated by the following tests:

Type of Test	Number Conducted
Moisture Content	24
Atterberg Limits	13
Unconfined Compression	10
Dry Unit Weight	10
Minus No. 200 Sieve	6
Hydrometer	4

Samples will be retained in our laboratory for thirty days after submittal of this final report. Please notify us in writing prior to this date if longer storage is required.

SITE GEOLOGY

A review of published geologic information indicates the site is located within the Comanche Peak Limestone Formation and Edwards Limestone Formation. These formations are of the Lower Cretaceous Age. The Comanche Peak Limestone Formation consists of fine to very fine grained, fairly hard, and light gray that weathers to white to tan. The Edward Limestone consists of limestone, dolomite and chert. The limestone is hard and brittle. The dolomite is fine to very fine grained and porous. The chert is hard. The zones of weathering within the Edwards Limestone formation are honeycombed and cavernous.

GENERAL SUBSURFACE CONDITIONS

The subsurface materials encountered in our borings may be grouped into five generalized strata with similar physical and engineering properties. The lines designating the interface between the strata on the boring logs represent approximate boundaries. Transitions between the strata may be gradual.

SUBSURFACE STRATIGRAPHY

Stratum I is brown to dark brown lean to fat clay with various amounts of limestone fragments. This strata was encountered in all borings, except Boring D-3, at the ground surface and extends to depths ranging from 0.5 to 2.5 feet below the existing ground surface. This stratum is plastic with measured plasticity indices (PIs) ranging from 16 to 40 percent. An unconfined compressive strength test was performed on a selected sample from this stratum which yielded a compressive strength results of 1.61 tons per square foot (tsf). The dry unit weight of the tested sample was 98.7 pounds per cubic foot (pcf).

Stratum II consists of completely weathered limestone. This stratum was encountered in borings D-5, P-1 and P-5, only, at depths ranging from 0.5 to 2 feet below the existing ground surface. Atterberg Limits tests results indicated PIs ranging from 1 to 5 percent for this stratum.

Stratum III consists of tan limestone. This strata was encountered in all borings at depths ranging from the ground surface to 4.5 feet. Unconfined compressive strength tests performed on selected samples from this stratum yielded compressive strengths ranging from 75 to 505 tsf. The upper portions of the tan limestone are very fractured (weathered). The fractures within this stratum range from very closely to medium spaced horizontal and angular. Recovery rates from coring operations range from 27 to 100 percent. Rock quality designations (RQD) range from 0 to 100 percent.

GROUNDWATER

Groundwater was encountered in borings P-2, P-3, P-4, and P-6 at depths of 4.5, 3.5, 2.5, and 2.6 feet, respectively. We believe the groundwater encountered is seep water which is seasonal. The permanent groundwater table is believed to be well below the depth encountered during our geotechnical exploration. Seasonal groundwater or seep water, such as encountered, may be encountered when excavating after periods of significant rainfall.

ANALYSIS, CONSIDERATIONS AND RECOMMENDATIONS

Project Information. We understand that the upstream portion of the proposed impoundment facility will have a forebay wall for the purpose of sedimentation and upper pond wall that will act as a weir. At the downstream end of the proposed impoundment facility, an earthen embankment having a weir on the west end, and 6 and 12 inch drains constructed approximately in the center of the earthen embankment. We understand the grading will be performed as shown on the Plan of Borings, Figure 2. We also understand that it is intended to use the soils within the impoundment area as lining materials for the impoundment areas.

Preliminary design parameters provided by Loomis Austin, Inc. indicate:

1) Maximum pool elevation (top of berm) for the proposed dam will be 858 feet;

2) Proposed dam height above permanent pool elevation (849.0) will be 9 feet;

3) Proposed dam general slope will be 3H:1V;

4) Top of spillway elevation will be 854 feet;

5) Top of Upper Pond Wall elevation will be 860.0 (maximum wall height will be 6 feet); and

6) Top of Forebay Wall elevation will be 859.0 (maximum wall height will be 3 feet).

Dam Analysis. We performed a slope stability analysis on the proposed dam based on the following: (1) the dam being constructed with the recommended materials and methods described in the Construction Guidelines section of this report; and (2) the geometry provided by Loomis Austin. Based on the aforementioned criteria and a 100-year flood water level of 856.90, the proposed dam provides a factor of safety greater than 2 against a general slope failure and a factor of safety greater than 2 against a slope failure due to rapid drawdown.

Forebay and Upper Pond Walls Design Criteria. Below grade retaining walls will experience lateral earth pressures depending upon backfill soil type. The table below presents at-rest and active earth pressure coefficients for various backfill materials. The at-rest pressures are recommended for cases where the wall unit will experience little yield, such as a below grade structural wall. The active pressures represent cases where any below grade wall can expect to experience some degree of lateral movement. A cantilevered retaining wall would represent this latter case.

Soil Type	Estimated Total Unit Weight, pcf	Lateral Earth Pressure Coefficients			Equivalent Fluid Weight, pcf		
		At-Rest (Ko)	Active (Ka)	Passive (Kp)	At-Rest	Active	Passive
Crushed Limestone	145	0.43	0.27	3.69	60	40	535
Clean Sand	120	0.50	0.33	3.00	60	40	360
Select Borrow (PI<15)	130	0.66	0.49	2.04	85	65	265
Clays	120	0.71	0.55	1.83	85	65	220

If the environment in which any wall will be placed, will be exposed to a condition in which a hydrostatic condition may be present, the effect of this condition should warrant a wall drain system to relieve these additional pressures. The effect of any additional surcharge loads should be accounted for by adding a component equal to 0.45 times the surcharge load to the full height of the excavation.

Since the Stratum III limestone was encountered at relatively shallow depths across the site, the retaining wall footings should be founded upon the Stratum III limestone. The retaining wall footing should be designed for an allowable bearing capacity of 5,000 pounds per square foot. The allowable bearing capacity will provide a factor of safety greater than 2 against a bearing failure.

Foundation Design: The term "foundation" used in this report is synonymous with the subgrade beneath the dam. The essential requirements of a foundation for an earthen dam are:

a) that it provide stable support for the dam embankment under all conditions of saturation and loading; and

b) that is provide sufficient resistance to seepage to prevent excessive loss of water.

The importance of adequate foundation treatment (subgrade preparation) is emphasized by the fact that approximately 40 percent of all earthfill dam accidents and 12 percent of all failures are attributable to foundation failures.[1]

Borrow Areas: We understand that the soils within the proposed pond area intended to be used as a liner for the proposed pond and portions of the embankment. Based on the laboratory testing of the lean to fat clays encountered in Borings P-1 through P-6, the fat clays are generally suitable as lining materials. A dispersion analysis was performed on fat clay samples from Boring D-2 and D-5. The analysis indicated that the fat clays are moderately dispersive (having a percent dispersion between 20 and 40 percent). Portions of the lean clays and the completely weathered limestone beneath the lean clays do not exhibit PIs suitable as lining material. Care should be taken during the excavation of the fat clays due to the limited thickness (less than 1 foot to as much as 4 feet, Borings P-1 through P-6) and fractured nature of the underlying rock formation. A minimum of 1 foot of clay should be left in place to serve as a liner for the upstream portion of the pond.

CONSTRUCTION GUIDELINES

Site Preparation: Native subgrades to support fill should be stripped of all vegetation or organic topsoil. The exposed subgrade should be scarified just prior to fill placement and compacted within 95 to 100 percent of the maximum density and within –1 to +3 percentage points of the optimum moisture content as determined by TEX-114E Compaction Tests. The water content of the subgrade should be maintained within the specified limits until permanently covered. Subgrade compacted at a moisture content beyond the specified limits should not be accepted.

Material Specifications: Materials used to construct the earthen dam should be limited to those materials that exhibit a minimum permeability of 2.2 x10^{-6} cm/sec, as measured by ASTM D2487. Furthermore, additional soil properties are listed below:

Percent Passing No. 200	70% min
Liquid Limit	35% min
Plasticity Index	18% to 30%
Percent Clay (finer than 0.002mm)	>30%
Percent Dispersion	≤35%

The dam fill should be placed at 95 to 100 percent of maximum dry density as determined by test method Tex-114E and with +/- 3 percentage points of optimum as determined by the same

[1] Design of Small Dams, U.S. Department of Interior, Bureau of Reclamation

test method. Alternative materials proposed for use as earthen fill should be submitted to the geotechnical engineer for testing and evaluation before they are accepted for use.

Erosion Control: Upon completion of the dam and embankment adjacent to the proposed Avery Ranch Boulevard, the fill materials should be promptly covered with erosion control measures such as sod or seed impregnated jute mesh. Areas of the embankment that will experience water velocities that would erode the vegetation should be covered by other erosion control measures such as stone cobbles or manufactured erosion control devices.

12" PVC Drain and 6" PVC Pond Drain: We understand that two PVC pipes having diameters of 12" and 6" will be constructed within the pond embankment. The backfill around the pipe should be compacted as described for the dam fill materials. Particular attention should be taken to properly compact the fill materials around the pipes. The soil around the pipes will be subject to piping and subsequently loss of soil around the pipes, if the soils are not properly compacted. If round PVC pipe is used, we recommend that the fill be placed and compacted to the elevation of one-half the pipe diameter. The bedding material should be tooled to the pipe diameter. Preferably, pipe with a square cross section may be used to achieve uniform compaction around the pipe.

Concrete Placement: Placement of concrete should be accomplished as soon as possible after each footing excavation is completed to reduce changes in the moisture content or the state of stress of the foundation soils.

QUALITY ASSURANCE CONSIDERATIONS

Additional analyses and comment may be necessary during the design phase as final plans are developed. Raba-Kistner Consultants, Inc. should be given the opportunity to review the final plans and specifications so our recommendations are properly interpreted. Raba-Kistner Consultants, Inc. cannot accept responsibility for misinterpretation of our recommendations if we have not been provided an opportunity to review the final plans and specifications.

During construction, we strongly recommend that we be retained so that our design is properly implemented into the project. Furthermore, we recommend the QA program in the Quality Assurance Considerations that are found at the end of this report. Raba-Kistner Consultants, Inc. should be retained to provide these services to check that construction is in accordance with the intentions of this report.

LIMITATIONS

The analyses and recommendations submitted in this report are based on: a) the data obtained from 13 exploratory borings drilled at this site; b) the assumption that the site grading and project information provided by Loomis Austin will remain valid; and (c) project information provided by the client.

This report may not reflect the exact variations of the subsurface conditions across the site. The nature and extent of variations across the site may not become evident until construction begins. If variations then appear evident, it may be necessary to reevaluate our recommendations after performing on-site observations and tests to establish the engineering significance of the variations.

If the final grade elevations are substantially different from the existing grades our office should be informed about these changes so that supplemental recommendations can be made.

This report is not intended for use in determining construction means, methods or sequences. Prospective contractors should not rely upon the information in this report to select excavation means, methods, or sequences but should rely upon test pits and their own evaluation prior to submitting bids.

RECORDERS MEMORANDUM
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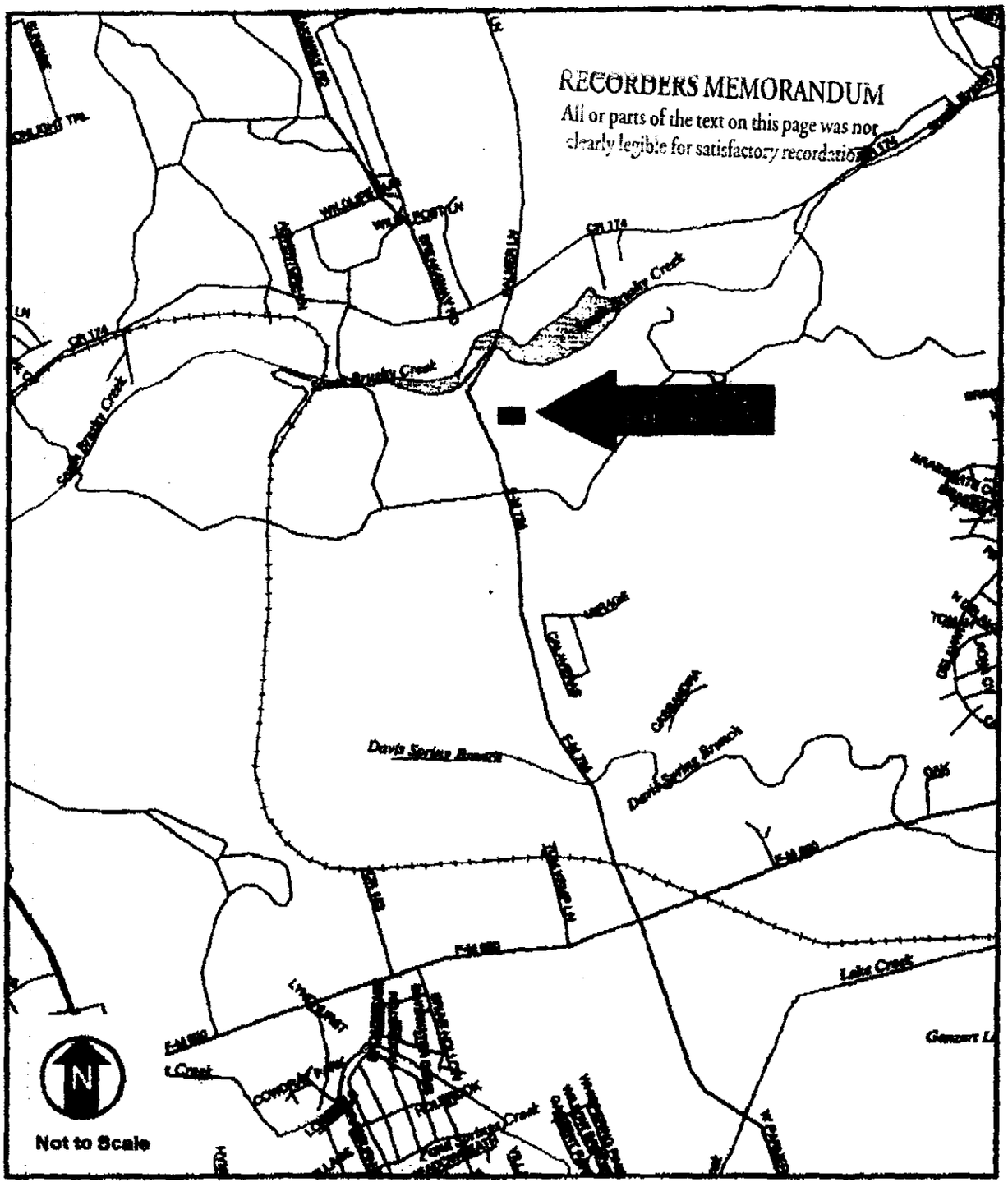
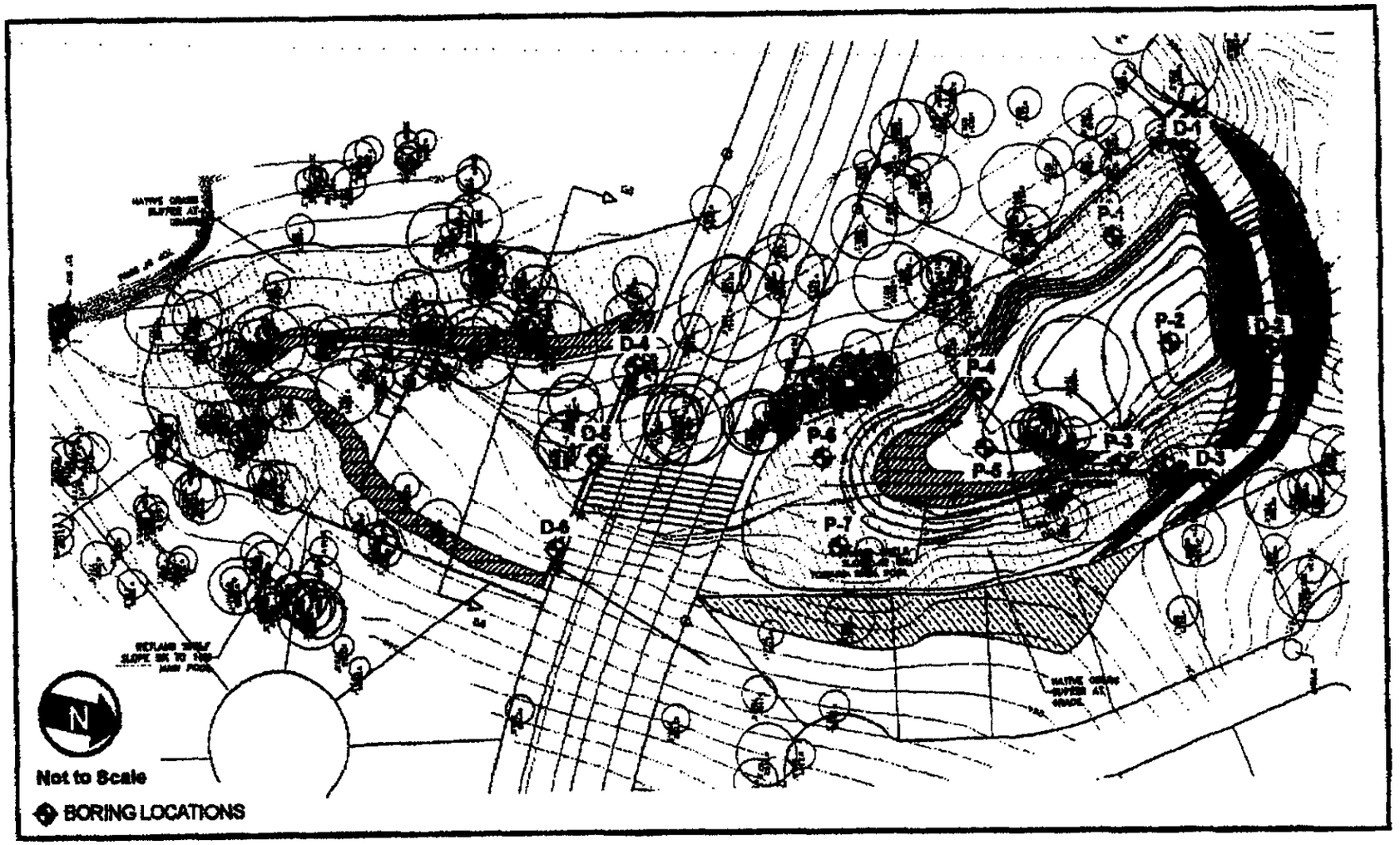


AVERY RANCH NORTH WET PONDS 3A & 3B
WILLIAMSON COUNTY, TEXAS
JOB NO. AAA00-019-00

Raba Kistner

SITE LOCATION MAP - FIGURE 1



AVERY RANCH NORTH WET PONDS 3A & 3B
WILLIAMSON COUNTY, TEXAS
JOB NO. AAA00-019-00

RECORDERS MEMORANDUM
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Raba Kistner

PLAN OF BORINGS - FIGURE 2

The following Special Provisions amend or supplement items of the City of Austin Construction Standards and shall govern and take precedence whenever in conflict with the Standard Specifications. All provisions which are not amended or supplemented remain in full force and effect.

GENERAL

ADD the following paragraph prior to the first sentence of all City of Austin Construction Standards:

"*If the work specified in this section is not included as a specific bid item in the Bid Form, then this work* shall be considered incidental and payment will be subsidiary to the cost of other bid items."

FLEXIBLE BASE

"Flexible Base will be measured at the depths specified for the area indicated, as measured from 12 inches behind the back of curb for the entire street length as shown in the plans, complete in place."

CONCRETE VALLEY GUTTERS

"Accepted work performed as prescribed by this item will be measured per each by street width in accordance with the details shown in the plans including the monolithic curb placed at the ends of the valley gutter."

MANHOLES

"All manholes with precast grade rings or brick adjustment courses may have a maximum vertical rise of 12 inches (the maximum includes the depth of the ring casting)."

TRENCH SAFETY SYSTEMS

"Trench Safety Systems shall be measured by linear foot of pipe through manholes and other appurtenances along the centerline of trench conforming to Contractor's Plans and Specifications. Carrier pipe lengths through boring encasement pipe shall not be measured for payment under Trench Safety Systems."

"Trench Safety Systems for pipes greater than or equal to 6-inches in diameter shall be measured by linear foot of pipe installed along the centerline of the trench. Trench safety systems required for pipes *less than 6-inches in diameter will not be paid for directly but will be considered subsidiary to the cost of* the pipe. Payment for Trench Safety Systems will be made based on the linear feet of pipe, 6-inch diameter and greater installed."

PIPE

"All labor, pipe and other materials that are not indicated on the plans and are required to reconnect or plug existing pipelines shall be considered subsidiary to the bid"

"**For fittings**; Only those specific items included as a separate pay item in the Bid Form will be paid for separately. In such cases, cast iron and ductile iron fittings of the class indicated furnished in accordance with these specifications will either be paid for at the unit price bid per each or at the unit price bid per ton, complete in place, as indicated in the Bid Form. If measured by the ton, then payment will be in accordance to scheduled weights for mechanical joint fittings furnished, including glands, bolts and gaskets, as published in the following standards:"

TREE PROTECTION

"During excavation, if major roots of trees are encountered, the contractor shall exercise caution and may use hand tools to excavate around tree roots and prune tops as instructed by the City of Austin".

BARRICADES, SIGNS AND TRAFFIC HANDLING

"Construction fences to separate work activities from pedestrians must be a minimum of six feet in height and shall be made of wood, orange polyurethane plastic or chain link fence material."

End

Special attention is directed to the following Special Specifications:

Number	Description	Date	Pages
Item No. SS-9001	Preservation and Restoration of Property Pins	06/15/95	1
Item No. SS-9400	Water Quality or Wet Pond	08/20/00	1
Item No. SS-9900	Restoration	06/15/95	1
Item No. SS-9910	Construction Staking	08/20/00	1

End

Special Specifications Item No. SS-9001
Preservation and Restoration of Property Pins

9001.1 Description

This item shall consist of the preservation of existing property pins and reference marks and restoration of all property pins removed, buried, exposed, destroyed or damaged during construction of this project prior to final acceptance by the OWNER.

9001.2 Requirements

Prior to the beginning of construction CONTRACTOR shall verify to his satisfaction that all property pins are installed in accordance with the approved final plat for the subdivision and/or easements related to the improvements. CONTRACTOR shall provide a letter to the OWNER stating that he has reviewed the site and all property pins exist. If pins are missing CONTRACTOR shall notify OWNER and OWNER shall have the pins restored prior to the start of construction.

During the course of construction CONTRACTOR shall make all efforts to preserve all engineering and surveyor's stakes, marks, property corners, etc. and in case of destruction , removal, burying, etc. shall replace them. Property pins buried or exposed due to mass grading shall be restored or replaced to new finished grade. All property pins shall be reset under the supervision of a Registered Professional Licensed Surveyor (RPLS) in accordance with the standards of practice and tolerances set forth in House Bill 663.13 adopted by the Texas Board of Professional Land Surveying (TBPLS).

Upon completion of the Project, CONTRACTOR shall provide to OWNER a certification, sealed and signed by a Registered Professional Licensed Surveyor, that all property pins within the limits of construction of the Project are in place. The final payment will not be released to the OWNER until all property corners in the Project have been verified to be in place to the satisfaction of the OWNERS representative.

9001.3 Measurement and Payment

Preservation and Restoration, complete in place, of all property pins damaged, destroyed, removed buried or exposed during construction of this project shall be considered subsidiary to the street and drainage improvements bid items and no measurement for additional payment shall be made.

END

9400.1 Description

This item shall consist of construction of the Water Quality or Wet Pond Facility and appurtenances as shown in the construction drawings, for "Paving and Drainage Improvements".

9400.2 References

In general, unless described otherwise in this specification, the materials, construction methods and testing required to accomplish the work for this item, except measurement and payment, shall be performed in accordance with the following specifications:

a. City of Austin Standard Technical Specifications
b. *Special provisions to City of Austin Standard Specifications*
c. SS-9001 Preservation and Restoration of Property Pins
d. SS-9900 Restoration

9400.3 Requirements

Prior to construction all erosion and sedimentation controls shall be installed. CONTRACTOR shall salvage and stockpile topsoil and remove all brush, unprotected trees, stumps, roots, vegetation, rubbish and other objectionable materials. CONTRACTOR shall coordinate grading of the pond with consideration to subcontractors and other utility construction. CONTRACTOR shall construct pond to the lines and grades shown on the Water Quality or Wet Pond Plan included in the "Paving and Drainage Improvements" construction drawings. Embankments in fill areas shall be accomplished by placing loose lifts not to exceed 8 inches and compacted in accordance with Specification No. 132, Embankment. Upon completion CONTRACTOR shall install permanent erosion controls in accordance with Item No. 604, Seeding for Erosion Control, as soon as practical to insure the timely acceptance of revegetation by the City of Austin, and Travis County.

9400.4 Measurement

Work and acceptable material for "Water Quality or Wet Pond West #2" will be measured per lump sum, except for the following items which will be measured as separate bid items:

1. Seeding for Erosion Control.
2. Silt Fence.
3. Rock Berms.
4. Wetlands Planting Plan

9400.5 Payment

This item will be paid for on a lump sum basis and shall be full compensation for all work herein described and as indicated in the drawings, including the furnishing of all materials, compaction, excavation, embankment, grading, splitter boxes, sand filtration system, gabions, riprap, piping(excluding stormsewer entering the splitter box), retaining walls, trickle channels, fencing, landscaping, equipment, tools, labor, water, borrow, and other incidentals and appurtenances as may be necessary to complete the work.

END

9900.1 Description

This item shall consist of the restoration, complete in place, to City standards of all improvements damaged during construction of this project which are not included as a contract pay item.

9900.2 Material and Construction Methods

The applicable items contained within this manual and the City of Austin Construction Standards shall govern the improvements to be restored.

9900.3 Measurement and Payment

Restoration, complete in place, of improvements, which are not included as a contract pay item, damaged during construction of this project shall be considered subsidiary to the bid and no measurement for additional payment shall be made.

END

9910.1 Description

This item shall consist of construction staking, necessary to perform all layout work and to transfer all controls for grades, lines, levels and measurements required to successfully carry out work under supervision of a Texas Registered Professional Land Surveyor.

9910.2 Requirements

The Contractor shall complete all the work in accordance with 1803S.8 and also fulfill the obligations identified as "Owner". CONTRACTOR shall provide grading/cut sheets prepared by a Professional Engineer or Registered Professional Land Surveyor, (as evidenced by their seal), either of whom is registered in the state of Texas.

All Work shall be done to the lines, grades and elevations indicated on the drawings. Information concerning basic horizontal and vertical control points can be obtained from the design surveyors, **Interstate Surveying, Inc.**. These points shall be used as datum under this Contract. All work to transfer any controls for grades, lines, levels, layout and measurements shall be performed by the CONTRACTOR. The CONTRACTOR shall place grade stakes and establish construction staking layout sheets. References to lines and grades as established by the CONTRACTOR's surveyor shall be in reference to these stake lines. The CONTRACTOR shall allow a minimum of five (5) days after submission to the CITY OF AUSTIN for approval of construction staking layout sheets. Construction layout sheets shall be in a format acceptable to the CITY OF AUSTIN. No Work shall be performed without the CITY OF AUSTIN approved construction staking layout sheets .

The CONTRACTOR shall provide a registered surveyor, an experienced instrument man, competent assistants, and such instruments, tools, stakes and other materials as required to complete the survey layout and *measurement work to conform to the Texas Society of Professional Surveyors Manual of Practice for Land* Surveying in the State of Texas, Category 5, Section 1-9 inclusive, and in a format to be established by the CITY OF AUSTIN.

The CONTRACTOR shall keep the OWNER and/or CITY OF AUSTIN informed, a reasonable time in advance of the times and places at which he wishes to do Work, so that any checking deemed necessary by the OWNER and/or CITY OF AUSTIN may be done with minimum inconvenience to the OWNER and/or CITY OF AUSTIN and minimum delay to the CONTRACTOR. Surveying will be coordinated between the OWNER and/or CITY OF AUSTIN and CONTRACTOR in a manner convenient to both.

Any Work done without being properly located may be ordered removed and replaced at the CONTRACTOR's expense.

The Engineer has furnished benchmarks as indicated on the construction Drawings. The CONTRACTOR shall carefully preserve all monuments, benchmarks, reference points, and stakes. In case of the destruction thereof, the CONTRACTOR shall be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks which must be removed or disturbed shall be protected until properly referenced for relocation. The CONTRACTOR shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.

The CONTRACTOR shall satisfy himself before commencing Work as to the meaning and correctness of all control stakes, marks, etc., and no claim will be entertained by the OWNER for or on account of any alleged inaccuracies, unless the CONTRACTOR notifies the OWNER thereof in writing before commencing work thereon.

9910.3 Measurement and Payment

Construction Staking shall be considered subsidiary to the bid and no measurement for additional payment shall be *made.*

END

AR: BLVD WEST CONTRACT

CONTRACT DOCUMENTS

FOR

PAVING AND DRAINAGE IMPROVEMENTS AVERY RANCH BOULEVARD (Proposed Homestead Village Trail to Parmer Lane)

Prepared for:

Avery Ranch Owner's Committee
2414 Exposition Boulevard, Suite 280
Austin, Texas 78703

Prepared by:

Cook-Steinman & Associates
3018 North Lamar, Suite 200
Austin, Texas 78705
(512) 454-6777

July 16, 2000
CSA Project No. 200-02a

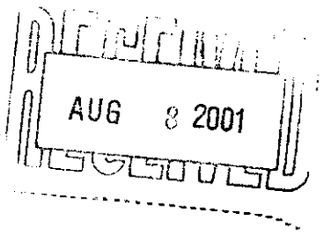
The St Paul
Surety

GENERAL FORM STATUS INQUIRY

8/07/2001

Bond No. 400KC9246

Contract Surety



TO: Avery Ranch Owner's Committee
2414 EXPOSITION BOULEVARD, #280
Austin, TX 78703

CONTRACTOR.....: J C Evans Construction Co Inc

CONTRACT DESCRIPTION..: Project NO. 96995200 - PAVING AND DRAINAGE IMPROVEMENTS AVERY RANCH BOULEVARD (PROPOSED HOMESTEAD VILLAGE TRAIL TO PARMER LANE)

OWNER: Avery Ranch Owner's Committee

CONTRACT PRICE: $1,763,324 *BOND AMOUNT:* $1,763,324 *EFFECTIVE DATE:* 10/16/00

It is understood that this information is furnished for the confidential use of the Surety, and is merely an expression of opinion, and in furnishing this information, no guaranty or warranty of accuracy or correctness is made; Nor is responsibility assumed as a result of reliance on such information.

Maria Griego

****

1. *IF CONTRACT COMPLETED.....: APPROXIMATE COMPLETION DATE* _____

APPROXIMATE ACCEPTANCE DATE _____

FINAL CONTRACT PRICE $ _____

2. *IF CONTRACT UNCOMPLETED...: PROBABLE COMPLETION DATE* _____

APPROXIMATE % OR $ AMOUNT OF CONTRACT COMPLETED _____

DO YOU KNOW OF ANY UNPAID BILLS FOR LABOR OR MATERIALS? *YES* _____ *NO* _____

3. *REMARKS:* _____

_____

SIGNATURE.....: _____ *DATE* _____

PRINT NAME & TITLE.: _____

****

PLEASE RETURN ORIGINAL TO:

St. Paul Surety
SAN ANTONIO BRANCH OFFICE
2700 NE LOOP 410 STE 125
SAN ANTONIO, TX 78217
(210) 527-3202

DIARY DATE: 11/07/2001

Project Manual For

PAVING AND DRAINAGE IMPROVEMENTS
Avery Ranch Boulevard
(Proposed Homestead Village Trail to Parmer Lane)

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July 16, 2000

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Pre-Bid Information		
00020	07/16/00	Invitation for Bids
Instructions to Bidders		
00100	07/16/00	Instructions to Bidders
00110	07/16/00	Bidder Information
Information Available to Bidders		
00220	07/16/00	Geotechnical Data
Bid Form and Affidavits		
00300	07/16/00	Bid Form
00400	07/16/00	Non-Collusion Affidavit
Agreement Form		
00500	08/08/00	Agreement
Bonds and Certificates		
00610	07/16/00	Performance Bond
00620	07/16/00	Payment Bond
00650	07/16/00	Certificate of Insurance
00680	06/25/00	Non-Use of Asbestos Affidavit (Contractor Prior to Construction)
00685	06/25/00	Non-Use of Asbestos Affidavit (Contractor After Construction)
General Conditions		
00700	11/02/94	General Conditions
Supplementary and Special Conditions		
00810	06/25/00	Supplemental General Conditions
00820	06/25/00	Special Conditions
Addenda		
00900	06/25/00	Addendum

Document Number	Date	Title

SPECIFICATIONS

City Standard Technical Specifications (not included in this manual)

City Standard Details (not included in this manual)

Series 1800 - Private Development

1800S	09/29/99	Construction Requirements and Procedures
1801S	09/29/99	Contents
1802S	09/29/99	Definition of Terms
1803S	09/29/99	Responsibilities of the Owner and Engineer
1804S	09/29/99	General Obligations and Responsibilities
1805S	09/29/99	Protection of Persons and Property
1806S	09/29/99	Final Acceptance
1807S	09/29/99	Miscellaneous

	Date
Special Provisions to City Standard Technical Specifications	06/25/00

Special Specifications

Number	Description	Date	Pages
Item No. SS-9001	Preservation and Restoration of Property Pins	06/15/95	1
Item No. SS-9010	Construction Staking	07/16/00	1
Item No. SS-9400	Water Quality or Wet Pond	06/25/00	1
Item No. SS-9900	Restoration	06/15/95	1

End

CONSTRUCTION DRAWINGS (attached as separate documents)

Paving and Drainage Improvements
Avery Ranch Boulevard (Homestead Village Trail to Parmer Lane)

1. Cover Sheet
2. Street Deed Exhibits
3. General Notes & Erosion/Sedimentation Details
4. Erosion/Sedimentation Control & Tree Protection Plan
5. Drainage Area Map: Existing Conditions
6. Drainage Area Map: Future Conditions
7. Plan and Profile: Sta. Begin to 74+50
8. Plan and Profile: Sta. 74+50 to 79+50
9. Plan and Profile: Sta. 79+50 to 84+50
10. Plan and Profile: Sta. 84+50 to 89+50
11. Plan and Profile: Sta. 89+50 to 94+50
12. Plan and Profile: Sta. 94+50 to End
13 Stormsewer Line Plan and Profile
14 Stormsewer Line Plan and Profile
15. Stormsewer Laterals Profile
16. *Drainageway Cross Sections and Culvert Cross Section*
17. Paving and Inlet Details
18. Drainage Details
19. TxDOT Box Culvert Details
20. TxDOT Wing Wall Details
21. TxDOT Wing Wall Details
22. TxDOT Pipe Culvert Headwall Details
23. Avery Ranch Blvd. Sections Sta. 82+50 to 89+00
24. Miscellaneous Details
25. Miscellaneous Details
26. Landscape Plan (Coleman & Associates)

C-1. Avery Ranch West Pond #2 (Loomis – Austin, Inc.)
C-2. Avery Ranch West Pond #2 (Loomis – Austin, Inc.)
C-3. Avery Ranch West Pond #2 (Loomis – Austin, Inc.)
C-4. Avery Ranch West Pond #2 (Loomis – Austin, Inc.)
6/80. Avery Ranch West – General Notes (Longaro & Clarke, Inc.)
10/80. *Avery Ranch West – Erosion/Sedimentation Control Details* and TNRCC Notes (Longaro & Clarke, Inc.)
54/80. Avery Ranch West – 50 Scale Wastewater Line Layout (Longaro & Clarke, Inc.)
56/80. Avery Ranch West – 50 Scale Wastewater Line Layout (Longaro & Clarke, Inc.)
59/75. Avery Ranch West – Wastewater Line "A" Sta. 31+00 to End (Longaro & Clarke, Inc.)
61/75. Avery Ranch West – Wastewater Lines "A4" & "A5" (Longaro & Clarke, Inc.)
62/75. Avery Ranch West – Wastewter Lines "A6", "A8" & "A10" (Longaro & Clarke, Inc.)
72/75. Avery Ranch West – General Details (Longaro & Clarke, Inc.)
73/75. Avery Ranch West – General Details (Longaro & Clarke, Inc.)
74/75. Avery Ranch West – General Details (Longaro & Clarke, Inc.)

End

Sealed bids, in duplicate, addressed to **Avery Ranch Owner's Committee** will be received at Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705 until **2:00 p.m., Tuesday August 8, 2000**. Any bid received after this time will be returned to bidder unopened. The bids will then be publicly opened and read for:

Construction of:

Paving and Drainage Improvements
Avery Ranch Boulevard
(Proposed Homestead Village Trail to Parmer Lane)

Consisting of the installation of paving and drainage improvements associated with the construction of approximately 2,900 linear feet of four (4) lane divided roadway, associated drainage infrastructure, 1,300 linear feet of 8 and 12 inch wastewater line, and one wet pond.

Each BID shall be accompanied by a Bidder's Bond, Certified Check or Cashier's Check drawn on a bank in Travis County or counties bordering Travis County, in an amount no less than five percent of the total amount bid, as a guarantee that the successful bidder will enter into a proper Contract and execute Bonds and Guaranty on the forms provided within ten days after the date Contract Documents are received by the CONTRACTOR. **The envelope containing the bid shall be addressed to the Avery Ranch Owner's Committee and indicate clearly on the front that it is a bid for "AVERY RANCH BOULEVARD, PAVING AND DRAINAGE IMPROVEMENTS".** Submitted Bids shall be good for a period of ninety (90) calendar days.

The successful bidder must furnish within ten calendar (10) days after the date of Notice of Award is received by the CONTRACTOR, PERFORMANCE and PAYMENT BONDS on the forms furnished with the BID DOCUMENTS in an amount at least equal to the Contract price, from a surety company holding a license from the State of Texas to act as a surety. The surety company must have a minimum Best Key Rating of "B".

State Statutes including wage and hour provisions and contract regulations must be adhered to as they relate to this project. Contractors will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

Bid documents may be obtained at the office of Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705, (512) 454-6777 ext. 24, upon payment of $100.00 (non-refundable) for each set, payable to Cook-Steinman & Associates, Inc..

Copies of the Bid Documents may be examined at the following locations:

- Cook-Steinman & Associates, 3018 North Lamar, Suite 200, Austin, Texas 78705

A MANDATORY PRE-BID CONFERENCE will be held at Cook-Steinman & Associates at the address shown above at **2:00 p.m., Monday July 24.** Attendance at this pre-bid conference is a prerequisite for having an acceptable bid and is limited to only responsible representatives of bona fide prospective bidders. All attendees must sign an attendance log giving individual name, firm represented, address and telephone number. No attendee may represent more than one firm for the purpose of satisfying this mandatory pre-bid conference attendance requirement. **ONLY BIDS RECEIVED FROM BIDDERS WHO HAVE ATTENDED THE PRE-BID CONFERENCE WILL BE CONSIDERED.** Proposals from firms not attending the mandatory pre-bid conference will be returned unopened and shall not be considered for the Contract award.

END

1. Defined Terms.

Terms used in these Instruction to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - One who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office - The office from which the Bid Document are to be issued and where the bidding procedures are to be administered.

1.3. Successful Bidder - The lowest, responsible and responsive Bidder to whom Owner (on the basis of the Owner's evaluation as hereinafter provided) makes an award.

2. Copies of Bid Documents.

2.1. Complete sets of the Bid Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the issuing office. If identified in the Invitation to Bid, as refundable, the deposit will be refunded to each document holder of record who returns a complete set of Bid Document in good condition within ten calendar days after opening the Bids.

2.2. Complete sets of Bid Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

2.3. Owner and Engineer in making copies of Bid Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders.

3.1. Contractor shall submit with the Bid, the required Section 00110 Bidder Information.

3.2. If requested by the Owner, Contractor shall be prepared to submit, within five working days of the request, a notarized financial statement, financial data or other information and references sufficiently comprehensive to permit an appraisal of his current financial condition.

4. Examination of Contract Documents and Site.

4.1. It is the responsibility of each Bidder before submitting a Bid to:

4.1.1. Examine thoroughly the Contract Documents and other related data identified in the Bid Documents (including "technical data" referred to below);

4.1.2. Visit the site to become familiar with and satisfy Bidders as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3. Consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4. Study and carefully correlate Bidder's knowledge and observations with the Contract Documents and other such regulated data; and

4.1.5. Promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and other such related documents.

4.2. Reference is made to Section 00220 Geotechnical Data or the Special Conditions for identification of:

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by Engineering in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.3. Copies of such reports and drawings will be made available by Owner to any Bidder on request. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3. Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof.

4.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing and unanticipated conditions appear in paragraphs 4.2 of the General Conditions.

4.5. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bids for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6. On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former condition upon completion of such explorations, investigations, tests and studies.

4.7. Reference is made to the Supplementary General Conditions and/or Special Conditions for the identification of the general nature of work that is to be performed at the site by Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to or more copies of Contract Documents (other than portions thereof related to price) for such work.

4.8. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. Availability of Lands for Work

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. Interpretations and Addenda.

6.1. All questions about the meaning or intent of the Bid Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bid Documents. Questions received less than five working days prior to the date for opening Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2. Addenda may also be issued to modify the Bid Documents as deemed advisable by Owner or Engineer.

7. Bid Security.

7.1. Each Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of Bidder's maximum Bid price and in the form of a certified check, cashiers check or an acceptable bid bond with Power of Attorney.

7.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within ten days after the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the thirty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within five days after the Bid opening.

8. Contract Times.

The number of days within which, or the dates by which, the Work is to be substantially completed and/or ready for final completion are set forth in the Agreement or incorporated therein by reference to the attached Bid Form.

9. Liquidated Damages.

Provisions for liquidated damages, if any, are set forth in the Bid Form and/or Agreement.

10. Substitute and "Or-Equal" Items.

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.2.4. of the General Conditions .

11. Subcontractors, Suppliers and Others.

11.1. If the Supplementary General Conditions and/or Special Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner, then the apparent Successful Bidder, and any other Bidder so requested, shall within five days after request by Owner, submit to Owner, a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for

which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request apparent Successful Bidder to submit an acceptable substitute, without an increase in the Bid price.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in the General Conditions.

11.2. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

12. Bid Form and Affidavits.

12.1. The Bid Form is included with the Bid Document; additional copies may be obtained from Engineer (or the Issuing Office).

12.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.

12.3. Bids by corporations must be executed in the corporate name by the president or a Vice-President (or other corporate office accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

12.5. All names must be typed or printed in black ink below the signature.

12.6. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12.7. The address and telephone number for communications regarding the Bid must be shown.

12.8. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 12.3 above. State contractor license number, if any, must also be known.

12.9 Section 00400, Non-Collusion Affidavit shall accompany the bid form.

13. Submission of Bids.

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

14. Modification and Withdrawal of Bids.

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

15. Opening of Bids.

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

16. *Bids to Remain Subject to Acceptance.*

All bids will remain subject to acceptance for ninety (90) days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. Award of Contract.

17.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is non responsible or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

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

17.3. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identify of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary General Conditions and/or Special Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to Notice of Award.

17.4. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5. If the contract is to be awarded, it will be awarded to lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

18. Contract Security.

Paragraph 5.1 of the General Conditions and paragraph 5.4.1 of the Supplementary General Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed agreement to Owner, it must be accompanied by the required performance and payment Bonds.

19. Signing of Agreement.

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and Certificate of Insurance. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. Prebid Conference.

A mandatory prebid conference will be held at the time and location specified in Section 00020 Invitation To Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

21. Sales and Use Taxes.

Project shall be considered as exempt from Texas State Sales and Use Taxes on materials and equipment for bid items relating to water, wastewater, stormwater collection, erosion and sedimentation control, and water quality controls. Said taxes shall not be included in the Contract Price. Refer to Supplementary General Conditions for additional information (if any).

22. Retainage.

Provisions concerning Retainage and Contractor's rights to deposit securities in lieu of Retainage are set forth in Article 14 of the General Conditions.

23. Disqualification of Bidders.

The following causes may be considered as sufficient for the disqualification of a bidder and the rejection of their proposal:

a. More than one proposal for the same work from an individual, firm, partnership or corporation.
b. Evidence of collusion among bidders.
c. Poor performance in the execution of work under previous contracts.
d. For being in arrears on existing contracts, in litigation with the OWNER, or having defaulted on a previous contract.
e. Not filling out the Non-Collusion Affidavit, Section 00400.

END

The Bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name J. C. EVANS CONSTRUCTION CO. INC.
2. Address P. O. Box 9647, Austin Tx 78766
3. Phone Number 512 244-1900
4. Type of Firm: ( ) Individual ( ) Partnership (X) Corporation
5. Corporation organized under the laws of the State of Tx - 1955
6. List the names and addresses of all members of the firm or names and titles of all officers of the corporation.
   Blake Kuhlman President
   Duane McGlauflin V. P.
7. Number of Years Experience 45
8. List at least three (3) projects completed of similar nature:

	$ Contract Amount	ENGINEER	Date Complete	Name & Address of Owner
a.				
b.	(attached list)			
c.				

9. Has your firm completed all prior contracts? ✓ Yes ____ No
   If no, submit details.
10. Payment of taxes, in the State of Tx

11. List all jobs you performed in which a trench failure injury occurred:

NONE

12. List the name of the person, firm or corporation that will be executing the payment and performance bonds:

St. Paul Guardian
c/o Summit Global Partners
W. Hayes Pitts

13. If requested by the OWNER, the Bidder shall submit a notarized financial statement, financial data or other information and references sufficiently comprehensive to permit an appraisal of his current financial conditions.

END

Excavation/ Underground Utilities Current Projects

PROJECT	OWNER/ENGINEER	CONTRACT	EST DATE OF COMP
STEINER RANCH SECTION 2 5A, 5B, 5C AND 4H	Taylor Woodrow Communities Carter Burgess	3,074,560	
DELL PN2, PHASE 3	White Construction	1,740,000	
CAHILL CONDO SITE	RMD and Company Cook Steinman & Associates	774,386	
STONE OAK PHS. 2, SECTION 3	Continental Homes of TX LP KC Engineering, Inc.	588,283	
TERAVISTA 3A PAVING	Newland Communities Turner Collie & Braden	474,000	
SECURITY SELF STORAGE	Security Development Co., LLC	845,376	09/00
SUBURBAN LODGE SITE	Bill Gaston, Inc.	257,247	09/00
HEB BUDA SITE	Williams Development	969,080	12/00
COMMANDERS POINT	620 Commanders Point LP Loomis – Austin, Inc.	1,323,000	08/00
THE PARK AT ANDERSON MILL	Parke @ AM LP/ RMD and Company Carter & Burgess, Inc.	1,312,000	08/00
SENDERA SOUTH 4A AND 4B	Continental Homes of TX LP Lockwood Engineers	1,223,233	08/00
THE VINEYARD AT BLOCKHOUSE STREETS	Continental Homes of TX LP Gray Jansing & Associates	277,758	06/00
THE HILLS OF LAKEWAY PHASE 10	Toll Brothers, Inc. PBS & J	466,733	07/00
GRANDVIEW HILLS UTILITY	Tomen-America Inc. Bury & Partners	1,835,000	08/00
PARK WEST @ CIRCLE C	RH Development/ Park West CC Longaro & Clarke	1,692,439	08/00
LAKE FOREST SECTION ONE	Bon Terre-B Ltd. Carter & Burgess, Inc.	4,300,000	08/00

Excavation/ Underground Utilities Recently Completed Projects

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
STORAGE WORLD AUSTIN	ANDCO Construction	433,000	08/00
HEB PFLUGERVILLE SITE	Williams Development	1,165,209	08/00
SHORELINE VILLAGE APT SITE	Carleton Construction Inc. Cunningham Allen Inc.	1,347,276	08/00
SUN CITY MEGAHOOD 3 CLEARING	Del Webb of Texas LP Turner Collie & Braden	141,740	06/00
HARRIS BRANCH NE SECTOR	Austin HB Residential Cook Steinman & Associates, Inc.	674,062	07/00
CAT HOLLOW A5 AND A6	Great Oak Development Gray Jansing & Associates	1,536,000	06/00
MACONDA PARK OFFSITE	Highland Resources	302,449	04/00
STONE OAK PHASE 2, SECTION 2	Continental Homes of Texas LP KC Engineering	674,317	04/00
HORIZON PARK SECTION TWO	Centex Homes Carlson Brigance & Doering	1,502,764	04/00
LAKE POINT SECTION 7, PHS 1	West Travis County MUD 7 c/o SWTC, Ltd. Malone/ Wheeler, Inc.	1,180,000	03/00
SUNSET VALLEY MEADOWS	Sunset Valley Meadows LP Bury & Pittman	1,641,447	02/00
SENDERA SOUTH SECTION 3	Continental Homes of Texas LP Lockwood Engineers	627,266	01/00
STORAGE WORLD SITE	ANDCO Construction J.L. Wilson & Associates	420,000	01/00
THE PARKE AT TRAVIS COUNTRY	Morrison Homes Longaro & Clarke	1,033,000	01/00
OAK BROOK SECTION 4B	RH Homes of Texas LP Gray Jansing & Associates, Inc.	835,162	01/00
THE LODGE @ MERRILLTOWN	Ocampo Partners Ltd. Jungman & Laffere	412,780	12/99
GRAND MESA SUBDIVISION	The Lookout Group	1,185,260	01/00
HORIZON PARK SECTION ONE	Centex Homes Carlson Brigance & Doering	1,064,000	12/99

EXCAVATION/UNDERGROUND UTILITIES
RECENTLY COMPLETED PROJECTS

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
STONE OAK PHASE 1, SECTION 2	Continental Homes of Texas LP	500,000	12/99
STONE OAK PHASE 1, SECTION 3	KC Engineering, Inc.	428,674	12/99
STONE OAK PHASE 2, SECTION 1	KC Engineering, Inc.	896,187	01/00
STONE OAK PHASE 1, SECTION 4	KC Engineering, Inc.	1,014,000	02/00
STONE OAK AMENITY CENTER	KC Engineering, Inc.	155,435	01/00
WASSON MINI STORAGE SITE	Ramco Internantional c/o Ivan Williams	412,709	11/99
LAKEWIND ESTATES	Toll Brothers, Inc. Cunningham-Allen, Inc.	1,934,116	12/99
GO WEST APARTMENT SITE	Westwood Builders 25, LP Cunningham Allen, Inc.	2,339,000	12/99
WATERS EDGE APARTMENT SITE	Larry Peel Company Jungman - Laffere	1,188,382	12/99
SUMMIT AT WEST RIM	Penta Development Corporation Gray Jansing & Associates	2,100,000	12/99
HOLT TRUCK FACILITY	Hooker Contracting, Inc.	511,289	12/99
SENDERA SOUTH SECTION 2	Continental Homes of Texas Lockwood Engineering	1,134,163	12/99
FOUR POINTS DRIVE	P-WB Joint Venture Cook- Steinman & Associates	975,000	10/99
BRADFIELD SECTION 2	Capitol Pacific Holdings LLC Carter & Burgess Inc.	1,263,000	10/99
NORTHSHORE DEVELOPMENT	Silvercreek One Ltd. Loomis and Moore	1,880,000	10/99
SOUTHLAND OAKS 4F AND 4D	RH of Texas, LP	1,031,000	09/99
SOUTHLAND OAKS 4C	RH of Texas, LP Carlson, Brigance, & Doering	815,066	08/99
OAK BROOK TWO, PHASE B	RH of Texas LP Gray Jansing & Associates, Inc.	791,851	08/99
WESTMINSTER GLEN 1C,1D,1E Dry Utilities Included	MaBe, Inc. Cunningham-Allen, Inc.	1,483,000	08/99
PRESERVE AT STONE OAK 1, 5	KC Engineering, Inc.	1,058,000	07/99
METROTECH PHASES A & B	Quentin Corporation Huffcut and Associates, Inc.	3,900,000	07/99

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
CAT HOLLOW SECTION A-4	Great Oaks Development LP Gray Jansing & Associates, Inc.	1,500,000	06/99
PARMER SOUTH INFRASTRUCTURE 24-Inch WL/ Harris Ridge Improv.	Parmer South 97 Ltd Bury & Pittman, Inc.	3,400,000	07/99
MERRILLTOWN TOWN HOMES Site Grading and Utilities	Ocampo Partners, Ltd. Jungman & Laffere	2,965,000	05/99
MILLWOOD SECTION 40B	Continental Homes of Texas LP Carlson, Brigance & Doering, Inc.	772,000	03/99
RIVER OAKS @ WESTLAKE	Toll Brothers, Inc. Cunningham Allen, Inc.	1,300,000	03/99
ABIA TERMINAL ACCESS ROAD	City of Austin/ NAPT	11,000,000	04/99
OAKBROOK SECTION 3	Scott Felder Homes LP Gray Jansing & Associates Inc.	1,283,000	03/99
BRADFIELD VILLAGE ONE	Capitol Pacific Holdings	1,172,000	01/99
RANCH AT CYPRESS CREEK 9 Dry Utilities Included	Pulte Homes of Texas LP JadCo/ Randal Jones Engineering, Inc.	1,000,000	01/99
HILL COUNTRY PHASE 2B	Morrison Homes H. W. Curington/ RMD & Company	343,439	01/99
LAKE POINT PHASE 4 Includes dry utilties	Bon Terre-B, Ltd Bury & Pittman,, Inc.	2,000,000	11/98
HEB AUSTIN NO. 21 SITE	HEB Construction Group	2,507,039	11/98
SHADY HOLLOW WEST Includes dry utilities	Paratus/ Harker Shady Hollow West Ltd. Urban Design Group, Inc.	870,000	11/98
VISTA OAKS SECTION 4A Streets	Vista Development Associates Huffcut & Associates	187,000	07/98
THE PARKE SECTION 5 Includes dry utilites	Tomen-Parke, Inc. Bury & Pittman, Inc.	869,000	08/98
ABIA RUNWAY PAVING WEST	City of Austin/ NAPT	300,000	07/98
SUN CITY GOLF COURSE 2 Clearing	Del Webb Tx Ltd Partnership Turner Collie & Braden	640,000	07/98

PROJECT	OWNER/ENGINEER	CONTRACT	DATE COMP
LAKEWAY APARTMENT SITES Phase 10 Townhomes Green Garden Homes Enclave at Treehaven Garden at Lakeside	Toll Brothers, Inc. Cook Steinman & Associates	1,400,000	05/98
PARK CENTRAL DEVELOPMENT	The Palladium Group Baker Aiklen	1,900,000	04/98
PRESTON OAKS SECTION 3	Milburn Homes Carlson Engineering & Associates	442,000	04/98
NORTH POINT 1 SECTIONS 1 & 2	Pacifica Houston, Inc. Espey, Huston & Assoc.	463,000	04/98
SUN CITY N36/N37A (ROW Clearing , Utilities)	Del E. Webb Development Turner Collie & Braden	704,000	03/98
THE PRESERVE AT BARTON CREEK	Schmidt Construction Flanagan Engineering	190,377	03/98
OAK BROOK SECTION 4A streets/ telecommunications	Scott Felder, LP Gray Jansing & Associates	156,000	03/98
CYPRESS CREEK WATER LINE	City of Cedar Park Turner Collie & Braden	839,196	03/98
TRAVIS COUNTRY GREEN streets/ utilities/ telecommunications	By-Well/ Rathgeber Barry Campbell Engineering	2,426,534	01/98

Depending on project requirements, OWNER may have obtained geotechnical information, which may include subsurface data logs of soil borings and recommendations from geotechnical consultants. Any information obtained is solely for use by ENGINEER/ARCHITECT in design of project and are not part of Contract. If soil borings have been prepared, they will be included in this section or on plans. Any geotechnical information included is for information only. Owner does not guarantee accuracy or validity of soil investigation data, nor does OWNER assume any responsibility for CONTRACTOR interpretation or conclusions drawn from data.

End

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-1
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT ROD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LL LIQUID LIMIT	PL PLASTIC LIMIT	PI PLASTICITY INDEX	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			N=21	22		79	21	58					Very stiff dark brown clay (CH)
2													Tan limestone (Edwards Group)
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
ROD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-2
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT (LL)	ATTERBERG LIMITS (%) PLASTIC LIMIT (PL)	ATTERBERG LIMITS (%) PLASTICITY INDEX (PI)	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=3.0	22	83								Very stiff dark brown clay (CH) with limestone fragments
2			P=50/6"										Tan limestone (Edwards Group) with clay seams and solution channels
4			R=71 RQD=46										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 2 feet; Wet Rotary 2 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/29/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-3
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	21		65	18	47					Hard dark brown to reddish brown clay (CH) with limestone fragments
2			N=50/6"										Tan limestone (Edwards Group) with clay seams and solution channels
4			R=71 RQD=58										
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-4
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA | LABORATORY DATA

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT ROD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			P=4.5+ N=41	19	86								Hard dark brown clay (CH) with limestone fragments
4													Tan limestone (Edwards Group)
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
ROD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 96995-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-5
PROJECT NO. 96995200
DATE 11-16-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA						LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N BLOWS/FT T. INCHES/100 BLOWS P. TONS/SQ FT R. PERCENT RQD. PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%)			MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ.FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
						LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI					
2			P=4.5+	16		61	17	44					Hard reddish brown clay (CH) with limestone fragments
			N=42	17									
4													Tan limestone (Edwards Group)
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-6
PROJECT NO. 96995200
DATE 11-16-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)
2		P=4.5+		20		23	16	7				
		N=63		3								
4												
6												
8												
10												
12												
14												
16												
18												
20												

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

DESCRIPTION OF STRATUM

Hard reddish brown silty clay (CL) with limestone fragments

Hard tan silty clay (CL) with calcareous nodules and limestone fragments

Boring Terminated at 6 feet

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-7
PROJECT NO. 96995200
DATE 11-16-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA | LABORATORY DATA

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			N=54	20									Hard brown silty clay (CL) with limestone fragments
4													Tan limestone (Edwards Group)
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-8
PROJECT NO. 96995200
DATE 11-16-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)
			N=44	11		76	23	53				
2			R=73 RQD=52									
4												
6												
8												
10												
12												
14												
16												
18												
20												

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

DESCRIPTION OF STRATUM

Hard dark brown clay (CH) with limestone fragments

Hard tan silty clay (CL) with limesotne fragments

Tan limestone (Edwards Group) with clay seams

-dolomitic below 3.5 feet

Boring Terminated at 6 feet

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-9
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA / LABORATORY DATA

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT ROD, PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LL	PL	PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	3									Hard dark brown clay (CH) with limestone fragments
			N=50/5"										Tan limestone (Edwards Group)
2													
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

969952 11/24/

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-10
PROJECT NO. 96995200
DATE 11-13-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LL	PL	PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
0													Hard dark brown clay (CH)
			N-50/3"	17									
2			R=93 RQD=62										Tan limestone (Edwards Group)
4					151					458			-gray below 5 feet
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1 foot; Wet Rotary 1 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 969952-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-11
PROJECT NO. 96995200
DATE 11-13-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA				LABORATORY DATA								
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)
2			P=4.5+	18		67	23	44				
4			N=50/3"									
6												
8												
10												
12												
14												
16												
18												
20												

DRILLING METHOD(S):
Dry Augered 0 to 2.5 feet; Wet Rotary 2.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

DESCRIPTION OF STRATUM

Hard dark brown clay (CH) with limestone fragments

Tan limestone (Edwards Group)

Boring Terminated at 6 feet

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

COB 969952-1.GPJ 11/29/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-12
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=3.0	17		53	19	34					Very stiff brown clay (CH)
2			R=83 RQD=55										Tan limestone (Edwards Group) with clay seams and solution channels
4													
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 0.5 feet; Wet Rotary 0.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

JOB 96995-1.GPJ 11/29/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-13
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA | LABORATORY DATA

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			R=92 RQD=82										Tan limestone (Edwards Group)
4					160					769			
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1 foot; Wet Rotary 1 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOG 96995200-1 GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-14
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA					LABORATORY DATA									
DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU.FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			N=50/6"	12									Hard dark brown clay (CH) with limestone fragments
2													Tan limestone (Edwards Group) with clay seams
4			R=78 RQD=50										
6													-gray below 5 feet
													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 1.5 feet; Wet Rotary 1.5 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOB 96995200-1.GPJ 11/24/99

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-15
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N BLOWS/FT T INCHES/100 BLOWS P TONS/SQ FT R PERCENT RQD PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
			P=4.5+	21	82								Hard dark brown clay (CH) with limestone fragments
2			N=50/5"										Tan limestone (Edwards Group) with clay seams, vugular
4			R=94 RQD=67										
6					148					357			Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 2 feet; Wet Rotary 2 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during dry augering.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

REMARKS:

HBC ENGINEERING, INC.

LOG OF BORING

PROJECT: Avery Ranch Boulevard
Williamson County, Texas
CLIENT: Cook-Steinman & Associates, Inc.
Austin, Texas

BORING NO. B-16
PROJECT NO. 96995200
DATE 11-12-99
SURFACE ELEVATION

PAGE 1 of 1

FIELD DATA | LABORATORY DATA

DEPTH (FT)	SOIL SYMBOL	SAMPLES	N: BLOWS/FT T: INCHES/100 BLOWS P: TONS/SQ FT R: PERCENT RQD: PERCENT	MOISTURE CONTENT (%)	DRY DENSITY POUNDS/CU FT	ATTERBERG LIMITS (%) LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI	MINUS NO. 200 SIEVE (%)	COMPRESSIVE STRENGTH (TONS/SQ FT)	FAILURE STRAIN (%)	CONFINING PRESSURE (POUNDS/SQ IN)	DESCRIPTION OF STRATUM
2			P=4.5+	15		81	22	59					Hard dark brown to reddish brown clay (CH) with limestone fragments
			N=82/9"										Hard tan silty clay (CL) with calcareous nodules and limestone fragments
4													Tan limestone (Edwards Group)
6													Boring Terminated at 6 feet
8													
10													
12													
14													
16													
18													
20													

DRILLING METHOD(S):
Dry Augered 0 to 6 feet

GROUNDWATER INFORMATION:
No groundwater observed during drilling.

N - STANDARD PENETRATION TEST RESISTANCE
T - TXDOT CONE PENETRATION RESISTANCE
P - POCKET PENETROMETER RESISTANCE
R - PERCENTAGE OF ROCK CORE RECOVERY
RQD - ROCK QUALITY DESIGNATION

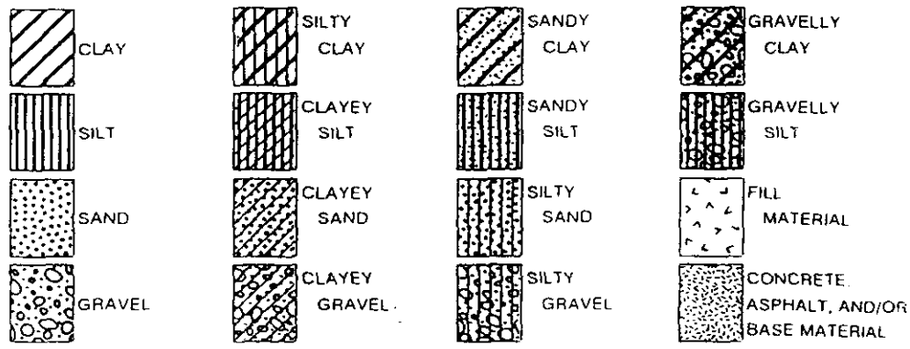
REMARKS:

HBC ENGINEERING, INC.

LOB 999952-1.GPJ 11/24/99

KEY TO SOIL CLASSIFICATIONS AND SYMBOLS

SOIL TYPES



CONSISTENCY OF COHESIVE SOILS

Penetration Resistance (blows per foot)	Consistency	Undrained Compressive Strength (tsf)
0 - 2	Very Soft	0 - 0.25
2 - 4	Soft	0.25 - 0.5
4 - 8	Firm	0.5 - 1.0
8 - 15	Stiff	1.0 - 2.0
15 - 30	Very Stiff	2.0 - 4.0
> 30	Hard	> 4.0

PLASTICITY OF COHESIVE SOILS

Plasticity Index	Degree of Plasticity
0 - 5	None
5 - 10	Low
10 - 20	Moderate
20 - 40	Plastic
> 40	Highly Plastic

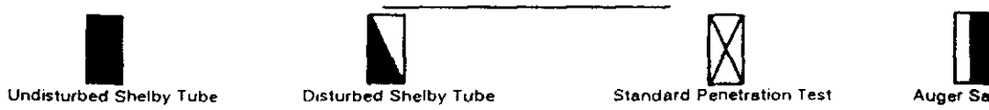
RELATIVE DENSITY OF COHESIONLESS SOILS

Penetration Resistance (blows per foot)	Relative Density
0 - 4	Very Loose
4 - 10	Loose
10 - 30	Medium Dense
30 - 50	Dense
> 50	Very Dense

TERMS CHARACTERIZING SOIL STRUCTURE

Slickensided	having inclined planes of weakness that are slick and glossy in appearance
Fissured	containing shrinkage cracks, frequently filled with fine sand or silt, usually more or less vertical
Laminated	composed of thin layers of varying color and texture
Interbedded	composed of alternate layers of different soil types
Calcareous	containing appreciable quantities of calcium carbonate

SAMPLER TYPES



HBC ENGINEERING, INC.

Avery Ranch Owner's Committee
Travis County, Texas

The undersigned, in compliance with your invitation for bids for construction of **Paving and Drainage Improvements: Avery Ranch Boulevard Boulevard**, having examined the Project Manual, Drawings and Addenda, the site of the proposed Work and being familiar with all of the conditions surrounding construction of the proposed Project, having conducted all inquiries, tests and investigations deemed necessary and proper; hereby proposes to furnish all labor, permits, material, machinery, tools, supplies and equipment, and perform all Work required for construction of the Project in accordance with the Project Manual, Drawings and Addenda within the time indicated for the following prices in both words and figures of:

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
1	29.5	STA	Preparing Right of Way, including clearing and grubbing - Per station for Five thousand eight hundred fifty eight dollars and no cents	$ 5858⁻	$ 172,811⁻
2	165	LF	Sawcut Existing Pavement - Per Linear Foot for One dollars and no cents	$ 1⁰⁰	$ 165⁻
3	39,305	SY	Street Excavation, ROW to ROW, including haul, grading and compaction, and embankment -per square yard for Three dollars and forty eight cents	$ 3⁴⁸	$ 136,781⁴⁰
4	23,310	SY	Subgrade Preparation, 1 foot behind curb, - per square yard for One dollars and no cents	$ 1⁰⁰	$ 23,310⁻
5	23,310	SY	Flexible Base, 24.5 in. depth, 1 ft behind curb - per square yard for Eleven dollars and no cents	$ 11⁻	$ 256,410⁻
6	19,300	SY	Hot Mix Asphaltic Concrete Pavement 1.5 inch , Type D, including prime coat - per square yard for Three dollars and ten cents	$ 3¹⁰	$ 59,830⁻

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
7	19,300	SY	Hot Mix Asphaltic Concrete Pavement 2.5 inch , Type C, including prime coat - per square yard		
			for Five dollars and fifteen cents	$5.15	$99395-
8	10,500	LF	Concrete Curb and Gutter, excluding inlets and transitions - per linear foot		
			for Six dollars and seventy five cents	$6.75	$70875-
9	228	LF	Concrete mountable Curb – TexDot Type 1 per linear foot		
			for Six dollars and seventy five cents	$6.75	$1539-
10	22	EA	Sidewalk Ramp, Type 1, including pavers - per each		
			for Five hundred thirty six dollars and sixty cents	$536.60	$11,805.20
11	2	EA	Concrete Valley Gutter for 60 ft. street, -per each		
			for Twenty five hundred dollars and no cents	$2500-	$5000-
12	1	EA	Concrete Valley Gutter for 30 ft. street, -per each		
			for Twenty one hundred dollars and no cents	$2100-	$2100-
13	28,710	SF	Sidewalk, meandering - per square foot		
			for Three dollars and no cents	$3-	$86130-
14	4	EA	Street Barricade, 60 ft street -per each		
			for Eleven hundred nine dollars and no cents	$1109-	$4436-

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
15	1	EA	Street Barricade, ~~60~~ 30 ft street, -per each for Four hundred ninety five dollars and no cents	$ 495-	$ 495-
16	3,530	SF	Pavers , concrete, for Street crossings, including, concrete base, and conc. edge - per square foot for Ten dollars and four cents	$ 10.04	$ 35441 20
17	~~1,860~~ 4170	SF	Pavers , concrete, for medians, including concrete base - per square foot for Eight dollars and twenty four cents	$ 8 24	$ 34,360 80
18	6	EA	Street Sign, intalled, - per each for Two hundred fifty two dollars and no cents	$ 252-	$ 1512-
19	1,120	LF	Pavement Markings 8 inch solid, white or yellow - per linear foot for —— dollars and seventy cents	$ .70	$ 784-
20	5,400	LF	Pavement Markings 4 in. x 10 ft. broken white - per linear foot of street for —— dollars and sixty cents	$ .60	$ 3240-
21	5,800	LF	Schedule 40 PVC, 2 inch, electric conduit for street lighting, inc. pull string - per linear foot for Seven dollars and ten cents	$ 7 10	$ 41,180-
22	1,600	LF	Schedule 40 PVC, 6 inch, conduit for irrigation sleeve - per linear foot for Eleven dollars and ninety two cents	$ 11. 92	$ 19072-
23			(RESERVED) for _____ dollars and _____ cents	$	$

PAVING IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
24			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____
25			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____
26			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____
27			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____
28			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____
29			(RESERVED)		
			for _____ dollars		
			and _____ cents	$_____	$_____

PAVING IMPROVEMENTS

SUBTOTAL AMOUNT BID: $ 1,066,672.60
(in figures)

SUBTOTAL AMOUNT BID: One million sixty six thousand six hunched seventy two dollars and sixty cents
(in words)

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
30	2	EA	Manhole 4 ft. diameter, all depths - per each for Twenty eight hundred dollars and no cents	$2800-	$5600-
31	x2	EA	Manhole 5 ft. diameter , all depths - per each for Thirty three hundred seventy five dollars and no cents	$3375-	$6750-
32	1	EA	Manhole 7 ft. diameter, all depths - per each for Forty seven hundred fifty dollars and no cents	$4750-	$4750-
33	1	EA	BoxManhole, 8 ft. x 4 ft, including manhole cone and ring and cover -per each for Fifty two hundred dollars and no cents	$5200-	$5200-
34	1	EA	Junction Box, 6 ft. x 6 ft, including manhole cone and ring and cover -per each for Forty seven hundred fifty dollars and no cents	$4750-	$4750-
35	13	EA	Inlet 10 ft., all depths - per each for Twentysix hundred fifty dollars and no cents	$2650-	$34450-
36	1	EA	Headwall for 48 inch RCP - per each for Forty three hundred dollars and no cents	$4300-	$4300-
37	1	EA	Headwall for 54 inch RCP - per each for Fifty seven hundred dollars and no cents	$5700-	$5700-
38	1,381	LF	Pipe, 18 in. Dia. RCP Cl. III, including excavation and backfill - per linear foot for Forty six dollars and no cents	$46-	$63526-

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
39	325	LF	Pipe, 24 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for Forty seven dollars and no cents	$ 47-	$ 15275-
40	313	LF	Pipe, 30 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for Sixty six dollars and no cents	$ 66-	$ 20658-
41	62	LF	Pipe, 48 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for One hundred nine dollars and no cents	$ 109-	$ 6758-
42	105	LF	Pipe, 54 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for One hundred fifty nine dollars and no cents	$ 159-	$ 16695-
43	342	LF	Pipe, 60 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for One hundred sixty three dollars and no cents	$ 163-	$ 55746-
44	310	LF	Pipe, 66 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for One hundred eighty nine dollars and no cents	$ 189-	$ 58590-
45	68	LF	Pipe, 72 in. Dia.. RCP Cl. III, all depths, including excavation and backfill - per linear foot for Two hundred sixty five dollars and no cents	$ 265-	$ 18020-

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
46	110	LF	Multiple Box Culvert, 7 - 6 ft. x 4 ft., - per linear foot for One thousand sixty nine dollars and no cents	$1069-	$117590-
47	1	LS	Flared Wingwalls, 15° and parapet for 7 – 6 ft. x 4 ft. MBC (upstream end) -per lump sum for Two thousand dollars and no cents	$2000-	$2000-
48	1	LS	Debris Fins, concrete apron and toewall for 7 – 6 ft. x 4 ft. MBC (upstream end) -per lump sum for Fifteen hundred dollars and no cents	$1500-	$1500-
49	1	LS	Headwall structure with 15° Flared Wings, for 7 – 6 ft. x 4 ft. MBC, 72 in. & 60 in RCP including concrete apron and toewall -per lump sum for Twenty five hundred dollars and no cents	$2500-	$2500-
50	575	LF	Handrail for multiple box culverts, -per linear foot for Forty seven dollars and four cents	$47.04	$27048-
51	2906	LF	Trench Safety Systems, including manholes and appurtenances - per linear foot for One dollars and no cents	$1-	$2906-
52	~~7~~	EA	Adjust manhole frame and cover to finish grade -per each for Two hundred seventy five dollars and no cents	$275-	$1925-
53	1	LS	Grading at upstream end of SS Line B including topsoil and seeding - per Lump Sum for Four thousand two hundred fifty dollars and no cents	$4250-	$4250-

DRAINAGE IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
54	1	LS	Wet Pond, per plan sheets C1-C5, excluding plantings, topsoil and seeding complete and in place - per Lump Sum		
			for One hundred thousand Four hundred Sixty Six dollars	100,466-	
			and no cents	$	$ 100,466-
55			(RESERVED)		
			for dollars		
			and cents	$	$
56			(RESERVED)		
			for dollars		
			and cents	$	$
57			(RESERVED)		
			for dollars		
			and cents	$	$
58			(RESERVED)		
			for dollars		
			and cents	$	$

DRAINAGE IMPROVEMENTS

SUBTOTAL AMOUNT BID: $ 586,953- (in figures)

SUBTOTAL AMOUNT BID: Five hundred eighty six thousand nine hundred fifty three dollars (in words)

EROSION AND SEDIMENTATION CONTROL & TREE PROTECTION

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
59	1	EA	Stabilized Construction Entrance -per each for Six hundred fifty dollars and no cents	$650-	$650-
60	200	LF	Rock Berm, High Service - per linear foot for Fifteen dollars and no cents	$15-	$3000-
61	3,000	LF	Silt Fence - per linear foot for One dollars and sixty five cents	$1 65	$4950-
62	1,780	LF	Tree Protection Fencing, Type A - per linear foot for Two dollars and twenty five cents	$2 25	$4005-
63			(RESERVED) for _____ dollars and _____ cents	$_____	$_____
64			(RESERVED) for _____ dollars and _____ cents	$_____	$_____

EROSION AND SEDIMENTATION CONTROL AND TREE PROTECTION

SUBTOTAL AMOUNT BID: $ 12,605- (in figures)

SUBTOTAL AMOUNT BID: Twelve thousand six hundred five dollars (in words)

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
65	2	EA	manholes 4 ft. diameter,0 -8 ft. including bolted and watertight cover -per each for Twenty eight hundred fifty dollars and no cents	$2850-	$5700-
66	3	EA	manholes,drop type, 4 ft. diameter,0 -8 ft. including bolted and watertight cover -per each for Thirty one hundred fifty dollars and no cents	$3150-	$9450-
67	33	VF	Manhole Riser Section, - per vertical foot for Two hundred twenty five dollars and no cents	$225-	$7425-
68	472	LF	12 inch, PVC SDR 26, all depths -per linear foot for Thirty nine dollars and no cents	$39-	$18408-
69	860	LF	8 inch, PVC SDR 26, all depths -per linear foot for Thirty five dollars and no cents	$35-	$30100-
70	40	LF	Concrete encasement for 8 inch PVC SDR 26 – per linear foot for Twenty dollars and no cents	$20-	$800-
71	68	LF	Steel encasement for 8 inch PVC SDR 26 – per linear foot for Fifty one dollars and no cents	$51-	$3468-
72	1,332	LF	Trench Safety Systems, including manholes - per linear foot for One dollars and twenty five cents	$1 25	$1665-
73	1	EA	Temporary Cleanout - per each for One hundred fifty dollars and no cents	$150-	$150-

WASTEWATER IMPROVEMENTS

Bid Item	Quantity	Unit	Item Description and Written Total Unit Price	Unit Price	Amount
74			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
75			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
76			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
77			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
78			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____
79			(RESERVED)		
			for _____ dollars and _____ cents	$_____	$_____

WASTEWATER IMPROVEMENTS

SUBTOTAL AMOUNT BID: $ 77,166⁻
(in figures)

SUBTOTAL AMOUNT BID: Seventy seven thousand one hundred sixty six dollars
(in words)

(in words)

Summary of Proposed Bid Amount

PAVING IMPROVEMENTS: TOTAL AMOUNT BID: $ 1066672.60 (in figures)

DRAINAGE IMPROVEMENTS: TOTAL AMOUNT BID: $ 586,953- (in figures)

EROS. AND SED. CONT. AND TREE PROT.: TOTAL AMOUNT BID: $ 12,605- (in figures)

WASTEWATER IMPROVEMENTS: TOTAL AMOUNT BID: $ 77,166- (in figures)

TOTAL IMPROVEMENTS:

TOTAL AMOUNT BID: $ 1,743,396.60 (in figures)

TOTAL AMOUNT BID: One million seven hundred forty three thousand three hundred ninety six dollars and sixty cents (in words)

STATEMENT OF MATERIALS INCORPORATED INTO REALTY IMPROVEMENTS

As per House Bill 11, and Chapter 151 of the Texas Tax Code, and as outlined in the Instruction to Bidders, the Contractor separates material and other charges comprising his total bid as follows:

MATERIALS INCORPORATED INTO THE PROJECT	$ 258,000
ALL OTHER CHARGES	$ 1,485,396.60
TOTAL (Shall equal total amount Bid)	$ 1,743,396.60

BID GUARANTY: Enclosed with this Bid is a cashier's or certified check or bid bond to Avery Ranch Owner's Committee, in the amount of not less than five percent (5%) of the total amount bid, bid bond (Dollars) ($) as bid guaranty. Following the Bid opening, submitted Bids may not be withdrawn for a period of (90) Calendar Days. Award of Contract will occur within this period, unless mutually agreed between the parties. If a submitted Bid is withdrawn within said period, or bidder fails to execute the Contract and furnish the prescribed documentation (bonds, insurance, etc.) needed to complete execution of the Contract within ten (10) calendar days after notice of award, the bid guaranty may become the property of the OWNER or the OWNER may pursue any other action allowed by law.

TIME OF COMPLETION: The undersigned bidder agrees to commence work within ten (10) calendar days after written notice as specified in a written "Notice to Proceed" to be issued by the OWNER and to be at **"Final Completion"** of the construction of the improvements, as required by the Project Manual, Drawings and Addenda for the Work within one hundred ~~twenty~~ fifty (150) calendar days. **"Final Completion"**, for the purposes of satisfiying the conditions of Time of Completion, shall be the completion of the Contractor responsible punchlist items prepared by the City of Austin under item 1806S.2 Final Inspection. The bidder further agrees that should the bidder fail to **finally** complete the Work within the number of days indicated in the Bid or as subsequently

adjusted, bidder shall pay the liquidated damages for each consecutive day thereafter as provided below; unless the OWNER elects to pursue any other action allowed by law.

LIQUIDATED DAMAGES: The bidder understands and agrees that the timely completion of the described Work is of the essence. The bidder and the OWNER agree that for each and every **Calendar** Day the Work or any portion thereof, remains incomplete after the **Final** completion date as established by the above paragraph, "Time of Completion", the bidder shall pay the amount of 1,000.00 dollars ($1,000.00) per **Calendar** day as liquidated damages, not as a penalty, but for delay damages to the OWNER. Such amount shall be deducted by the OWNER from any payment due to the bidder.

CERTIFICATION OF INTEREST IN OTHER BID PROPOSALS FOR THIS WORK: By signing this bid form, the bidding firm and the signer, certify that the following information, as indicated by checking "Yes" or "No", below is true, accurate and complete.

A. Quotation(s) have been issued in this firm's name to other firm(s) interested in this work for consideration for performing a portion of this work.

_____ YES ___✓___ NO

B. If this proposal is the low bid, the bidder agrees to provide the following information prior to award of the contract.

1. Identify firms which bid as a prime contractor and from which the bidder received quotations for work on this project.

2. Identify all the firms which bid as a prime contractor to which the bidder gave quotations for work on this project.

OWNER reserves the right to reject any or all Bids and to waive any informalities and irregularities in Bids received.

The undersigned acknowledges receipt of the following addenda:

Addendum No. 1 dated 8/2/00 Received 8/2/00
Addendum No. 2 dated _____ Received _____
Addendum No. 3 dated _____ Received _____

Denise Faust
Secretary, *if bidder is a Corporation

(Seal)

J. C. EVANS CONSTRUCTION CO. INC.
Legal Firm Name

Authorized Signature

Blake A. Kuhlman, President
Title

8/8/2000
Date

P. O. Box 9647
austin, Tx
78766
Address

* Copy of Corporate Resolution and minutes with certificate of officer of bidder as to authority of signatory to bind bidder is to be signed and dated no earlier than one week before Bid date, and attached to this document.

End

J.C. EVANS CONSTRUCTION

September 25, 2000

Cook Steinman & Associates
Attn. Mr. Jim Cook
3018 N. Lamar Blvd., Suite 200
Austin, Tx 78705

RE: Avery Ranch West Blvd.

Subject: Proposal for Change Order

Mr. Cook:

J.C. Evans Construction Co., Inc. is pleased to submit our proposal for change order to the contract on the above referenced project for the work detailed below:

Embankment in R.O.W.		
	11,292 c.y. @ $1.00 / c.y.	$11,292.00
Prep R.O.W. incl. clearing & grubbing		
	1 l.s. @ $	$8,635.10
	Total	**$19,927.10**

It is our understanding that this work will be change ordered out of the Avery Ranch West W.L. contract (Heyl Construction) and into the Avery Ranch West Blvd. contract. J.C. Evans will mobilize and clear the blvd. prior to water line installation by Heyl. It is our understanding that there is ample clearance above the water line from natural ground. Therefore, we will not construct the embankment until Heyl has installed the majority of their water line.

Please contact me directly at 310-4518 should you have any questions or require further information.

Sincerely,
J.C. Evans Construction Co., Inc.

Michael J. Ehrhardt
Project Manager

P.O. Box 9647 • Austin, Texas 78766 • (512) 244-1400 • Fax (512) 244-1900
3324 Roy Orr Blvd. • Grand Prairie, Texas 75050 • (972) 313-1339 • Fax (972) 313-0525

J.C. EVANS CONSTRUCTION

J. C. EVANS CONSTRUCTION CO., INC.
August 8, 2000

Let it be known that the persons whose names are herein below listed by, and each of them hereby is, elected to and declared qualified to sign and approve all contract documents, occupy the corporate office or offices set forth opposite their respective names; and that such persons shall occupy such offices until their respective successors shall be duly elected and qualified, unless they shall sooner resign or be removed in accordance with the Bylaws of each corporation:

Blake A. Kuhlman, Chief Executive Officer/President
Duane B. McGlauflin, Senior Vice President
Zane Hudson, Vice President
Johnny Odell, Vice President
Denise Laird/ Secretary

Blake A. Kuhlman, President

P.O. Box 9647 • Austin, Texas 78766 • (512) 244-1400 • Fax (512) 244-1900
3324 Roy Orr Blvd. • Grand Prairie, Texas 75050 • (972) 313-1339 • Fax (972) 313-0525

United States Fidelity and Guaranty Insurance Company

Baltimore, Maryland
A Stock Company

USF&G INSURANCE

Bid Bond

(Private Work)

Bond Number .....

Know all men by these presents:

That J. C. Evans Construction Co., Inc.

of Austin, TX

, as Principal, and **United States Fidelity and Guaranty Company,** a Maryland corporation, as Surety, are held and firmly bound unto Avery Ranch Owners Committee

as Obligee, in the full and just sum of 5% of bid by the Principal

Dollars,

lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said Principal is herewith submitting its proposal for Avery Ranch BLVD West-Paving and Drainage, Proposed Homestead Village Trail to Parner LN.

The condition of this obligation is such that if the aforesaid Principal shall be awarded the contract the said Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract, then this obligation to be void; otherwise the Principal and Surety will pay unto the Obligee the difference in money between the amount of the bid of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

Provided, however, neither Principal nor Surety shall be bound hereunder unless Obligee shall, prior to execution of the contract, furnish evidence satisfactory to the Surety of the Obligee's ability to make payment to the Principal in accordance with the terms of the contract.

Signed, sealed and delivered 8/8/00
(Date)

Denise Jaird

J. C. Evans Construction Co., Inc (Seal)

(Seal)

Blake A. Kuhlman, President
United States Fidelity and Guaranty Company

William H. Pettit
Attorney-in-fact

Contract 21 (2-94)

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 21130 **Certificate No.** [illegible]

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Rose Marie Boriskie, Glenn Richards, Emily Mikeska and Roberta Jones

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 1st day of December, 1999.

WARNING - THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

John F. Phinney

JOHN F. PHINNEY, Vice President

Michael R. McKibben

MICHAEL R. MCKIBBEN, Assistant Secretary

State of Maryland
City of Baltimore

On this 1st day of December, 1999, before me, the undersigned officer, personally appeared John F. Phinney and Michael R. McKibben, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

Rebecca Easley-Onokala

REBECCA EASLEY-ONOKALA, Notary Public

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for the work.

The undersigned affirms the truth and accuracy of this certification.

J. C. EVANS CONSTRUCTION CO. INC.
Legal Firm Name

Signature Blake A. Kuhlman, President

Address:
P. O. Box 9647
Austin, Tx 78766

Before me, the undersigned authority a Notary Public on this day personally appeared Blake A. Kuhlman, President who, being by me duly sworn, upon oath says: that he is qualified and authorized to make this affidavit for and on behalf of J. C. EVANS CONSTRUCTION CO. INC. of Travis County, Texas, and is fully cognizant of the facts herein set out and affirms to the truth and accuracy of the certification made herein by signing above.

Subscribed and sworn to before me by the said Blake A. Kuhlman, President
this 8 day of August, 2000, to certify which witness my hand and seal

DENISE LAIRD NOTARY PUBLIC STATE OF TEXAS EXPIRES DEC 5, 2003

Denise Laird
Notary Public in and for Travis County, Texas

End

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

THIS AGREEMENT is made and entered into this the _____day of _____ in the year 2000 by and between Avery Ranch Owner's Committee (herein-after called OWNER) and J.C. Evans Construction, Co. Inc. (herein-after called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

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

Paving and Drainage Improvements
Avery Ranch Boulevard
(Proposed Homestead Village Trail to Parmer Lane)

Article 2. ENGINEER

The Design Engineer and/or his Designate shall hereinafter be called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME

3.1. The Work associated with Avery Ranch Boulevard will be ready for "Final Completion", in accordance with the definition under Time of Completion in the Bid Form, within **150 calendar days** after the date when the Contract Time commence to run as provided in paragraph 2.3. of the General Conditions. Contractor is entitled to assume the number of raindays as outlined in Section 12.2 of the General Conditions. No additional raindays beyond those outlined in Section 12.2 of the General Conditions will be granted.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in paragraph 3.1 above, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. They 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 ready for final acceptance 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 One Thousand Dollars ($1,000.00) for each calendar day that expires after the time specified in paragraph 3.1 for Final Acceptance until the Work is Finally Accepted. However, the Owner reserves the right to waive liquidated damages.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the BID FORM and in the Proposal for Change Order (dated September 25, 2000).

TOTAL OF ALL UNIT PRICES **$1,763,323.70**
(in figures)
one million seven hundred sixty three thousand three hundred twenty three dollars and seventy cents
(use words)

As provided in paragraph 11.6 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Owner's Representative.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or, if applicable, as amended in the Supplementary General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions or, if applicable, as amended in the Supplementary General Conditions.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. 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, performance or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Special Conditions and Section 00220 Geotechnical Data. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5. 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.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7. 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

7.1. This Agreement (pages 1 to 4, inclusive).

7.2. Exhibits to this Agreement (not applicable).

7.3. Performance, Payment, and other Bonds.

7.4. Project Manual generally consisting of:

a. Introductory information.
b. Bidding requirements.
c. Contract Forms.
d. General, Supplementary General and Special Conditions of the Contract.
e. Specifications: The City of Austin Standard Specifications and Standard Details; and Series 1800.
f. Special Specifications.

7.5. Notice of Award.

7.6. Drawings consisting of the following:

a. Paving and Drainage Improvements, Avery Ranch Boulevard (Proposed Homestead Village Trail to Parmer Lane).

7.7. Addenda No. 1, dated 8/2/2000.

7.8. CONTRACTOR'S Bid Form.

7.9. CONTRACTOR'S Proposal for Change Order, dated September 25, 2000.

The Exhibits listed in paragraph 7.2 above, if any, are attached to this Agreement.

There are no Contract Documents other than those listed in this Article 7. The Contract Documents may only be amended or supplemented as provided in Article 3 of the General Conditions.

Article 8. MISCELLANEOUS

8.1. Terms listed in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents 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 are due but 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.

8.3. 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.

8.4. Any provision or part of the Contract Documents held to be void or enforceable 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 hereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed three (3) copies of this Agreement. One counterpart each has been delivered to OWNER, CONTRACTOR, AND DESIGN ENGINEER.

OWNER

By: Avery Ranch Owner's Committee
Travis County, Texas

By: _____ 11-30-2000
Date

ATTEST:
By: _____

_____
Printed Name

_____
Date

§ **CONTRACTOR**
§ J.C. EVANS CONSTRUCTION CO. INC.
§ By: _____
§ _____
§ Printed Name of Signatory
§
§ Duane B. McGlauflin, Senior Vice President
§ Title of Signatory
§
§ ATTEST:
§
§ _____
§ *Secretary, if CONTRACTOR is a
§ Corporation or otherwise
§ registered with Secretary of State

*Copy of Corporate Resolution and minutes with certificate of officer of CONTRACTOR as to authority of signatory to bind CONTRACTOR is to be attached to this document.

Owner Address for giving notices:

Avery Ranch Owner's Committee
2414 Exposition Boulevard
Suite 280
Austin, Texas 78703

Contractor Address for giving notices:

J.C. Evans Construction Co. Inc.
P.O. Box 9647
Austin, Texas 78766

END

STATE OF TEXAS Bond No. KC9246

COUNTY OF Travis CSA No. _____

Project No. 96995200

Know All Men By These Presents: That J.C. Evans Construction Co., Inc., P.O. Box 9647, Austin, TX 78766

of the City of Austin, County of Travis and

State of Texas, as principal, and United States Fidelity and Guaranty Company a solvent corporation authorized under laws of the State of Texas to act as surety on bonds for principals, are held and

firmly bound unto Avery Ranch Owner's Committee (Owner), and all Subcontractors, workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to sue upon this bond in

the penal sum of One Million Seven Hundred Sixty Three Thousand Three Hundred Twenty Three

and 70/100 U.S. Dollars ($ 1,763,323.70 U.S.), for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with Owner; dated

the _____ day of _____, 2000 to which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied in length herein.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this 16th

day of October, 2000.

J.C. Evans Construction Co., Inc.
Principal

By Duane B. McGlauflin

Title Duane B. McGlauflin, Senior Vice President

Address P.O. Box 9647, Austin, TX 78766

United States Fidelity and Guaranty Company
Surety

By Emily Mikeska

Title Emily Mikeska Attorney-in-Fact

Address 5801 Smith Avenue, Baltimore, MD 21209

Name and address of the Resident Agent of Surety: Glenn Richards, Summit Global Partners
P.O. Box 3623, Temple, Texas 76505

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 21130 **Certificate No.** 299025

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Rose Marie Boriskie, Glenn Richards, Emily Mikeska and Roberta Jones

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 1st day of December, 1999.

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

John F. Phinney

JOHN F. PHINNEY, Vice President

Michael R. McKibben

MICHAEL R. MCKIBBEN, Assistant Secretary

State of Maryland
City of Baltimore

On this 1st day of December, 1999, before me, the undersigned officer, personally appeared John F. Phinney and Michael R. McKibben, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

REBECCA EASLEY-ONOKALA NOTARY PUBLIC BALTIMORE CITY MD

Rebecca Easley-Onokala

REBECCA EASLEY-ONOKALA, Notary Public

86203 Rev. 11-99 Printed in U.S.A.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

RESOLVED FURTHER, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Michael R. McKibben, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this 16th day of October, 2000.

Michael R. McKibben, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.

IMPORTANT NOTICE

To obtain information or make a complaint:

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

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax # (512) 475-1771

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR POLICY:

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

STATE OF TEXAS Bond No. KC9246

COUNTY OF Travis CSA. No.

Project No. 96995200

Know All Men By These Presents: That J.C. Evans Construction Co., Inc., P.O. Box 9647, Austin, TX 78766

of the City of Austin, County of Travis, and

State of Texas, as Principal, and United States Fidelity and Guaranty Company, 5801 Smith Ave., Baltimore, MD 21209
a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and

firmly bound unto Avery Ranch Owner's Committee, (OWNER), in the penal sum of

One Million Seven Hundred Sixty Three Thousand Three Hundred Twenty Three and 70/100 U.S. Dollars ($ 1,763,323.70 U.S.)
for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated

the _____ day of _____, 2000, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular convenants, conditions and agreements in and by said contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

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

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this 16th

day of October, 2000.

J.C. Evans Construction Co., Inc.
Principal

By Duane B. McGlauflin

Title Duane B. McGlauflin, Senior Vice President

Address P.O. Box 9647, Austin, TX 78766

United States Fidelity and Guaranty Company
Surety

By Emily Mikeska

Title Emily Mikeska Attorney-in-Fact

Address 5801 Smith Avenue, Baltimore, MD 21209

Name and address of Resident Agent of Surety:
Glenn Richards, Summit Global Partners, P.O. Box 3623, Temple, Texas 76505

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law.. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

The St Paul

POWER OF ATTORNEY

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 21130 **Certificate No.** 299020

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin *(herein collectively called the "Companies")*, and that the Companies do hereby make, constitute and appoint

William H. Pitts, Jr., Norman P. Rolling, John W. Wagner, James O. Schnell, Rose Marie Boriskie, Glenn Richards, Emily Mikeska and Roberta Jones

of the City of Austin, State Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 1st day of December, 1999.

Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
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Fidelity and Guaranty Insurance Underwriters, Inc.

John F. Phinney

JOHN F. PHINNEY, Vice President

Michael R. McKibben

MICHAEL R. MCKIBBEN, Assistant Secretary

State of Maryland
City of Baltimore

On this 1st day of December, 1999, before me, the undersigned officer, personally appeared John F. Phinney and Michael R. McKibben, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 13th day of July, 2002.

REBECCA EASLEY-ONOKALA, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

RESOLVED FURTHER, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Michael R. McKibben, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this 16th day of October, 2000.

Michael R. McKibben, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.

THIS POWER OF ATTORNEY IS WITHOUT TRUE BORDER

RECORDERS MEMORANDUM
All or parts of the text on this page was not clearly legible for satisfactory recordation.

IMPORTANT NOTICE

To obtain information or make a complaint:

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

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, Texas 78714-9104
Fax # (512) 475-1771

PREMIUM OR CLAIM DISPUTES:

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

ATTACH THIS NOTICE TO YOUR POLICY:

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

CERTIFICATE OF INSURANCE

The insurance evidenced by this Certificate shall conform to the Supplemental General Conditions, Section 5.3 Insurance:

Name and Address of Agency:
Summit Global Partners of Texas, Inc.
P.O. Box 2291
Austin, TX 78768

Phone: 512 / 451-7555

Name and Address of Insured:
J. C. Evans Construction Co., Inc.
P.O. Box 9647
Austin, TX 78766
Phone: 512 / 244-1400

Prime or Sub-Contractor?: Prime

Owner Reference:
Project Name: Paving and Drainage Improvements
Avery Ranch Boulevard
(proposed homestead Village Trail to
Parmer Lane)

Project Location: Austin, Texas
Williamson County
CSA Project No.: 200-02a
Contract No.:
Project Mgr. James M. Cock, P.E.
Companies Affording Coverages:
Company A Letter St. Paul Fire & Marine Ins. Co.
Company B Letter St. Paul Mercury Ins. Co.
Company C Letter St. Paul Insurance Co.
Company D Letter

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (M/D/Y)	POLICY EXPIRATION DATE (M/D/Y)	LIMITS OF LIABILITY IN THOUSANDS (000) EACH	
A	Commercial General Liability Policy	KK091011 15				
	X Blanket Contractural Liability				General Aggregate	$2,000,000
	X Completed Operations/ Products				Completed Operations/ Products - Aggregate	$1,000,000
	X Explosion, Collapse, Underground				Personal & Advertising Injury	$1,000,000
	X Independent Contractor's Coverage				Each Occurrence	$1,000,000
	X Aggregate Limits Per Project Form - CG 2503					
	X Additional Insured Form -CG 2010					
	X 30 Day Notice of Cancellation Form - CG 0205				Deductible or Self Insured Retention	$10,000
	X Waiver of Subrogation Form - CG 2404					
	[illegible]					
	[illegible]					

Certificate of Insurance

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (M/D/Y)	POLICY EXPIRATION DATE (M/D/Y)	LIMITS OF LIABILITY IN THOUSANDS (000) EACH	
B	Auto Liability Policy X All Owned Autos X Non-Owned Autos X Hired Autos X Waiver of Subrogation- TE2046A X 30 Day Notice of Cancellation - TE0202A X Additional Insured- TE9901B XXXXXXX	KK091011 1501	4/1/00	4/1/01	CSL Bodily Injury (Per Person) Bodily Injury (Per Accident) Property Damage (Per Accident) Deductible or Self Insured Retention	$1,000,000 $Included $ Included $Included $ 5,000 Liability Only
A	Excess Liability X Umbrella Form Excess Liability Follow Form	KK09101 115	4/1/00	4/1/01	Each Aggregate Occurrence	$ 5,000,000
C	Worker's Compensation and Employers' Liability X Waiver of Subrogation - WC420304 X 30 Day Notice of Cancellation - WC420601	WVK 9101258	4/1/00	4/1/01	Statutory (Each Accident) (Disease - Policy Limit) (Disease - Each Employee)	$1,000,000 $1,000,000 $1,000,000
	XXXXXXXXXXXXXXXX					$ N/A
	XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX				Each Claim Deductible or Self Insured Retention	$ N/A $ N/A

This is to certify that policies of insurance listed above have been issued to insured named above and are in force at this time. Not withstanding any requirements, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, insurance afforded by policies described herein is subject to all terms, exclusions and conditions of such policies.

CERTIFICATE HOLDER:
Avery Ranch Owner's Committee
2414 Exposition Boulevard
Suite 280
Austin, Texas 78703

DATE ISSUED: 10/16/2000

William H. Potts Jr.
AUTHORIZED REPRESENTATIVE

End

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly sworn, upon oath deposed and stated:

"My name is Duane B. McGlauflin, Senior Vice President, hereinafter known as Affiant. I am over the age of 18 years. I am the _____, herein after known as CONTRACTOR.

I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are true and correct. WHEREAS CONTRACTOR has submitted a bid to the Avery Ranh Owner's Committee, hereinafter known as OWNER, as the Prime CONTRACTOR and anticipates being awarded a Contract for the construction of:
Paving and Drainage Improvements, Avery Ranch Boulevard located between Proposed Homestead Village Trail and Parmer Lane, Austin, Texas, hereinafter known as Project, and

WHEREAS asbestos in a dust form is a recognized health hazard, and WHEREAS the OWNER desires not to have any asbestos containing materials used or incorporated into the construction of the Project; THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR shall not cause or allow any material to be incorporated into the construction of the Project, or allow any building material on the Project site that is an asbestos containing material defined as containing asbestos by any laws, rules or regulations promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.
2. Realizing that there might be materials required in which a satisfactory non-asbestos containing material cannot be obtained, the Consultant has received approval from the OWNER before specifying any such asbestos containing material. Those approved materials are the only asbestos containing materials that are exempt from the above prohibition.
3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the CITY OF AUSTIN for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the construction of the Project, or brought onto the site of the Project the OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or abatement of said asbestos containing materials.
4. CONTRACTOR further understands that OWNER shall also look to CONTRACTOR for any and all damages to OWNER which results from the inability of the OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by the CITY OF AUSTIN.
5. CONTRACTOR further understands that OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within OWNER's right and power."

Signature of Affiant: Duane B. McGlauflin

STATE OF TEXAS
COUNTY OF TRAVIS

ON 11/28/2000, 2000, personally appeared Duane B. McGlauflin, Senior Vice President and been duly sworn by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

Denise Laird
Notary Public, State of Texas

DENISE LAIRD NOTARY PUBLIC STATE OF TEXAS

Denise Laird
Printed Name of Notary

My Commission Expires: 12/5/03

END

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared the Affiant who, being by me first duly sworn, upon oath deposed and stated:

"My name is_____, hereinafter known as Affiant. I am over the age of 18 years. I am the _____, herein after known as CONTRACTOR.

I am fully competent to make this affidavit. I have personal knowledge of the facts set forth below and they are true and correct. WHEREAS CONTRACTOR was awarded a contract for, and was the Prime CONTRACTOR for the construction of: Paving and Drainage Improvements, Aver Ranch Boulevard located between proposed Homestead Village Trail and Parmer Lane, Austin, Texas, hereinafter known as Project, and

WHEREAS asbestos in a dust form is a recognized health hazard, and WHEREAS the CITY OF AUSTIN and OWNER desire not to have any asbestos containing materials used or incorporated into the construction of the Project; THEREFORE the CONTRACTOR affirms and understands the following:

1. The CONTRACTOR, any person, firm or organization representing or represented by the CONTRACTOR, or employed by the CONTRACTOR has not caused or allowed any material to be incorporated into the construction of the Project, or allowed any building material on the Project site that is an asbestos containing material defined as containing asbestos by any laws, rules or regulations promulgated by the United States Government, the State of Texas or any governmental organization or agency operating under the authority of either of those entities.
2. Realizing that there might be materials required in which a satisfactory non-asbestos containing material cannot be obtained, the Consultant has received approval from the CITY OF AUSTIN before specifying any such asbestos containing material. Those approved materials were the only asbestos containing materials incorporated into the construction of the project and are listed below with their locations:

   _____
   _____
   _____
   _____

3. The CONTRACTOR certifies and affirms their understanding that if any asbestos containing materials not approved by the CITY OF AUSTIN for inclusion into the Project, are determined, as a result of any inspection and sample analysis performed by an individual(s) and/or firm(s) certified and/or licensed to perform such inspection by the United States Government and/or the State of Texas, to have been incorporated into the construction of the Project, or brought onto the site of the Project the CITY OF AUSTIN and OWNER shall look to the CONTRACTOR for reimbursement of any and all costs incurred in the removal and/or abatement of said asbestos containing materials.
4. CONTRACTOR further understands that CITY OF AUSTIN and OWNER shall also look to CONTRACTOR for any and all damages to CITY OF AUSTIN and OWNER which results from the inability of the CITY OF AUSTIN and OWNER to use any portion or all of the Project due to the incorporation of asbestos containing materials that have not been approved by the CITY OF AUSTIN.
5. CONTRACTOR further understands that CITY OF AUSTIN and OWNER will pursue reimbursement of any said cost and compensation for any said damages from the CONTRACTOR by any and every means within CITY OF AUSTIN's and OWNER'S right and power."

Signature of Affiant: _____

STATE OF TEXAS
COUNTY OF TRAVIS

ON _____, 2000, personally appeared _____
and been duly sworn by me, subscribed to the foregoing affidavit and has stated that the facts stated therein are true and correct.

_____
Notary Public, State of Texas

_____
Printed Name of Notary

My Commission Expires: _____

END

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding requirements or the Contract Documents.

1.2 Agreement - Prescribed form, Section 00500.

1.3 Alternative Dispute Resolution - The process by which a disputed Claim may be settled if the OWNER and the CONTRACTOR cannot reach an agreement between themselves, as an alternative to litigation.

1.4 Bid - Proposal of bidder on prescribed forms setting forth prices for performing the Work described in the Contract Documents.

1.5 Bid Documents - The advertisement or invitation for bids, instructions to bidders, the bid form, the Contract Documents and Addenda.

1.6 Calendar Day - Any day of the week; no days being excepted.

1.7 Change Directive - A written directive to CONTRACTOR, signed by OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

1.8 Change Orders - Executed agreements entered into between CONTRACTOR and OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.

1.9 Claim - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

1.10 Contract - The Contract represents the entire and integrated agreement between OWNER and CONTRACTOR for performance of the Work, as evidenced by the Contract Documents.

1.11 Contract Amount - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents.

1.12 Contract Documents - Project Manual, Drawings, Addenda and Change Orders.

1.13 Contract Time - The number of days allowed for completion of the Work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period. A day of twenty-four hours measured from midnight to the next midnight will constitute a day.

1.14 CONTRACTOR - The individual, firm, corporation, or other business entity with whom OWNER has entered into the Contract.

1.15 Drawings - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been approved by OWNER. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.

see 00810

1.16 Engineer/Architect (E/A) - The OWNER's design professional identified as such in the Contract. The titles of "Architect/Engineer," "Architect" and "Engineer" used in the Contract Documents shall read the same as Engineer/Architect (E/A). Nothing contained in the Contract Documents shall create any contractual or agency relationship between E/A and CONTRACTOR.

1.17 Equal - The terms "equal" or "approved equal" shall have the same meaning.

1.18 Execution Date - Date of last signature of the parties to the Agreement.

1.19 Field Order - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.

1.20 Final Completion - The point in time when OWNER determines that all Work has been completed and final payment to CONTRACTOR will be made in accordance with the Contract Documents.

1.21 Inspector - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.

1.22 Legal Holidays

see 00810

1.22.1 The following are recognized by the OWNER:

Holiday	*Date Observed*
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

1.22.2 If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.22.3 Christmas Eve is observed *only* if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

1.23 Milestones - A significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.24 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 CONTRACTOR's obligations under the Contract Documents.

1.25 OWNER - ~~City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.~~

1.26 Owner's Representative - The designatec representative of the OWNER.

1.27 Partial Occupancy or Use - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided OWNER and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any security, maintenance, utilities, corrective work insurance and warranties.

1.28 Project - The total construction of which the Work to be provided under the Contract Document may be the whole, or a part, as indicated elsewhere in the Contract Documents.

1.29 Project Manual - That portion of the Contract Documents which may include the following introductory information; bidding requirements Contract forms and General and Supplemental General Conditions; General Requirements Specifications; Drawings; MBE/WBE Participation Packet; Project Safety Manual; and Addenda.

1.30 Resident Project Representative - The authorized representative of E/A who may be assigned to the site or any part thereof.

1.31 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 as required by the Contract Documents.

1.32 Specifications - Those portions of the Contract Documents consisting of written technical descriptions as applied to the Work, which set forth to CONTRACTOR, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship,

equipment and services in order to render a completed and useful project.

1.33 Substantial Completion - The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so OWNER can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by OWNER.

1.34 Subcontractor - An individual, firm, or corporation having a direct contract with CONTRACTOR for the performance of a part of the Work.

1.35 Sub-subcontractor - A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work.

1.36 Superintendent - The representative of CONTRACTOR authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.

1.37 Supplemental General Conditions - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.

1.38 Supplier - An individual or entity having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.39 Time Extension Request - An approved request for time extension on a form acceptable to OWNER.

1.40 Work - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

1.41 Working Day - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CONTRACTOR's control will permit work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. Upon agreement with Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.

1.42 Working Hours - Under a Working Day Contract, all Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CONTRACTOR's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.

1.43 Written Notice - Written communication between OWNER and CONTRACTOR. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CONTRACTOR's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CONTRACTOR's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Agreement, Bonds, Insurance, etc.:

Within ten Calendar Days after written notification of award of Contract, CONTRACTOR shall deliver to OWNER signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.

2.2 Copies of Documents: See 00810

OWNER shall furnish to CONTRACTOR up to ~~ten~~ copies of the Contract Documents unless otherwise specified. Additional copies will be furnished, upon request, at the cost specified in the Supplemental General Conditions.

2.3 Commencement of Contract Times; Notice to Proceed:

The Contract Time(s) will begin to run on the day indicated in the Notice to Proceed. Notice to Proceed will be given at any time within sixty calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.

2.4 Before Starting Construction:

2.4.1 No Work shall be done at the site prior to the preconstruction conference without OWNER's approval. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CONTRACTOR knew or reasonably should have known.

2.4.2 CONTRACTOR shall submit the following to Owner's Representative for review and approval no later than the preconstruction conference:

.1 a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, and taking into consideration any limitations on Working Hours;

.2 a preliminary schedule of Shop Drawing and sample submittals;

see 00810

.3 ~~a preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work;~~

.4 a letter designating CONTRACTOR's Superintendent;

see 00810

.5 ~~a letter from CONTRACTOR and Subcontractor(s) listing salaried specialists;~~

.6 if applicable, a letter designating the "Competent Person(s)" on general safety and trench safety measures;

.7 if applicable, a trench safety system plan;

.8 if applicable, a plan illustrating proposed locations of temporary facilities; and

.9 a completed Non-Use of Asbestos Affidavit (Prior to Construction).

2.5 Preconstruction Conference:

Prior to commencement of Work at the site, a preconstruction conference attended by CONTRACTOR, Owner's Representative and others will be held as set forth in Division 1.

2.6 Initially Acceptable Schedules:

Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain approval of Owner's Representative on final versions of the schedules submitted in accordance with paragraph 2.4.2 and Division 1 before the first progress payment will be made to CONTRACTOR. The progress schedule must provide for an orderly progression of the Work to completion within any specified Milestones and Contract Times. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility for the sequencing scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawings and sample submissions must provide an arrangement agreeable to the parties for reviewing and processing the required submittals. CONTRACTOR's schedule of values must conform to the requirements set forth in Division 1.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

3.1.1 The intent of the Contract Documents is to include all information necessary for the proper execution and completion of the Work by CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

3.1.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

3.2 *Reporting and Resolving Discrepancies:*

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 any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CONTRACTOR shall report it to Owner's Representative in writing at once, and CONTRACTOR shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.3.1 or 3.3.2. CONTRACTOR shall be liable to OWNER for failure to report any such conflict, error, ambiguity or discrepancy of which CONTRACTOR knew or reasonably should have known.

3.3 **Amending and Supplementing Contract Documents:**

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

.1 Change Order.

.2 Change Directive.

.3 Time Extension Request.

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be *authorized, in one or more of the following ways:*

.1 Field Order.

.2 review of a Shop Drawing or sample.

.3 written interpretation or clarification.

3.4 **Reuse of Documents Prohibited:**

CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 E/A or E/A's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and E/A.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 **Availability of Lands:**

OWNER shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If OWNER fails to furnish these lands, rights-of-way or easements in a timely manner, CONTRACTOR may make a Claim for adjustments in the Contract Amount or the Contract Times. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 **Subsurface and Physical Conditions:**

4.2.1 CONTRACTOR hereby covenants that it has examined the site of the proposed Work and is familiar with all of the conditions surrounding *construction of the Project, having conducted all* inquiry, tests and investigation deemed necessary and proper.

4.2.2 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ *materially from those ordinarily found to exist* and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions. Owner's Representative will promptly investigate such conditions with E/A and, if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of any part of the Work, will

recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If Owner's Representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the CONTRACTOR shall be notified in writing, stating the reasons. Any disputes arising from Owner's Representative's determination shall be resolved in accordance with Article 16.

4.2.3 Notwithstanding any other provision of this Contract, CONTRACTOR shall be solely responsible for the location and protection of any and all public lines and utility customer service lines in the Work area. For the purposes of this section, "public lines" means the utility distribution and supply system within public rights-of-way or easements, and "utility customer service lines" (service) means any utility line connecting a utility customer to the utility distribution system. Generally, existing service connections within right-of-way or easements are not shown on the Drawings. CONTRACTOR shall notify "One Call" and exercise due care to locate and to mark, uncover or otherwise protect all such lines in the construction zone and any of CONTRACTOR's work or storage areas. CONTRACTOR's obligation hereunder shall be primary and nondelegable. CONTRACTOR shall indemnify or reimburse such expenses or costs (including fines that may be levied against OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the Work area. OWNER reserves the right to repair such damage CONTRACTOR may cause, at CONTRACTOR's expense.

4.2.4 CONTRACTOR shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and Texas Department of Antiquities Protection. When such objects are uncovered unexpectedly, CONTRACTOR shall stop all Work in close proximity and notify Owner's Representative and Texas Department of Antiquities Protection of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on OWNER's property shall remain property of State of Texas, Texas Department of Antiquities Protection conforming to Texas Natural Resources Code. If it is determined by OWNER, in consultation with Texas Department of Antiquities Protection, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CONTRACTOR shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time will be equitably adjusted.

4.3 Reference Points:

Unless otherwise specified, all control lines and bench marks suitable for use in layout will be furnished by OWNER. Lay out of the Work shall be performed in accordance with Division 1. Controls and bench marks shall be carefully preserved by CONTRACTOR by use of flags, staffs or other visible devices and in case of destruction or removal by CONTRACTOR or its employees, such controls and bench marks shall be replaced by a Registered Public Land Surveyor at CONTRACTOR's expense. City of Austin survey monuments damaged by CONTRACTOR will be reestablished by OWNER at CONTRACTOR's expense.

4.4 Hazardous Materials:

4.4.1 OWNER shall be responsible for any hazardous material uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CONTRACTOR shall immediately notify Owner's Representative of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

4.4.2 CONTRACTOR shall be responsible for any hazardous materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.4.3 No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of OWNER.

4.4.4 Refer to Division 1 for hazardous material definitions and procedures.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies:

All bonds and insurance required by the Contrac Documents shall be obtained from solvent surety o insurance companies that are duly licensed by th State of Texas and authorized to issue bonds o

insurance policies for the limits and coverages required by the Contract Documents.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.2 Duration of the Project - includes the time from the beginning of the Work on the Project until the CONTRACTOR's/ person's Work on the Project has been completed and accepted by OWNER.

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

5.2.2 CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.

5.2.3 CONTRACTOR must provide a certificate of coverage to OWNER prior to being awarded the Contract.

5.2.4 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with OWNER showing that coverage has been extended.

5.2.5 CONTRACTOR shall obtain from each person providing service on the Project, and provide to OWNER:

.1 a certificate of coverage, prior to that person beginning Work on the Project, so OWNER will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.2 no later than seven days after receipt by CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the Project.

5.2.6 CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

5.2.7 CONTRACTOR shall notify OWNER in writing by certified mail or personal delivery, within 10 days after CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

5.2.9 CONTRACTOR shall contractually require each person with whom it contracts to provide services on a Project, to:

.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor

Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.2 provide to CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.3 provide CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 obtain from each other person with whom it contracts, and provide to CONTRACTOR:

a) a certificate of coverage, prior to the other person beginning Work on the Project; and

b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.5 retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 notify OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 contractually require each person with whom it contracts, to perform as required by paragraphs 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

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

5.2.11 CONTRACTOR's failure to comply with any of these provisions is a breach of Contract by CONTRACTOR which entitles OWNER to declare the Contract void if CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from OWNER.

5.3 Other Bond and Insurance Requirements:

See 00810

~~For specific bond requirements and additional insurance requirements, refer to the Supplemental General Conditions.~~

5.4 See 00810

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

6.1.1 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 be responsible to see that the completed Work complies accurately with the Contract Documents.

6.1.2 CONTRACTOR shall keep on the Work at all times during its progress a competent English speaking Superintendent, who shall not be replaced without Written Notice to Owner's Representative except under extraordinary circumstances. The Superintendent will be the CONTRACTOR's representative at the site and shall have the authority to act on behalf of the CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. CONTRACTOR shall replace Superintendent upon OWNER's request in the event that the Superintendent is unable to perform to OWNER's satisfaction.

See 00810

6.2 Labor, Materials and Equipment:

6.2.1 CONTRACTOR agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR and its employees shall hold all licenses required to do the Work. CONTRACTOR shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project. ~~CONTRACTOR shall pay workers no less than the wage rates established in Section 00830, and submit weekly payroll reports as evidence thereof.~~

6.2.2 Unless otherwise specified in Division 1, CONTRACTOR shall provide and pay for all 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 furnishing, performance, testing, start-up and completion of the Work.

6.2.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Owner's Representative, CONTRACTOR shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.2.4 Substitutes and "Approved Equal" Items:

6.2.4.1 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 and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted to E/A through Owner's Representative under the following circumstances:

.1 "Approved Equal": If in E/A'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 E/A as an "approved equal" item, in which case review of the proposed item may, in E/A's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CONTRACTOR shall provide E/A with the documentation required for E/A to make its determination.

.2 Substitute Items: If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "approved equal" item under subparagraph 6.2.4.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided in Division 1 to allow E/A to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.

6.2.4.2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may with prior approval of E/A furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CONTRACTOR shall submit sufficient information to Owner's Representative to allow E/A, in E/A's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by E/A will be same as that provided for substitute items in Division 1.

6.2.4.3 E/A's Evaluation: E/A will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to subparagraphs 6.2.4.1.1 and 6.2.4.1.2. E/A will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until E/A's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute. OWNER shall not be responsible for any delay due to review time for any "approved equal" or substitute.

6.2.4.4 CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "approved equal" or substitute item will be at CONTRACTOR's expense.

6.2.5 CONTRACTOR agrees to assign to OWNER any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CONTRACTOR further agrees to cooperate with OWNER should OWNER wish to prosecute suits against Suppliers for illegal price fixing.

6.3 Progress Schedule:

Unless otherwise provided in Division 1, CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.6 as it may be adjusted from time to time as provided below:

.1 CONTRACTOR shall submit to Owner's Representative for acceptance proposed adjustments in the progress schedule that will not change the Contract Times or Milestones. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of Division 1 applicable thereto.

.2 Proposed adjustments in the progress schedule that will change the Contract Times or Milestones shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Time Extension Request in accordance with Article 12.

6.4 Concerning Subcontractors, Suppliers and Others:

6.4.1 Assignment: CONTRACTOR agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CONTRACTOR agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of OWNER.

6.4.2 Award of Subcontracts for Portions of the Work: CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom OWNER may have reasonable objection. OWNER will communicate such objections by Written Notice. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish any of the Work against whom CONTRACTOR has reasonable objection. If OWNER requires a change without good cause of any Subcontractor, person or organization previously accepted by OWNER, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CONTRACTOR shall not substitute any Subcontractor, person or organization that has been accepted by OWNER, unless the substitute has been accepted in writing by OWNER. No acceptance by OWNER of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER to reject defective Work.

6.4.3 CONTRACTOR shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and E/A. The OWNER reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a portion of the agreement between CONTRACTOR and Subcontractor or Supplier.

6.4.4 CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or E/A to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.

6.4.5 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CONTRACTOR.

6.4.6 The divisions and sections of the Specifications and the identifications of any

Drawings shall not control CONTRACTOR in dividing or delineating the Work to be performed by any specific trade.

6.5 Patent Fees and Royalties:

6.5.1 CONTRACTOR shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

6.5.2 CONTRACTOR shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.

6.5.3 CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright and shall save OWNER harmless from any loss or liability, direct or indirect, arising with respect to CONTRACTOR's process in the formulation of its bid or the performance of the Work or otherwise arising in connection therewith. OWNER reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CONTRACTOR shall indemnify and save harmless OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against OWNER.

6.5.4 OWNER shall have the right to stop the Work and/or terminate this Agreement at any time in the event CONTRACTOR fails to disclose to OWNER that CONTRACTOR's work methodology includes the use of any infringing design, device, material or process.

6.6 Permits, Fees:

Unless otherwise provided in the Supplemental General Conditions, CONTRACTOR shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.6.1 → See 00810

6.7 Laws and Regulations:

6.7.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work. Except where otherwise expressly required by applicable laws and regulations, neither OWNER nor E/A shall be responsible for monitoring CONTRACTOR's compliance with any laws and regulations.

6.7.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CONTRACTOR shall plan and execute its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution.

6.7.3 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 arising therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with laws and regulations, but this does not relieve CONTRACTOR of CONTRACTOR's obligations under Article 3.

6.7.4 → See 00810

6.8 Taxes:

6.8.1 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 State of Texas.

6.8.2 OWNER is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.9 Use of Premises:

6.9.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises 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. 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. CONTRACTOR shall indemnify, defend and hold harmless OWNER, E/A, E/A's consultants and

anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorneys' fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, E/A or any other party indemnified hereunder to the extent caused by or based upon performance of the Work or failure to perform the Work.

6.9.2 During the progress of the Work and on a daily basis, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall, at a minimum, restore to original condition all property not designated for alteration by the Contact Documents.

6.9.3 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.

6.10 Record Documents:

CONTRACTOR shall maintain in a safe place at the site, or other location acceptable to OWNER, one record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to OWNER and E/A for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.11 Safety and Protection:

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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 Work 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, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

6.11.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of underground facilities, and 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. All damage, injury or loss to any property referred to in paragraph 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish 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 E/A, or E/A's consultant or anyone employed by any of them or anyone whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to OWNER and CONTRACTOR in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.11.3 Safety Representative: 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. Upon request of OWNER, CONTRACTOR shall provide certifications

or other documentation of the safety representative's qualifications.

6.11.4 Hazard Communication Programs: 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 and regulations.

6.11.5 Emergencies:

6.11.5.1 In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or E/A, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CONTRACTOR shall give Owner's Representative prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise OWNER will not be responsible for CONTRACTOR's emergency action.

6.11.5.2 Authorized agents of CONTRACTOR shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CONTRACTOR or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CONTRACTOR and/or their agent fail to respond and take action to alleviate such an emergency situation, OWNER may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CONTRACTOR under this Contract.

6.11.5.3 In the event there is an accident involving injury to any individual on or near the Work, CONTRACTOR shall notify Owner's Representative within twenty-four hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for OWNER's and E/A's records, within forty-eight hours of the event.

6.12 Continuing the Work:

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 OWNER and CONTRACTOR may otherwise agree in writing.

6.13 CONTRACTOR's General Warranty and Guarantee:

6.13.1 CONTRACTOR warrants and guarantees to OWNER that all Work will be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. 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 or Suppliers; or

.2 normal wear and tear under normal usage.

6.13.2 CONTRACTOR's obligation to perform and complete the Work in a good and workmanlike manner 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 Owner's Representative and/or E/A;

.2 recommendation of any progress or final payment by Owner's Representative;

.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

.4 use or occupancy of the Work or any part thereof by OWNER;

.5 any acceptance by OWNER or any failure to do so;

.6 any review of a Shop Drawing or sample submittal;

.7 any inspection, test or approval by others; or

.8 any correction of defective Work by OWNER.

6.14 Indemnification:

6.14.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER, E/A, E/A's consultants and subconsultants and their respective officers, directors, partners, employees, agents and other consultants 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 resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

.1 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, and

.2 is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, ~~regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws and regulations regardless of the negligence of any such person or entity.~~

6.14.2 The indemnification obligation under paragraph 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.14.3 The obligations of CONTRACTOR under paragraph 6.14.1 shall not extend to the liability of OWNER, E/A, E/A's consultants, and their officers, directors, partners, employees or agents caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of OWNER's, E/A's or E/A's consultant's officers, directors, partners, employees or agents.

6.14.4 In the event CONTRACTOR fails to follow OWNER's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CONTRACTOR shall indemnify OWNER against all costs resulting from such claims.

6.14.5 In the event CONTRACTOR unreasonably delays progress of the work being done by others on the site so as to cause loss for which OWNER becomes liable, then CONTRACTOR shall reimburse OWNER for such loss.

6.15 Survival of Obligations:

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 and termination or completion of the Agreement.

6.16 Losses from Natural Causes:

Unless otherwise specified, all loss or damage to CONTRACTOR arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CONTRACTOR at its own cost and expense.

6.17 Notice of Claim:

Should CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of OWNER or of any of OWNER's employees or agents or others for whose acts OWNER is liable, Claim will be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph 6.17 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 7 - OTHER WORK

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other contracts therefor, or have other work performed by utility owners. If CONTRACTOR believes that delay or additional cost is involved because of such action by OWNER, CONTRACTOR may make a Claim as provided in Article 11 or 12.

7.2 CONTRACTOR shall afford other contractors who are in a contract with OWNER and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. CONTRACTOR shall promptly remedy damage wrongfully caused by CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

7.3 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 Owner's Representative 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 report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.

7.4 OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate with them. CONTRACTOR shall participate with other separate contractors and Owner's Representative in reviewing their construction schedules when directed to do so. CONTRACTOR shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by CONTRACTOR, separate contractors and OWNER until subsequently revised.

7.5 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Prior to the start of construction, OWNER will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through Owner's Representative.

8.2 OWNER 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. OWNER is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to furnishing or performing the Work. OWNER is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.3 OWNER is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

8.4 Information or services under the OWNER's control shall be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work.

8.5 The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CONTRACTOR and Completion).

8.6 **Notice of Claim:**

Should OWNER suffer injury or damage to person or property because of any error, omission or act of CONTRACTOR or of any of CONTRACTOR's employees or agents or others for whose acts CONTRACTOR is liable, a Claim will be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The

Receiving notice of

provisions of this paragraph 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION

9.1 E/A's Authority and Responsibilities:

9.1.1 The duties and responsibilities and the limitations of authority of E/A during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and E/A. The assignment of any authority, duties or responsibilities to E/A under the Contract Documents, or under any agreement between OWNER and E/A, or any undertaking, exercise or performance thereof by E/A, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.

9.1.2 E/A 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. E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. E/A is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.1.3 E/A is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.1.4 If OWNER and E/A agree, E/A will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only 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.

9.1.5 The limitations upon authority and responsibility set forth in this paragraph 9.1 shall also apply to E/A's Consultants, Resident Project Representative and assistants.

9.2 E/A as Owner's Representative:

9.2.1 E/A may be designated as the Owner's Representative under paragraph 8.1.

9.3 Visits to Site:

If OWNER and E/A agree, E/A will make visits to the site at intervals appropriate to the various stages of construction as E/A 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, E/A will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. E/A'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 on-site observations, E/A will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. E/A's visits and on-site observations are subject to all the limitations on E/A's authority and responsibility set forth in paragraph 9.1.

9.4 Project Representative:

If OWNER and E/A agree, E/A will furnish a Resident Project Representative to assist E/A in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in paragraph 9.1 and in the Supplemental General Conditions. OWNER may designate another representative or agent to represent OWNER at the site who is not E/A, E/A's consultant, agent or employee.

9.5 Clarifications and Interpretations:

E/A may determine that written clarifications o interpretations of the requirements of the Contrac Documents (in the form of drawings or otherwise are necessary. Such written clarifications o interpretations will be consistent with the intent o and reasonably inferable from the Contrac Documents, will be issued with reasonabl promptness by Owner's Representative and will b binding on OWNER and CONTRACTOR. I

OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in Article 11 or 12.

9.6 Rejecting Defective Work:

E/A will recommend that OWNER disapprove or reject Work which E/A believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9.7 Shop Drawings:

Refer to Division 1 for E/A's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

10.1.1 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. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order.

10.1.3 CONTRACTOR shall not be entitled to an increase in the Contract Amount or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.3.1 and 3.3.2, except in the case of an emergency as provided in paragraph 6.11.5 or in the case of uncovering Work as provided in paragraph 13.4.

10.1.4 Except in the case of an emergency as provided in paragraph 6.11.5, a Change Order or Change Directive is required before CONTRACTOR commences any activities associated with a change in the Work which, in CONTRACTOR 's opinion, will result in a change in the Contract Amount and/or Contract Times.

10.1.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Amount, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

10.3 Change Directives:

10.3.1 OWNER may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order.

10.3.2 If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in paragraph 11.5.

10.3.3 A Change Directive signed by CONTRACTOR indicates the agreement of CONTRACTOR with proposed basis of adjustment, if any, in Contract Amount and Contract Time. Such agreement shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.

10.3.4 Upon execution of a Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved.

10.4 Field Order:

10.4.1 Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These shall

be accomplished by Field Order and shall be binding on OWNER and on CONTRACTOR who shall perform the Work involved promptly.

10.4.2 If CONTRACTOR believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, CONTRACTOR shall make written request to Owner's Representative for a Change Order. Any request by CONTRACTOR for an adjustment in Contract Amount and/or Contract Times shall be made prior to beginning the work covered by the Field Order.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.1 The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by OWNER to CONTRACTOR for performance of the Work under the Contract Documents.

11.2 The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CONTRACTOR to such decrease.

11.3 The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

11.4 Determination of Value of Work:

11.4.1 The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Amount will be determined by one or more of the following methods:

.1 by application of unit prices contained in the Contract Documents to the quantities of the items involved.

.2 by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

.3 by cost of Work plus CONTRACTOR's fee for all overhead costs and profit (determined as provided in paragraph 11.5).

11.4.2 Before using the method described in paragraph 11.4.1.3, OWNER and CONTRACTOR agree to negotiate a Change Order using the methods identified in paragraphs 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.

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11.5 Cost of Work:

If neither of the methods defined in paragraphs 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive and payment will be made as follows:

.1 For all personnel, CONTRACTOR will receive the rate or wage specified in the prevailing wage rates established in Section 00830 for each hour that said personnel are actually engaged in such Work, to which will be added an amount equal to twenty-five percent (25%) of the sum thereof as compensation for CONTRACTOR's and any effected Subcontractor's total overhead and profit. No separate charge will be made by CONTRACTOR for organization or overhead expenses. For the cost of premiums on public liability insurance, workers' compensation insurance, social security and unemployment insurance, an amount equal to 55% of the wages paid personnel, excluding the 25% compensation provided above, will be paid to CONTRACTOR. The actual cost of CONTRACTOR's bond(s) on the extra Work will be paid based on invoices from surety. No charge for superintendence will be made unless considered necessary and ordered by OWNER.

.2 CONTRACTOR will receive the actual cost, including freight charges, of the materials used on such Work, to which costs will be added a sum equal to twenty-five percent (25%) thereof as compensation for CONTRACTOR's and any effected Subcontractor's total

overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.

.3 For machinery, trucks, power tools, or other similar equipment agreed to be necessary by OWNER and CONTRACTOR, OWNER will allow CONTRACTOR the rate as given in the latest edition of the Associated General Contractors of America "Contractor's Equipment Cost Guide" as published by Dataquest for each hour that said tools or equipment are in use on such work, which rate includes the cost of fuel, lubricants and repairs. No additional compensation will be allowed on the equipment for CONTRACTOR's overhead and profit.

.4 The compensation, as herein provided for, shall be received by CONTRACTOR and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CONTRACTOR and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by OWNER and signed by both Owner's Representative and CONTRACTOR, with one copy being retained by OWNER and one by CONTRACTOR. Refusal by CONTRACTOR to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.6 Unit Price Work:

11.6.1 Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. 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 Amount. Determinations of the actual quantities and classifications of unit price work performed by CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

11.6.2 When "plan quantity" is indicated for a bid item, CONTRACTOR shall be paid amount specified in the Contract Documents without any measurements.

11.6.3 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.

11.6.4 A Major Item is any individual bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or $50,000, whichever is greater, computed on the basis of bid quantities and Contract unit prices.

11.6.5 OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:

.1 the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or

.2 CONTRACTOR presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Working Day and Calendar Day Contracts:

12.1.1 The Contract Times (or Milestones) shall only be changed by Change Order or Time Extension Request duly executed by both CONTRACTOR and Owner's Representative. Any claim for an adjustment of the Contract Times (or Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the delay and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which

claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Times (or Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

12.1.2 When CONTRACTOR is at fault and OWNER stops the Work, so that corrections in the Work can be made by CONTRACTOR, no extension in time will be allowed.

12.1.3 When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.1.4 OWNER will consider time extension requests and may grant CONTRACTOR an extension of time because of:

.1 Changes ordered in the work which justify additional time.

.2 Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CONTRACTOR's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CONTRACTOR's control, including, but not limited to, CONTRACTOR's efforts to overcome such delays documented as follows:

a) Copy of purchase order for delayed item(s) indicating date ordered by CONTRACTOR/ Subcontractor and date purchase order received by Supplier.

b) If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CONTRACTOR, and date submittal(s) forwarded to Supplier.

c) Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).

d) Copies of all correspondence between CONTRACTOR/ Subcontractor and Supplier indicating CONTRACTOR/ Subcontractor's efforts to expedite item(s).

e) If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CONTRACTOR's efforts with the Subcontractor to expedite delivery of the item(s).

.3 When acts of OWNER, E/A, utility owners or other contractors employed by OWNER delay progress of work through no fault of CONTRACTOR.

.4 When CONTRACTOR is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CONTRACTOR's control.

12.2 Calendar Day Contracts:

Under a Calendar Day Contract, CONTRACTOR may also be granted an extension of time because of unusual inclement weather which is beyond the normal weather recorded and expected for Austin, Texas. Normal rainfall compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the Calendar Day Contract, and is <u>not</u> a justification for an extension of time. Listed as follows are the mean number of days in which there occurred 0.01 inch or more of precipitation:

January	8 days
February	8 days
March	7 days
April	7 days
May	9 days
June	6 days
July	5 days
August	5 days
September	7 days
October	7 days
November	7 days
December	7 days

Rain days per month in amounts exceeding the number of days shown above may be credited as a Rain Day if a Claim is made in accordance with paragraph 12.1.1 and meets the following definition: a "Rain Day" is any day in which a rain event occurs at the site and is sufficient to prevent CONTRACTOR from performing units of Work critical to maintaining the project schedule~~, for at least seven (7) hours between the hours of 7:00 a.m. and 6:00 p.m.~~ see 00810

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

13.1 Notice of Defects:

Prompt notice of all defective Work of which OWNER or E/A has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in Article 13.

13.2 Access to Work:

OWNER, E/A, E/A's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access, and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections:

13.3.1 CONTRACTOR shall give 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.

13.3.2 OWNER shall employ and pay for 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 paragraph 13.3.3 below;

.2 that costs incurred with tests or inspections conducted pursuant to paragraph 13.4.3 below shall be paid as provided in paragraph 13.4.3;

.3 for reinspecting or retesting defective Work; and

.4 as otherwise specifically provided in the Contract Documents.

All testing laboratories shall meet the requirements of ASTM E-329.

13.3.3 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 Owner's Representative the required certificates of inspection or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and E/A's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CONTRACTOR's expense.

13.4.2 Uncovering Work as provided in paragraph 13.4.1 shall be at CONTRACTOR's expense unless CONTRACTOR has given Owner's Representative timely notice of CONTRACTOR's intention to cover the same and Owner's Representative has not acted within five (5) working days to such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CONTRACTOR shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims,

costs, losses and damages caused by, arising out of or resulting from 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 Amount, and may make a Claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Amount or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CONTRACTOR may make a Claim therefor as provided in Articles 11 and 12.

13.5 OWNER May Stop the Work:

13.5.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or 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 or any surety or other party.

13.5.2 If CONTRACTOR persistently fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work:

If required by OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Warranty period:

13.7.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents (e.g. paragraph 14.11.2), any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions:

(i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and

(ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If 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, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

13.8 Acceptance of Defective Work:

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating OWNER for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.9 OWNER May Correct Defective Work:

If CONTRACTOR fails within a reasonable time after Written Notice of OWNER to correct defective Work, or to remove and replace rejected Work, 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 (7) calendar days' Written Notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and 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, 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, its agents and employees, OWNER's other contractors, E/A and E/A's consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies 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. 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. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment:

14.1.1 No more often than once a month, CONTRACTOR shall submit to Owner's Representative 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.

14.1.2 Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.

14.1.3 Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.

see 00810

14.1.4 ~~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 data substantiating OWNER's title to such materials and equipment or otherwise protecting OWNER's interest.~~

Prior to issuance of substantial completion by OWNER

14.1.5 ~~Where the original Contract Amount is less than $400,000,~~ OWNER will pay CONTRACTOR total amount of approved Application for Payment, less ten percent (10%) of amount thereof, which ten percent (10%) will be retained until final payment, less all previous payments and less all sums that may be retained by OWNER under the terms of this Agreement. ~~Where the original Contract Amount is $400,000 or more,~~ OWNER will pay CONTRACTOR total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five (5%) will be retained until final payment, less all previous payments and less all sums that may be retained by OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of CONTRACTOR, OWNER may pay a portion of the retained amount to CONTRACTOR. CONTRACTOR, at OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, CONTRACTOR shall receive payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2.

there after:

14.1.6 Applications for Payment shall include the following documentation:

.1 updated progress schedule;

.2 monthly subcontractor report; and

.3 any other documentation required under the Supplemental General Conditions.

14.2 CONTRACTOR's Warranty of Title:

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 to CONTRACTOR free and clear of all Liens.

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by OWNER, or return the Application to CONTRACTOR indicating Owner's Representative's reasons for refusing to recommend payment. In the later case, CONTRACTOR may make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

.1 the Work has progressed to the point indicated; and

.2 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

.1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;

.2 examination has been made to ascertain how or for what purpose CONTRACTOR has used money previously paid on account of the Contract Amount;

.3 CONTRACTOR's construction means, methods, techniques, sequences or procedures have been reviewed; or

.4 that 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.

14.4 Decisions to Withhold Payment:

14.4.1 OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

.1 defective Work not remedied;

.2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;

.3 failure of CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;

.5 damage to OWNER or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 failure of CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;

.8 failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;

.9 failure of CONTRACTOR to submit and update a construction schedule in accordance with the Contract Documents;

.10 failure of CONTRACTOR to maintain a record of changes on drawings and documents;

.11 failure of CONTRACTOR to submi weekly payroll reports;

.12 failure of CONTRACTOR to submi monthly subcontractor reports;

.13 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up; or

.14 failure of CONTRACTOR to comply with any provision of the Contract Documents.

14.4.2 When the above reasons for withholding payment are removed, CONTRACTOR shall resubmit a statement for the value of Work performed. Payment will be made within ~~thirty (30)~~ calendar days of receipt of approved Application for Payment. See 00810

14.5 Delayed Payments:

Should OWNER fail to make payment to CONTRACTOR of sum named in any Application for Payment within ~~thirty (30)~~ calendar days after the day on which OWNER received the mutually acceptable Application for Payment, then OWNER will pay to CONTRACTOR, in addition to sum shown as due by such Application for Payment, interest thereon at the rate of one percent (1%) per month from date due until fully paid, which shall fully liquidate any injury to CONTRACTOR growing out of such delay in payment.

14.6 Arrears:

No money shall be paid by OWNER upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of OWNER to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.7 Substantial Completion:

14.7.1 When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, the CONTRACTOR shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CONTRACTOR giving reasons therefor. CONTRACTOR shall then submit another request for Owner's Representative to determine substantial completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CONTRACTOR shall finish the punch list, and shall establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by OWNER and CONTRACTOR to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER will allow CONTRACTOR reasonable access to complete or correct items on the punch list.

14.8 Partial Utilization:

Use by OWNER, at OWNER's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER 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, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

.1 OWNER at any time may request CONTRACTOR to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify Owner's Representative that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. The provisions of

paragraphs 14.7.1 and 14.7.2 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.

.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection:

Upon Written Notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with CONTRACTOR and provide Written Notice 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.

14.10 Final Application for Payment:

CONTRACTOR may make application for final payment following the procedure for progress payments after CONTRACTOR has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

see 00810

~~.1 Payroll data;~~

.2 Affidavit by CONTRACTOR certifying the payment of all debts and claims;

.3 Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

.4 Record documents (as provided in paragraph 6.10);

.5 Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to OWNER) of all claims arising out of or filed in connection with the Work;

.6 Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment;

.7 Non-Use of Asbestos Affidavit (After Construction); and

.8 Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

14.11.1 If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the OWNER, who will pay to CONTRACTOR the balance due CONTRACTOR under the terms of the Contract.

14.11.2 If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CONTRACTOR which establishes the Final Completion date and initiates the one year warranty period.

14.11.3 Final payment is considered to have taken place when CONTRACTOR or any of its representatives negotiates OWNER's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.

14.12 Waiver of Claims:

The making and acceptance of final payment will constitute:

.1 a waiver of claims by OWNER against CONTRACTOR, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contrac Documents or the terms of any warranty specified therein, or from CONTRACTOR's continuing obligation: under the Contract Documents; and

.2 a waiver of all claims by CONTRACTOF against OWNER other than thos previously made in writing and sti unsettled.

and Contractor's failure to cure or initiate substantial corrective action within such time,

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause:

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim therefor as provided in Articles 11 and 12.

15.2 OWNER May Terminate Without Cause:

Upon seven (7) calendar days' Written Notice to CONTRACTOR, OWNER may, without cause and without prejudice to any right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;

.2 for all claims incurred in settlement of terminated contracts with Subcontractors, Suppliers and others. CONTRACTOR agrees to negotiate in good faith with Subcontractors, Suppliers and others to mitigate OWNER's cost; and

.3 for anticipated profits on entire Contract not previously paid.

15.3 OWNER May Terminate With Cause:

15.3.1 Upon the occurrence of any one or more of the following events: see 00810

.1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents;

.2 if CONTRACTOR disregards laws or regulations of any public body having jurisdiction;

.3 if CONTRACTOR disregards the authority of Owner's Representative; or

.4 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven (7) calendar days' Written Notice, terminate the services of CONTRACTOR. OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, OWNER may under these circumstances exclude CONTRACTOR from the site and take possession of the Work (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, CONTRACTOR or surety shall pay the difference to OWNER.

15.3.2 Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4 CONTRACTOR May Stop Work or Terminate:

If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) calendar days by OWNER or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within ~~thirty (30)~~ calendar days after it is submitted, or (except during disputes) OWNER fails for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, then CONTRACTOR may, upon seven (7) calendar days' Written Notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without

prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER has failed for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, CONTRACTOR may upon seven (7) calendar days' Written Notice to OWNER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.4 are not intended to preclude CONTRACTOR from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims: Receiving Notice

16.1.1 Claims arising from the circumstances identified in paragraphs 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after ~~the start~~ of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled.

16.1.2 Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CONTRACTOR shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to:

.1 submit additional supporting data requested by the other party;

.2 modify the initial Claim; or

.3 request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. OWNER reserves the right to include the E/A as a party.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker empowered to negotiate on behalf of their organization. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

16.2.3.1 If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The parties agree to select within thirty (30) calendar days one (1) mediator trained in mediation skills, to assist with resolution of the dispute. OWNER and CONTRACTOR agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection shall be binding on the parties.

16.2.3.2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for 1) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, 2) a meeting of all parties for the exchange of points of view and 3) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate i

mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

~~Notwithstanding any provisions contained herein or in any other document or instrument to the contrary, the sole remedy which may be asserted against the Owner shall be a suit to enforce specific performance of this Contract. Any such lawsuit must be brought no later than one (1) year after the occurrence giving rise to such lawsuit or be forever barred.~~ Under no circumstances whatsoever shall the Contractor or any other party to this Contract be entitled to sue the Owner for damages, such right hereby expressly being waived. consequential

ARTICLE 17 - MISCELLANEOUS

17.1 Venue:

In the event of any suit at law or in equity involving the Contract, venue shall be in Travis County, Texas and the laws of the state of Texas shall apply to the interpretation and enforcement of the Contract.

17.2 Extent of Agreement:

This Contract represents the entire and integrated agreement between the OWNER and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

17.3 Cumulative Remedies:

The rights and remedies available to the parties 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 guarantees or by other provisions of the Contract Documents, and 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.

17.4 Severability:

If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

End

THE PARTIES TO THIS CONTRACT ACKNOWLEDGE THAT THEY ARE NOT IN A DISPARATE BARGAINING POSITION VIS-A-SIS THE OWNER, AND SAID PARTIES HEREBY KNOWINGLY WAIVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS, BENEFITS, AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT SET FORTH IN SUB-CHAPTER E OF CHAPTER 17 IN THE TEXAS BUSINESS AND COMMERCE CODE WITH RESPECT TO ANY MATTERS PERTAINING TO THIS CONTRACT AND THE TRANSACTION CONTEMPLATED HEREBY. TO THAT END, SAID PARTIES HEREBY STATE, ADOPT, ACKNOWLEDGE, AND REPRESENT THAT THEY WAIVE THEIR RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMER SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THEIR OWN SELECTION, SAID PARTIES HEREBY VOLUNTARILY CONSENT TO THIS WAIVER AS TO THE OWNER.

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

ARTICLE 1 - DEFINITIONS

1.16 Engineer/Architect (E/A) - Add the following:

Cook-Steinman & Associates, Inc.
3018 North Lamar, Suite 200
Austin, Texas 78705
(512) 454-6777 Fax (512) 454-2999

Delete 1.25 OWNER and **replace** with the following:

"1.25 OWNER – AVERY RANCH OWNER'S COMMITTEE

ARTICLE 2 - PRELIMINARY MATTERS

2.2 Copies of Documents:

Add the following:

"Additional copies of the Project Manual and Drawings may be obtained from Cook-Steinman & Associates, Inc., 3018 North Lamar, Suite 200, Austin, Texas 78705 on the following basis:

Complete set of Paving and Drainage Drawings and Project Manual: $100.00.
Individual set of Construction Drawings: $50.00 per set.
Project Manual $50.00 each.
Partial set of Drawings $3.00 per sheet."

2.4 Before Starting Construction:

Replace 2.4.2.3 with the following:

" .3 Not used this Contract

Replace 2.4.2.5 with the following:

.5 Not used this Contract"

ARTICLE 5 - BONDS AND INSURANCE

Replace 5.3 with the following:

"5.3 Insurance

5.3.1 CONTRACTOR Provided Insurance.

5.3.1.1 General Requirements.

.1 CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.

.2 CONTRACTOR must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance had been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.

.3 CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+7 or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.

.4 All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: Avery Ranch Owner's Committee.

.5 The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.

.6 If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

.7 OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

.8 OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.

.9 CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

.10 CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

.11 CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.

.12 If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

.13 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

5.3.1.2 Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

a) Waiver of Subrogation endorsement TE 2046A;

b) 30 day Notice of Cancellation endorsement TE 0202A; and

c) Additional Insured endorsement TE 9901 B.

Provide coverage in the following types and amounts:

.1 A minimum combined single limit of $600,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability each accident.

5.3.1.3 Workers' Compensation And Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

a) Waiver of Subrogation, form WC 420304; and

b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

.1 $100,000 bodily injury per accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

5.3.1.4 Commercial General Liability Insurance. The Policy shall contain the following provisions:

a) Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.

b) Completed Operations/Products Liability for the duration of the warranty period.

c) Explosion, Collapse and Underground (X, C & U) coverage.

d) Independent Contractors coverage.

e) Aggregate limits of insurance per project, endorsement CG 2503.

f) OWNER listed as an additional insured, endorsement CG 2010.

g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.

h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

.1 A combined bodily injury and property damage limit of $600,000 per occurrence.

5.3.1.5 Additional Requirements:

a) Contractor shall name Owner, and it's contracted representatives, as additional insured.

b) All insurance coverages required as herein set forth, shall be at the sole cost and expense of Contractor, Subcontractor or those providing their party services, and deductible shall be assumed by, for the account of, and at their sole risk.

c) Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery of subrogation against Owner, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, Contractors, Subcontractors, and their insurers."

Add the following:

"5.4 Bonds:

5.4.1 General.

.1 Bonds, when required, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. The surety company and the agency or agent issuing the PAYMENT AND PERFORMANCE BONDS must be authorized to issue PAYMENT AND PERFORMANCE BONDS in Texas in an amount equal to or greater than the contract price. These bonds shall remain in effect at least until one year after the date when final payment becomes due.

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the payment and performance bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the State Board of Insurance. The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such bonds have been provided by the CONTRACTOR and accepted by the OWNER.

.2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

.3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

5.4.2 Performance Bond.

.1 If the Contract Amount exceeds $100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610.

.2 If the Contract Amount exceeds $25,000 but is less than or equal to $100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out in Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

.3 If the Contract Amount is less than or equal to $25,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

.4 If a Performance Bond is required to be furnished, it shall extend for the one year warranty period.

5.4.3 Payment Bond.

.1 If the Contract Amount exceeds $25,000, CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out in Section 00620.

.2 If the Contract Amount is less than or equal to $25,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the terms and conditions specified in paragraph 5.4.2.3."

5.4.4 These bonds shall remain in effect until final acceptance by the Engineer and until a Maintenance Bond is provided by the Contractor.

5.4.5 Warranty Bond

.1 The Contractor shall provide a maintenance bond, in a form approved by the City's legal representative, in the amount of 10% of the final construction value, as agreed by the City (see 1806S.4 and 1806S.5) which will run for a period of one (1) year from the date of final acceptance of the construction work by the CITY.

.2 The bond shall guarantee the city that: the required funds are and will remain available to the city at a sound and reputable banking or financial institution authorized to do business in the State of Texas for a period of one year from the date of final acceptance by the OWNER; the improvements are free of defects and/or faulty workmanship; and such security may be called upon by the city to remedy construction defects and/or faulty workmanship of the improvements during the term of the warranty bond.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1.2 **Add** the folowing:

"The superintendent shall be available to be reached 24 hours per day and shall carry a pager or be available by radio at all times."

6.6 **Permits, Fees: Add** the following:

"OWNER will obtain and pay for the following permits, licenses and/or fees:

.1 none.

6.7 **Laws and Regulations: Add** the following:

"6.7.4 This Project is subject to the Environmental Protection Agency (EPA) National Pollution Discharge Elimination System (NPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls throughout the construction period. OWNER is responsible for provision of the Owner's Notice of Intent and Notice of Termination to the EPA. CONTRACTOR's responsibilities are as follows:

.1 Maintain a set of construction plans with the temporary erosion and sediment control plan at the Work site at all times.

.2 Post a copy of OWNER's EPA permit at the Work site.

.3 File a Notice of Intent with the EPA (form can be obtained from Owner's Representative).

.4 Post a copy of CONTRACTOR's EPA permit at the Work site.

.5 Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion and sediment control measures. This statement shall indicate that the Subcontractor understands the permit requirements.

.6 Perform normal site inspection of temporary sediment and erosion controls. Maintain records that indicate any problems and CONTRACTOR's efforts to repair the controls.

.7 Note in CONTRACTOR's records the E/A's or OWNERS Representative's comments on the temporary erosion and sediment controls.

.8 In response to the E/A's or OWNERS Representative's comments, note in CONTRACTOR's records CONTRACTOR's response to repair the temporary erosion and sediment controls.

.9 Upon completion of the Work, provide NPDES records to OWNER.

.10 File a Notice of Termination with the EPA once the Work has been accepted."

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.4 Determination of Value of Work: Add the following to paragraph 11.4.1.2:

"The R.S. Means Co., Inc. ' Construction Cost Data' - latest edition - shall be used as a basis for evaluating the cost of labor, material and equipment to be incorporated in the Work and the cost of tools, equipment and facilities necessary to accomplish the Work described in the change. The costs of payroll taxes and insurance, Liability and Builder's Risk Insurance, and bonds shall be calculated as follows:

- Payroll taxes and Workers' Compensation Insurance.....25% of payroll

- Liability and Builder's Risk Insurance.....2% of total costs
- Performance and Payment Bond according to the following table:

DOLLAR VALUE OF CONTRACT			% OF TOTAL COST OF CHANGE ORDER ADDED FOR BOND EXPENSE
100,000	or	less	2.5
100,001	thru	500,000	1.5
500,001	thru	2,500,000	1.0
2,500,001	thru	5,000,000	0.75
5,000,001	thru	7,500,000	0.70
OVER 7,500,000			0.65

Overhead and profit shall be calculated as follows:

- For Subcontractors and for those portions of the Work performed by CONTRACTOR's own forces:
  15% of the first $10,000.00 of costs.
  10% of the balance over $10,000.00.
- For the CONTRACTOR for Work performed by Subcontractors:
  10% of the first $10,000.00 of costs.
  7.5% of the balance over $10,000.00.

The total costs for the change, whether additive or deductive shall be the sum total of:

- cost of labor, material and equipment.
- cost of tools, equipment and facilities.
- cost of payroll taxes and insurance, Liability and Builder's Risk Insurance, and bonds.
- overhead and profit (for additive changes only)."

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.2 Calendar Day Contracts: Delete the last part of the last sentence reading:

"...for at least seven (7) hours between the hours of 7:00 a.m. and 6:00 p.m."

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1.4 Delete this paragraph and **Replace** with the following:

"OWNER shall pay for ninety (90) per cent of materials on hand and stored at the site at CONTRACTOR's invoiced amount by material supplier in accordance with the monthly estimate procedure stipulated in the General Conditions of the Contract. An Affadavit of Bills Paid shall accompany said request."

14.4.2 Replace "thirty (30)" with "forty-five (45)".

14.5 Replace "thirty (30)" with "forty-five (45)".

14.10 Final Application for Payment:

Replace 14.10.1 with the following:

".1 The required Warranty Bond."

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.4 Replace "thirty (30)" with "forty-five (45)".

End

These Special Conditions shall govern over any discrepancies that may occur with the General or Supplementary General Conditions and shall be considered as part of the Contract Documents.

1. Subsurface and Physical Conditions

Reports of explorations and tests of subsurface conditions at the site of the work are as follows:

a) Geotechnical Pavement Investigation
Avery Ranch Boulevard
Williamson County, Texas

Prepared by:
HBC Engineering, Inc..
November 30, 1999

Project No. 96995200

Drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the work are as follows:

a) None for this project.

OWNER does not guarantee accuracy or validity of the technical data contained in the above reports or drawings, nor does OWNER assume any responsibility for CONTRACTOR interpretation or conclusions drawn from the technical data.

2. Interpretation of "Day" or "Days"

All references to "day" or "days" in the Bidding Documents shall be interpreted to mean "calendar day" or "calendar days" unless specifically referred to as "working day" or "working days".

3. Testing

3.1. Testing and Control of Materials

Testing of all materials, material placement, construction items or products incorporated in the work shall be performed as required by the Specifications, Construction Plans and/or Section 01400 Quality Control Services, at the direction and expense of the OWNER, through the City of Austin Department of Public Works. An independent testing laboratory shall be approved in advance by the OWNER, ENGINEER and/or CITY OF AUSTIN. Monitoring of the foundation installation shall be performed at the direction and expense of the OWNER through an independent testing laboratory.

In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove-out test shall be made as directed by the ENGINEER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER or ENGINEER to make any tests of materials shall in no way relieve the CONTRACTOR of his responsibility of furnishing materials conforming to the Contract Documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the City of Austin Standard Specifications in place at the time of the bid. CONTRACTOR shall provide such facilities as are required for collecting

and forwarding samples and shall not use the materials represented by the samples until tests have been made. CONTRACTOR shall furnish adequate samples without charge.

Retesting after failure to pass tests shall be at the expense of the CONTRACTOR. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and test resulting therefrom shall be borne by the CONTRACTOR.

3.2. Underground Facilities

CONTRACTOR shall perform all tests in accordance with the latest City of Austin Construction Standards Manual in place at the time of the bid. All tests not assisted (including use of City of Austin equipment) or performed by the City of Austin shall be the responsibility of the CONTRACTOR and at no expense to OWNER. Retesting after failure to pass tests shall be at the expense of the CONTRACTOR.

3.3. Reports

Promptly submit 3 copies of reports of observations and tests to Owner/City of Austin including but not limited to:

1. Date Issued.
2. Project Title and Number.
3. Testing Laboratory name and address.
4. Name and signature of technician and testing engineer.
5. Date of sampling.
6. Record of temperature and weather.
7. Date of test.
8. Identification of product and specification section.
9. Location of product.
10. Type of test.
11. Observations regarding compliance with Contract Documents.

4. Existing Utilities

The CONTRACTOR shall notify the various water, irrigation, gas, power, telephone, or other utility companies 72 hours in advance of his intention to begin work so that they may take any necessary protective measures around their facilities. The CONTRACTOR is responsible for the protection of any utility and for damage to any such utility during the prosecution of the work. Any damage to a utility shall be repaired at the CONTRACTOR'S expense to the satisfaction of the owner of facility at the expense of the CONTRACTOR.

Unless otherwise indicated on the contract drawings, the CONTRACTOR shall maintain in service all drainage, water, irrigation, gas and sewer lines, including house services; power, lighting, and telephone conduits; and any other surface or subsurface utility. CONTRACTOR, for his convenience, may arrange with the utility company or homeowner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities will be borne by the CONTRACTOR and no extension of time will be allowed for this type of relocation.

5. Use of Public Roads and Streets

In the hauling of construction materials, excavation, equipment or other items required in the completion of this Project, the attention of the CONTRACTOR is directed to ordinances and regulations of local municipal or county governments, and State Governments which limit the type or gross weight of motor vehicles or construction equipment operating on public roads and streets or which restrict the use of such equipment on certain streets.
The CONTRACTOR shall keep haul routes clean at all times to the satisfaction of the ENGINEER and the local governing body having jurisdiction over the haul routes. It will be responsibility of the CONTRACTOR to investigate any limitations in routing, size of equipment or gross weight which may be subject to regulations by governmental jurisdictions.

It shall be the responsibility of the CONTRACTOR to provide for the safety and convenience of traffic so as to comply with all existing traffic regulations and ordinances that may apply.

Care of existing pavement (all types) shall be the responsibility of the CONTRACTOR. He will be held liable for any damage to the existing pavement which will be used by construction equipment or suppliers while construction is in progress. Upon completion of the construction, the pavement shall be restored to its original condition or better at no cost to OWNER.

Any bonds, permits or fees required for use of roadways will be the sole obligation of the CONTRACTOR.

6. Cooperation Between Contractors

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

The OWNER and ENGINEER shall under no circumstances be liable or responsible for guaranteeing or assuring that any claims among Contractors shall be paid; and any representation, expressed or implied, that any Contractor to whom a Contract is awarded is responsible or will be able to respond for damages is expressly negated.

7. Archeological or Historical Material

If any materials are discovered which might be of archeological or historical significance, all construction shall immediately cease and the CONTRACTOR shall notify the ENGINEER and OWNER. The OWNER shall then consult with a professional archeologist and the Texas Historical Society to determine the significance of the find.

8. Protection of Trees, Plants and Shrubs

All trees indicated on the drawings or designated by the Owner to remain shall be protected from damage. Substantially constructed guards or barricades shall be provided as required to protect tree trunks from moving equipment. No trees shall be cut or pruned without the Owner's approval.

The Contractor shall exercise special care to minimize damage to other trees, plants and shrubs along the route of the work. The owners of trees, plants and shrubs which lie outside the property line and within the normal limits or work shall be notified by the Contractor before beginning construction operations. The Owners shall be allowed to remove and protect their property, and all such trees, plants and shrubs not so protected by their owners shall be removed and replaced by the Contractor.

Compensation for Plant Loss - Any tree that is to remain which is damaged or destroyed due to the Contractor's negligence or failure to provide adequate protection shall be compensated for in accordance with the following schedule of values, using the "tree caliper" method (greatest trunk diameter measured six feet above the ground).

A. For trees or shrubs with diameters up to and including six inches, the actual cost of replacement with an item similar in species, size, and shape, including:

1. Actual cost of item boxed out of ground.
2. Transportation or delivery of boxed item to site.
3. Planting and staking.
4. Maintenance of watering, fertilizing, pruning, pest control and other care to bring replacement to same general condition of original item.

B. For trunks up to: Penalty:

7 inches	$1,200
8 inches	$1,700
9 inches	$2,200
10 inches	$2,600
11 inches	$3,100
12 inches	$3,600
13 inches	$4,100
14 inches	$4,600
15 inches	$5,000
16 inches	$5,500
17 inches	$6,000

18 inches and larger: add $500 for each caliper inch.

9. Staging Areas/Spoils Disposal

Staging areas are subject to the following conditions:

Owner and Contractor will agree on the exact location of the site access point prior to the installation of a stabilized construction entrance.

Owner and Contractor will agree on exact limits of the staging area prior to any clearing or occupancy.

Contractor will fence the area using metal t-posts at 15' o/c and rope or single strand smooth wire or other fencing approved by Owner, and will strictly adhere to area limits.

Contractor will provide any erosion control devices required by the City of Austin, Texas.

Contractor will provide sanitary facilities.

Contractor will provide trash receptacles, perform daily clean-up, and keep the area in a neat and orderly manner.

Contractor may not remove any vegetation without the Owner's approval.

Contractor will remove all fences and revegetate areas (at Contractors expense) not previously disturbed in accordance with City of Austin requirements.

Owner must approve all uses of the staging areas.

Contractor will remove and replace any soil contaminated with oils, fuels, or chemicals.

The working operations of the Contractor shall at all times be conducted so as to create a minimum of inconvenience to the Owner or to the public. Stock-piling of materials, etc., will be allowed only where no inconvenience is caused and only in amounts that can be readily used by the Contractor.

All excavated earth in excess of that required for project shall be removed from the job site and deposited in the designated spoil disposal area. Disposal of excess material to area creeks and drainageways will not be allowed.

Spoil removal must be accomplished PRIOR TO RELEASE OF ANY RETAINAGE.

Additional staging, storage or spoils disposal areas not identified on the plans, whether on-site or off-site, deemed necessary by the CONTRACTOR to perform the work shall be the responsibility of the CONTRACTOR. All necessary permits, environmental approvals, and compliance with local City, County, State or Federal laws and regulations shall be the responsibility of the CONTRACTOR.

10. Occupational Safety

The Contractor shall comply with the provisions of the Occupational Safety and Health Act and the standards and regulations issued thereunder and warrant that all work, materials, and products furnished under this Contract will conform to and comply with said standards and regulations which are in existence on the date of this Contract. The Contractor further agrees to indemnify and hold harmless the Owner and the Engineer for all damages suffered by the Owner and the Engineer as a result of the contractor's failure to comply with the Act and the Standards issued thereunder and for the failure of any material and/or equipment furnished under this Contract to so comply.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his equipment and employees, and for any damage which may result from their failure or their improper construction, maintenance or operation.

11. Visual Records of Site

Prior to the start of construction, the Contractor shall record the existing work area with either photographs or using video tape recording equipment and supply such records to the Owner.

12. Protection of Existing Survey Controls

The CONTRACTOR shall be responsible for protecting all temporary and permanent survey controls, property lines markers, monuments, and construction stakes. Damaged or obliterated stakes will be reset by the ENGINEER and at the CONTRACTORS expense.

13. Sanitary Facilities and Daily Clean-Up

Contractor shall provide sanitary facilities at sufficient locations to service the worker's as directed by the Owner. Contractor shall provide DAILY CLEAN-UP and at all times keep the work areas neat and free from litter and debris.

14. Construction Layout

All work under this Contract shall be constructed in accordance with the lines and grades shown on the plans. The full responsibility for the holding to alignment and grade shall rest upon the Contractor.

The Contractor, shall at his own expense, protect all property corner markers and reference points as established by the Owner in accordance with Sec. 4.3 of the General Conditions, and when any such markers, reference points, or monuments are in danger of being disturbed, they shall be properly referenced and, if disturbed, shall be reset at the expense of the Contractor.

15. Liquidated Damages

If after Final Inspection the only remaining work to be performed is the establishment of the permanent erosion control, then the Contractor shall be relieved of his obligation to pay liquidated damages, relative to readiness for final payment, as outlined in paragraph 3.2 of the AGREEMENT.

16. Removal of Topsoil; Clay Sources and; Clay Material Testing

Contractor shall not remove topsoil from the Project site. All topsoil excavated from the Project site must be used as set forth herein.
Contractor may use topsoil excavated from the Project site in the performance of its Work for purposes of revegetation and finish grading behind curbs and surrounding wet ponds.
All topsoil excavated by Contractor and not used for purposes set forth above, shall be stockpiled in a location mutually agreed with Owner.
Owner and Contractor will further cooperate regarding known sites where clay is located to be used as liners for wet ponds. Prior to use of such clay, the clay must be tested and approved by the Engineer.

End

ADDENDUM NO. 1

Date: August 2, 2000

Avery Ranch Owner's Committee

Project: Paving and Drainage Improvements
Avery Ranch Boulevard
(Proposed Homestead Village Trail to Parmer Lane)

CSA Project No. 200-02a

Original Bid Date and Time: August 8, 2000, 2:00 pm.

This Addendum forms a part of the Contract and clarifies, corrects or modifies original Bid Documents, dated July 16, 2000. Acknowledge receipt of this addendum in space provided on bid form. Failure to do so may subject bidder to disqualification.

A. Project Manual Revisions:

1. Section 00300, Bid Form:

   Page 3, Bid Item 15, under description, replace "60 ft street" with "30 ft street".
   Page 3, Bid Item 17, under quantity, replace "1,860 SF" with "4,170 SF".
   Page 5, Bid Item 31, under quantity, replace "1 EA" with "2 EA".
   Page 7, Bid Item 52, under quantity, replace "6 EA" with "7 EA".

   Page 12, under **TIME OF COMPLETION**: replace "**one hundred twenty (120) Calendar Days**", with "**one hundred fifty (150) Calendar Days**".

2. Section 00500, Agreement, Page 1, under **Article 3. CONTRACT TIME**: replace "**120 calendar days**", with "**150 calendar days**".

3. Section 00810, Supplemental General Conditions, Page 3, third paragraph **.4**, replace "Austin HB Residential Properties, Ltd." With, "Avery Ranch Owner's Committee".

4. Section 00810, Supplemental General Conditions, Page 7, **Article 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**: **14.4.2 and 14.5** should read as follows:

   14.4.2 "thirty (30)" shall remain as "thirty (30)".
   14.5 "thirty (30)" shall remain as "thirty (30)".

5. Section 00820, Special Conditions, Page 3, add the following paragraph:

   6a. Coordination with Water Line Contractor

   Owner has contracted with Heyl Construction Ltd, for the installation of the 24-inch water line in the proposed southern lanes of Avery Ranch Boulevard. Contractor's projected start date for this construction is August 8, 2000, with 120 calendar days to substantial completion. Prior to awarding the Avery Ranch Paving and Drainage Improvements contract and prior to the start of construction, the apparent low bidder (Contractor), Owner and Engineer shall meet in order to best resolve any potential conflicts, and to minimize any impacts to the project. Bidder shall assume for this bid that the anticipated start date for construction is October 2, 2000.

B. Construction Plan Revisions:

1. On Sheet 3, "General Notes", replace the "Sequence of Construction" with the attached "Sequence of Construction".
2. On Sheet C-2, profile, replace "12" SCH. 40 PVC" with "12" C150, ASTM D2241".
3. On Sheet C-4, Section A-A, replace "12" RCP" with "12" C150, ASTM D2241".

This addendum consists of 3 pages.

Approved by ENGINEER

End

The City of Austin Standard Technical Specifications shall govern, except for the specific modifications, deletions or additions set forth in the Special Provisions or Special Specifications thereto, on the date of advertisement for bids. Special attention is directed to the following technical specifications:

City Standard Technical Specifications

Item No. 101	Preparing Right of Way
Item No. 102	Clearing and Grubbing
Item No. 104	Removing Concrete
Item No. 110	Street Excavation
Item No. 120	Channel Excavation
Item No. 132	Embankment
Item No. 201	Subgrade Preparation
Item No. 202	Hydrated Lime and Lime Slurry
Item No. 203	Lime Treatment for Materials in Place
Item No. 210	Flexible Base
Item No. 306	Prime Coat
Item No. 307	Tack Coat
Item No. 340	Hot Mix Asphaltic Concrete Pavement
Item No. 374	Concrete Pavers for Sidewalk Ramps
Item No. 401	Structural Excavation and Backfill
Item No. 403	Concrete for Structures
Item No. 406	Reinforcing Steel
Item No. 410	Concrete Structures
Item No. 430	Concrete Curb and Gutter
Item No. 431	Machine Laid Curb and Gutter
Item No. 432	Concrete Sidewalks
Item No. 433	Concrete Driveways
Item No. 436	Concrete Valley Gutters
Item No. 503	Frames, Grates, Rings and Covers
Item No. 505	Concrete Encasement and Encasement Pipe
Item No. 506	Manholes
Item No. 508	Miscellaneous Structures and Appurtenances
Item No. 509	Trench Safety Systems
Item No. 510	Pipe
Item No. 511	Water Valves
Item No. 559	Concrete Box Culverts
Item No. 594	Gabions
Item No. 601	Salvaging and Placing Topsoil
Item No. 604	Seeding for Erosion Control
Item No. 606	Fertilizer
Item No. 610	Preservation of Trees and Other Vegetation
Item No. 639	Rock Berm
Item No. 641	Stabilized Construction Entrance
Item No. 642	Silt Fence
Item No. 703	Fencing for Excavation
Item No. 706	Bridge and Culvert Railing
Item No. 803	Barricades, Signs and Traffic Handling

City of Austin Standard Specifications, Series 100 through 16000, adopted April 6, 1986, as amended. Commonly known as the "Brown Book." Available for purchase from Document Sales, One Texas Center, Austin, Texas

End

Section No.

1800S Construction Requirements and Procedures

1801S Contents

1802S Definition of Terms

1803S Responsibilities of the Owner and Engineer

1804S General Obligations and Responsibilities

1805S Protection of Persons and Property

1806S Final Acceptance

1807S Miscellaneous

End

SECTION 1800S
CONSTRUCTION REQUIREMENTS AND PROCEDURES

General

This series and the technical specifications of the City of Austin Standard Specifications shall govern the construction of the public infrastructure that is related to a subdivision or site development located within the City of Austin and within subdivisions assigned for City of Austin inspection within its five (5) mile [8 kilometer] extraterritorial jurisdiction, as well as the acceptance of completed Work conforming to the City of Austin, Texas Code of Ordinances, Volume II, Title 25, "Land Development Code".

This specification is applicable for projects or work involving either inch-pound or SI units. Within the text, the inch-pound units are given preference followed by SI units shown within parentheses.

End

SPECIFIC CROSS REFERENCE MATERIALS
Specification 1800S, "CONSTRUCTION REQUIREMENTS AND PROCEDURES"

Volume II, Land Development Code

Designation	Description
Title 25	Land Development

RELATED CROSS REFERENCE MATERIALS
Specification 1800S, "CONSTRUCTION REQUIREMENTS AND PROCEDURES"

Volume II, Land Development Code

Designation	Description
Chapter 25-1	General Requirements and Procedures
Chapter 25-3	Traditional Neighborhood District
Chapter 25-4	Subdivision
Chapter 25-5	Article 1: Site Plans Generally
Chapter 25-7	Article I: General Provisions
Chapter 25-8	Article 3: Environmental Assessment ; Pollution Attenuation Plan
Chapter 25-8	Article 6: Water-Quality Controls

City of Austin Environmental Criteria Manual

Designation	Description
Section 1.4.1.1.D	Ordinance Authority
Section 1.2.3.2.A.3	Related to expiration of preliminary plans and site plans
Section 1.2.2.6.B	Minimum Requirements for Issuance of a Permit
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SECTION 1802S
DEFINITION OF TERMS

1802S.1 Definitions

Whenever the following terms or pronouns used in place of them appear in the Contract Documents, the intent and meaning of the terms or pronouns shall be interpreted as follows:

1802S.2 The City or City of Austin

The City of Austin, Texas.

1802S.3 The Owner

The Owner of the development or the person in the financial entity (e.g., bank, credit corporation, etc.) liable for its existence or their duly designated representative who can authorize construction.

1802S.4 The Consulting Engineer

The Engineer of the Owner or the Consulting Engineer's duly designated representative, who is authorized to make design decisions for the Owner. The Consulting Engineer must be a Registered Professional Engineer licensed in the State of Texas.

1802S.5 The Director

The Director of the Managing Department of the City of Austin or his/her duly authorized representative, who makes all decisions as to quality of the project and conformance of the Work for final acceptance by the City.

1802S.6 The Construction Engineer

The Director's representative in responsible charge of a group of projects. He/she shall be a Registered Professional Engineer licensed in the State of Texas.

1802S.7 The Contractor

The individual, firm, corporation or other business entity that is contracted to complete the Work for the Owner.

1802S.8 License Agreement

An agreement between the City of Austin and the Owner for private use of public property. The application for a License Agreement must be submitted and approved in accordance with the City of Austin Land Development Code Chapter 15-12, Article 1, Division 3.

1802S.9 The Work

The work shall include the furnishing of all labor, materials, equipment and other incidentals necessary for the successful completion of all items required by The Contract Documents and the completion of all the duties and obligations included therein.

1802S.10 The Contract Documents

The Contract Documents are the Drawings and the Project Manual, that have been prepared by a Registered Professional Engineer, licensed in the State of Texas and, have been approved by the Owner for Work for which a Development Permit has been issued.

The Contract Documents are complementary and what is required by any one of them shall be as binding as if required by all. In case of conflict between any Private Development Contract Documents, priority of interpretation shall be in the following order: Approved Development Permit, the Specifications (1802S.11), the Drawings (1802S.12), and Construction Requirements and Procedures (1802S.16).

1802S.11 The Specifications

The directions and conditions contained in the technical specifications of the City of Austin Standard Specifications, supplemented by changes pertaining to method and manner of performing The Work, or to quantities and qualities of materials to be furnished as presented by the Consulting Engineer and approved by the appropriate plan review department. Where phrases "as directed by" or "to the satisfaction of the Director" occur, it is to be understood that requirements, orders or instructions to which they relate are within limitations of and authorized by the Owner and the City of Austin. Where reference is made to specifications of ASTM, AASHTO, TxDOT, Water and Wastewater Standard Products List, etc., it shall mean the latest standard or tentative standard in effect on the date of the permit authorizing construction, unless another date applies pursuant to State statutes.

1802S.12 The Drawings

The Drawings approved by the Director or true reproductions thereof, which show locations, character, dimensions and details of the Work.

1802S.13 The Development Review

A function of The Managing Department in the review and approval process for subdivision and site development Drawings and Specifications.

1802S.14 The Development Permit

A permit that is issued which indicates that the Drawings and the Specifications for the development of a subdivision or a site have been approved by the plan review department.

180S2.15 The Managing Department

The specific department of the City of Austin which is responsible for assuring that the subdivision and/or private development is constructed in accordance with the Approved Contract Documents.

1802S.16 Construction Requirements and Procedures

Detailed instructions set forth in this section delineating the responsibilities of the Owner for proper prosecution of the Work and the functions to be followed by the Managing Department and the Construction Inspection Division of the Department of Public Works and Transportation in the inspection and acceptance of functionally completed Work.

1802S.17 Sequence of Construction

The order in which the work is to be accomplished.

1802S.18 Written Notice

A Written Notice will have been duly served: if delivered in person to the Owner or a principal or employee of the firm authorized to make decisions for the Owner, if hand delivered or submitted through facsimile transmission to an office of the corporation for whom it is intended, or if delivered to or forwarded by certified, registered mail to the last business address known to the party giving notice.

1802S.19 The Superintendent

An English-speaking representative of the Owner or the Contractor with relevant experience and knowledge of construction work related to the type of infrastructure development authorized by the Development Permit. The superintendent shall supervise and direct the construction and shall be the person authorized to receive and respond to communications from the Director and the Inspector.

1802S.20 The Inspector

The authorized representative of the Director of the Managing Department assigned to inspect and test any or all parts of the Work and materials used therein. He/she is also a member of the Construction Inspection team under the direction of the Construction Engineer.

1802S.21 Laboratory

A laboratory, which is certified in accordance with ASTM E-329 by a nationally recognized certifying authority, and is approved by the Engineer.

1802S.22 Standard Products List

A listing of construction related manufactured products of like kind that have been reviewed and accepted by the Water and Wastewater Utility of the City of Austin.

1802S.23 Qualified Products List

A listing of manufactured products of like kind that are used by city forces in maintenance of Water and Wastewater Utility Installations and Facilities.

1802S.24 Abbreviations

The following abbreviations represent a list of the more commonly used ones and do not compose a complete listing of all abbreviations. If an abbreviation is used that a person is unfamiliar with or does not immediately recognize, the person may contact the Department of Public Works and Transportation of the City of Austin for the appropriate full, formal name associated with the abbreviation.

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans With Disabilities Act
ANSI	American National Standards Institute
APWA	American Public Works Association
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
USCE	Corps of Engineers (U.S. Dept. of the Army)
FM	Factory Mutual System
ITTE	Institute of Traffic and Transportation Engineers
TxDOT MUTCD	Texas DOT Manual on Uniform Traffic Control Devices
TxDOT	Texas State Department of Transportation
TEX TEST	TxDOT Laboratory Test
TNRCC	Texas Natural Resources and Conservation Commission
UL	Underwriters Laboratory

End

SPECIFIC CROSS REFERENCE MATERIALS
Specification 1802S, "Definition of Terms"

Volume II, Land Development Code of the City of Austin

Designation	Description
Ch. 15, Art. 1, Division 3	License for Private Use of Public Property

American Society for Testing and Materials (ASTM)

Designation	Description
ASTM E-329	Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction

RELATED CROSS REFERENCE MATERIALS
Specification 1802S, "Definition of Terms"

Volume II, Land Development Code of the City of Austin

Designation	Description
Title 25	Land Development
Chapter 25-1	General Requirements and Procedures
Chapter 25-3	Traditional Neighborhood District
Chapter 25-4	Subdivision
Chapter 25-5	Article 1: Site Plans Generally
Chapter 25-7	Article I: General Provisions
Chapter 25-8	Article 3: Environmental Assessment ; Pollution Attenuation Plan
Chapter 25-8	Article 6: Water-Quality Controls

City of Austin Environmental Criteria Manual

Designation	Description
Section 1.4.1.1.D	Ordinance Authority
Section 1.2.3.2.A.3	Related to expiration of preliminary plans and site plans
Section 1.2.2.6.B	Minimum Requirements for Issuance of a Permit
Section 1.4.1.1.D	Ordinance Authority

City of Austin Standard Contract Documents

Designation	Description
Section 00700	General Conditions; Article I - Definitions

SECTION 1803S
RESPONSIBILITIES OF THE OWNER AND ENGINEER

1803S.1 The Owner - Engineer Relationship

The Owner shall specify in writing his representative(s) for the Work who will be responsible for all communications with the City. Once the Contract Documents have been approved by the appropriate plan review department , properly executed and submitted to the Construction Inspection Division of the Department of Public Works and Transportation for inspection, the Work must not deviate from the Contract Documents, unless supported by a Change Order submitted by the Consulting Engineer and approved as a correction or plan revision by the appropriate plan review department. Minor field adjustments which do not effect project integrity, cost or construction time; are consistent with the intent of the design and are approved by the Construction Engineer or Director may be allowed by the Inspector. The Owner may effect changes through the appropriate plan review department, which will forward approved changes to the Construction Inspection Division.

Only the Director of the Managing Department may accept the Work as complete for the City of Austin or appropriate counties within the City of Austin Extra Territorial Jurisdiction. This acceptance will be exercised only after the Director or designated representative is satisfied that the Work complies with the Contract Documents.

This specification is applicable for projects or work involving either inch-pound or SI units. Within the text, the inch-pound units are given preference followed by SI units shown within parentheses.

1803S.2 The Owner's Duty and Superintendence

The Owner shall be responsible for the contractual requirement that the Contractor provide a competent English-speaking Superintendent and necessary assistants to supervise and direct the Work during its progress. The Owner shall insure that no work shall be done by the Contractor nor materials used at the site without qualified supervision by the Contractor and inspection of the Work by the Director or designated representative. The Owner shall require the Contractor to immediately comply with "Stop Work Orders" commonly referred to as 'Red Tag' violations (Land Development Code Article 25-1-441).

1803S.3 Authority and Duties of the Inspectors

The Inspectors will be authorized to inspect all work undertaken by the Contractor and all materials furnished to the site and shall be given ingress and egress to all areas of the Work. Inspection activities may extend to all or to any part of the Work and to the preparation or manufacture of the materials to be used on the site. The Inspector will be assigned to the Work, will document/inspect the progress of the work and the manner in which it is being performed and will advise the Contractor and Owner of any obligations to perform the Work in accordance with the requirements of the Contract Documents. The Inspector will also report to the Director or designated representative whenever it appears that the materials furnished and the Work performed by the Contractor fail to fulfill the requirements of the Contract Documents.

In case of any dispute arising between the Contractor and the Inspector concerning materials furnished or the performance of the Work, the Inspector will issue to the Owner and the Contractor a Notice of Unacceptable Work, which will remain in effect until the Work is corrected or the question at issue can be resolved by the Owner under item 1803S.14, Objections. The Inspector will not be authorized: (1) to revoke, alter, enlarge or release any requirement of the Contract Documents ; (2) to approve or accept any portion of the Work or (3) to issue instructions contrary to the Contract Documents. The Inspector will in no case: act as foreman of the Work; perform other duties for the Contractor or interfere with the management of the Work.

The presence of an Inspector on the site shall not relieve the Owner and the Contractor from full compliance with the Contract Documents,

1803S.4 Pre-construction Conference

A Pre-construction Conference will be held prior to the start of construction on the Work. For Work involving grading and drainage projects only, the Owner will provide three sets of prints of approved Drawings, development permit, and two (2) sets of the executed Contract and full payment of construction inspection fees to the Construction Inspection Division of the Department of Public Works and Transportation for distribution before a Pre-construction Conference is scheduled. If water and wastewater utility lines are also included in the Work, then an additional nine sets of prints must be provided.

In those cases where the Owner of a Project is allowed to amend his Work to undertake rough-cut or rough-cut/utility work on a portion of the Project, a pre-construction conference shall be held for the rough-cut or rough cut/utility and associated work and an additional preconstruction conference must be held after a full development permit has been obtained. Inspection fees, development permit, Drawings and executed contracts must be delivered at both the rough cut and full development phases.

The date and the time for the Pre-construction Conference will be established by the Inspector with the concurrence of the Owner but in no case more than seven (7) days after request and receipt from the Owner of the Drawings, Development Permit, Contracts and confirmation of Payment of Inspection Fees. An agenda will be prepared by the Inspector and will include, as a minimum, discussion of the following items:

Introduction of all parties with an exchange of phone numbers and addresses;

Approved plans and required permits;

Discussion of start dates;

Notification to City for inspection and testing;

Erosion control system, violations and "Red Tags";

Traffic control and barricade system;

Submittals for all materials scheduled for the Work;

TNRCC requirements;

City approved material submittals (SPLs, flexible base, p.c. concrete, hot mix asphalt concrete, etc.);

Construction sequencing and phasing;

Utility conflict notice;

Trench safety plan and proof of insurance;

Survey cut sheets;

Backfill procedure and compaction of trenches;

Hydrant maintenance by the Contractor;

Flushing meter;

Revegetation and Developer's Contract;

Final clean-up and punch list;

Maintenance and warranty bonds;

Certificate of Occupancy and release of taps issued after Final or Conditional Acceptance;

Final walk-through and acceptance.

A minimum of two days notice of the conference will be given by the Inspector to the following:

Owner,

County Representative, as appropriate,

Water and Wastewater Utility,

The Electric Company,

The Gas Company,

The Watershed Protection Utility Department,

The Director's representative,

Other Utilities and Parties, as appropriate.

The Contruction Division will provide notice to other individuals in the Department of Public Works and Transportation, as appropriate.

The Owner will provide notice to the Consulting Engineer and the Contractor. The Preconstruction Conference is mandatory for the Owner and the Consulting Engineer. The Contractor may invite subcontractors.

1803S.5 On-Site Pre-construction Meeting

After or in conjunction with the Preconstruction Conference and before the Work begins, an on-site meeting shall be held to review erosion and sedimentation controls. As a minimum the meeting shall include the following individuals:

The Contractor and the Superintendent,

The Inspector assigned to inspect the Work,

A representative from the Watershed Protection Department,

The Consulting Engineer.

The representative from the Watershed Protection Department will be provided with a minimum of 24 hours notice to establish a meeting date and time. If the Watershed Protection Department representative does not establish a date and time for the meeting within five days of receiving the notice, construction may proceed.

1803S. 6 Communications

The Construction Inspection Division of the Department of Public Works and Transportation maintains a normal duty hours Dispatcher for contact with the Area Offices and Inspectors. Communications through the Dispatcher may only be made through the following numbers or a current number in a case of a change:

Main Office	Central Area Office	North Area Office	South Area Office
499-7180	457-5462	837-8814	441-8785

Messages or notifications will not be considered official unless communicated to the Inspector by the caller or called to the Central Dispatcher. Callers must state the name of the Subdivision or Development, Inspector (if known) and the nature of the business in sufficient detail to make a determination of the priority of the message.

The Water and Wastewater Utility maintains a Central Dispatcher at Control One for water and wastewater related emergencies. The telephone number is (512)-912-6000. All non-emergency water and wastewater contacts shall be made through the Inspector.

1803S. 7 Inspection Notifications

After the Pre-construction Conference, the Contractor must provide a minimum forty-eight hour advance notice of intent to begin the Work. Other circumstances may require additional time for notification when agreed to by the Director or designated representative.

There are various stages of construction for which the Inspector shall be given the choice of inspecting and testing either before, during or after the operation. The actual stages of the various items are too numerous to itemize in complete detail or define the absolute advance notification time required by an Inspector.

Circumstances requiring advance notification include, but are not limited to:

1. The Inspector shall be given 24 hours advance notice for a major item, such as excavation, embankment, placement of pipes, backfill, processing of base material, placement of curb and gutter, placement of structures, placement of p.c.concrete, laydown of asphalt concrete or when the construction of drains is under way. The Inspector will follow up at time intervals to be established by the Inspector. If the Work is stopped for any reason, (i.e., weather, strike, lack of materials, equipment break downs, etc.) for 7 or more calendar days, the Inspector shall be notified 24 hours in advance of any Work starting back up.

2. The Inspector shall be given 24 hours advance notice when the Contractor anticipates each blue top/density stage, subgrade approval for base, base approval for a succeeding course of base, base approval for prime coat and placement of asphalt concrete.

3. A Job Mix Formula for asphalt concrete, which is not included on the Department of Public Works and Transportation HMAC mix Design Approved List, must be provided to the Inspector for review and approval a minimum of three days before asphalt paving is planned, Notification shall be given to the Inspector a minimum of 24 hours before the initiation of asphalt concrete paving. This review and notification must be accomplished for asphalt concrete to be acceptable to the City of Austin.

4. A Portland Cement Concrete Mix Design, which is not included on the Department of Public Works and Transportation concrete mix Design Approved List, shall be provided to the Inspector for review and approval a minimum of 3 days before the proposed concrete placement. The inspector shall be notified at least 24 hours before the concrete is placed to allow the scheduling of on-site testing and inspection of reinforcing steel, waterstops and other related components.

5. The Inspector shall be notified as far in advance as practicable but no less then 24 hours in advance of any work to be performed on Saturdays, Sundays or City of Austin holidays. Any Work accomplished without such prior notification will not be acceptable to the City.

6. The Contractor shall contact the Austin Area "One Call" Center for the location of existing utilities prior to the beginning of any Work.

1803S.8 Lines and Grades

All lines, grades and control measures shall be furnished, checked and/or replaced as necessary by the Owner. The Contractor shall provide assistance, as necessary, to conduct these checks. Whenever necessary, construction shall be suspended to permit the performance of this Work and to allow the Inspector to review and check, if necessary, these procedures. Suspension will be as brief as practical. Four (4) copies of "Cut and Fill" sheets or other approved provisions for line and grade control for road, bridges, water and wastewater lines, storm sewer and other drainage structures or systems, along with required certifications shall be delivered to the Construction Inspection Division for distribution. The sheets shall be certified by a Registered Professional Engineer licensed in the State of Texas or a Registered Professional Land Surveyor licensed in the State of Texas. Minimum staking requirements for roadways, bridges, water and wastewater lines, storm sewers and channels are as follows:

A. **Roadways:**

1. Offset hubs must be provided on both sides of the roadway
2. Straight grades at 50 feet (15 meters) maximum spacing with transverse quarter points.
3. Vertical curves at 25 feet (7.5 meters) maximum spacing with transverse quarter points.
4. BC, EC and stations of vertical curves with elevations.
5. PC, PT and stations of horizontal curves with elevations.
6. Horizontal curves at 25 feet (7.5 meters) maximum spacing with transverse quarter points.
7. Both ends, offsets and transitions of curb inlets.
8. High and low points of vertical curves.
9. Grade breaks.
10. Islands - all of the above points.
11. Separate subgrade cut sheets are not needed.
12. Roadway transitions.
13. Slope stakes for top and toe of slopes.

B. **Storm Sewers:**

1. Every 50 lineal feet [15 meters] maximum spacing.
2. Grade breaks with elevations.
3. PI, forward and backward tangents for horizontal curves.
4. Horizontal curves at 25 feet (7.5 meters) maximum spacing.
5. PC and PT stations for horizontal curves.
6. Flow lines into and out of manholes, junction boxes and splitter boxes.
7. Tie-in to existing storm sewers.
8. Flow line of storm sewer and channel where they intersect.
9. Double stake ends of storm sewer
10. Headwalls

C. **Channels:**

1. Every 50 lineal feet (15 meters) maximum spacing.
2. P.I., P.C., P.T., stations of all horizontal curves.
3. Horizontal curves, 25 feet (7.5 meters) maximum spacing.
4. All offsets to centerline of channel.
5. Flow line of storm sewer and channel where they intersect.
6. Grade breaks with elevations.
7. Dissipators - break points, beginning and end.

D. **Water Pipelines:**

1. Every 50 lineal feet (15 meters), maximum spacing.
2. PI, PC, PT, PRC, PCC and stations of horizontal curves.
3. Horizontal curve stations at 25 feet (7.5 meters) maximum spacing.
4. Reference all offsets to the center line of pipe.
5. Tie-in both ends to existing pipe.
6. Vertical PI stations with elevations.
7. "Cut and Fill" sheets are not required for water lines less than 12" (300 mm) inside diameter (ID).
8. Pipe lines 12" (300 mm) ID and larger will be laid out according to pipe layout plan if required by the technical specifications,
9. Where the pipe layout plan indicates a straight pipe section with no grade change it is permissible to layout every 50 feet (15 meters).
10. All pipe joint deflections along vertical and horizontal curves and angle points with elevations.
11. All points along the construction staked line will have a hub driven in the ground with a known elevation obtained from a USGS reference datum.
12. All structures and appurtenances shall be staked at beginning, end and any intermediate point deemed necessary.

E. **Wastewater Pipelines:**

1. Every 50 lineal feet (15 meters) maximum spacing.
2. Grade breaks.
3. Inlets and outfalls of all manholes.
4. Forward and backward tangents of horizontal curves.
5. Horizontal curves at 25 feet (7.5 meters) maximum spacing.
6. PC, PT, PCC, PRC stations of horizontal curves with elevations.
7. All offsets referenced from the center line of pipe.
8. All points along the construction staked line will have a hub driven in the ground with a known elevation obtained by U.S.G.S. reference datum.
9. All structures and appurtenances shall be staked at beginning, end and any intermediate point deemed necessary.

"Cut or Fill" sheets shall be transmitted to contractors through the Inspector. Each point or station on a "Cut or Fill" sheet shall have a hub set and identified on the ground

1803S.9 Construction Drawings

The Owner will forward two executed copies of the approved subdivision or site development plans and approved revisions of the plans and the specifications to the Construction Inspection Division of the Department of Public Works and Transportation, if the Work includes only grading and drainage. If the Work also involves water and wastewater utility lines, an additional nine (9) executed copies showing the utility construction shall be provided.

If construction is not underway within three years after the date of approval of the Drawings by the appropriate plan review department, the Development Permits shall expire unless the permit has been extended in accordance with the Land Development Code. If construction ceases for a period of one year or more, it will be necessary for the Owner to resubmit all Construction Drawings to the appropriate plan review department for review and approval prior to beginning construction again. The resubmitted Contract Drawings shall include any rehabilitation work necessary to return the condition of the existing Work to that condition which existed prior to the cessation of work.

1803S.10 Shop Drawings and Submittals

All sample submittals, shop drawings, setting drawings, and schedules required for the work of the various trades by the Contract Documents will be submitted by the Contractor to the Consulting Engineer. The Consulting Engineer shall review, identify any required corrections, correct the Record Reproducible Drawings if required, and inform the Contractor of the status of the shop drawings. The Consulting

Engineer shall then forward two copies of the corrected shop drawings and/or four copies of the corrected plans to the appropriate plan review department, which will forward the corrected drawings and plans to the Construction Inspection Division for continued inspection. Any work identified in a shop drawing or sample submittal shall not proceed until amended Drawings (plans) have been received by the Inspector.

1803S.11 Preliminary Approval

The Director and the Owner shall not have the power to waive: any obligations of the Work; the furnishing of good material by the Contractor; or the performance of good work as herein described. The Work shall be in complete accordance with the Contract Documents. The failure or omission on the part of the Director to discover, identify or condemn any defective work or material shall not release the Owner from the obligations to fully and properly complete the Work including without limitations, the obligation upon the discovery of said defective work or material to at once remove and properly replace the defective work or material at any time prior to final acceptance. The Director shall, upon request of the Contractor or Owner, inspect and accept or reject any material furnished for the Work. Once the material has been accepted by the Director, the acceptance shall be binding on the City of Austin, unless it can clearly be shown that the identified material has changed in character to the extent that it does not meet the specifications for the Work.

Any specific item of the Work, which is in dispute and has been issued a Notice of Unacceptable Work, may be re-examined by the Director at any time prior to final acceptance. If found to be not in accordance with the Contract Documents for any specific item of the Work, all expense for removal, re-examination and replacement shall be borne by the Owner. When inspection or approval is specifically required by the Specifications prior to performance of certain work or subsequent stages of the Work and the Contractor proceeds with such work without requesting prior inspection or approval, the Owner shall bear all expenses of demolition, removal, and replacement of the work if so directed by the Director.

1803S.12 Defects and Their Remedies

If any material, either selected for the Work or delivered on the site for use in the Work, shall be deemed by the Director to be unsuitable or not in conformity with the Contract Documents, or the intent thereof, the Owner and the Contractor shall be notified by the Director in a written notice which identifies and/or describes the unacceptable material. The Owner, after receipt of written notice from the Director, shall then require the Contractor to immediately remove such material from the jobsite and rebuild or otherwise remedy any effected work so that it shall be in full accordance with the Contract Documents.

1803S.13 Initial Determinations

The Consulting Engineer and/or the Owner shall determine all claims, disputes and other matters in question between the Contractors and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents. If, in the opinion of the Consulting Engineer, the resolution results in a proposed change in the Contract Documents, appropriate revisions will be submitted to the appropriate plan review department for review and approval and delivered to the Inspector before the Work proceeds.

The Director or his/her authorized representative will be the final authority for the interpretation of the Technical Construction Specifications.

1803S.14 Objections

In the event the Director or his representative renders any decision which in the opinion of the Owner or the Consulting Engineer is not in accordance with the meaning and intent of the Contract Documents, and the Owner or the Consulting Engineer is unable to resolve the matter with the Inspector assigned to the Work, the Inspector's Supervisor or the Construction Inspection Division Manager, then the Owner may submit a written objection to the decision explaining why the decision is not in accordance with the Contract Documents to:

Chief Engineer
Department of Public Works and Transportation
P. O. Box 1088
Austin, Texas, 78767-8839

for questions regarding Construction.

A copy of the objection shall be sent to Division Manager whose decision is being appealed.

The Chief Engineer of the Department of Public Works and Transportation will resolve the appeal within five working days of its receipt (excluding weekends and City of Austin holidays) or refer the appeal to the Director of Public Works and Transportation for a final decision.

End

SPECIFIC CROSS REFERENCE MATERIALS
Specification 1803S, "Responsibilities of the Owner and Engineer"

The Code of the City of Austin

Designation	Description
Article 25-1-441	Stop Work Order

RELATED CROSS REFERENCE MATERIALS
Specification 1803S, "Responsibilities of the Owner and Engineer"

City of Austin Standard 1800 Series Specifications

Designation	Description
Article 1804S.9	Watershed Violations

City of Austin Standard Contract Documents

Designation	Description
Section 00700	General Conditions

RELATED CROSS REFERENCE MATERIALS (Continued)
Specification 1803S, "Responsibilities of the Owner and Engineer"

The Code of the City of Austin

Designation	Description
Section 13-1-952	Application for License Agreement
Ch. 15, Division 3	License for Private Use of Public Property
Article 15-12-41	Application Approval
Title 25	Land Development
Chapter 25-1	General Requirements and Procedures
Article 25-1-282	Preconstruction Conference Required
Article 25-1-288	Inspection of Erosion and Sedimentation Controls; and Tree Protection measures
Article 25-1-286	Inspection requests
Article 25-1-287	Inspection Record Cards
Article 25-1-289	Reinspection Fee
Chapter 25-3	Traditional Neighborhood District
Chapter 25-4	Subdivision
Chapter 25-5, Art.1	Site Plans Generally
Chapter 25-7, Art.1	General Provisions
Chapter 25-8, Art.3	Environmental Assessment ; Pollution Attenuation Plan
Chapter 25-8, Art.6	Water-Quality Controls
Chapter 25-11, Art.4	Historic Landmarks Generally
Article 25-11-2	Historic Landmarks

City of Austin Environmental Criteria Manual

Designation	Description
Section 1.2.3.2.A.3	Related to expiration of preliminary plans and site plans
Section 1.2.2.6.B	Minimum Requirements for Issuance of a Permit
Section 1.4.1.1.D	Ordinance Authority

City of Austin Standard Specifications

Designation	Description
Item No. 101S	Preparing Right of Way
Item No. 102S	Clearing and Grubbing
Item No. 110S	Street Excavation
Item No. 111S	Excavation
Item No. 130S	Borrow
Item No. 132S	Embankment
Item No. 340	Hot Mix Asphaltic Concrete Pavement
Item No. 403	Concrete for Structures
Item No. 406	Reinforcing Steel
Item No. 410	Concrete Structures
Item No. 414	Concrete Retaining Walls
Item No. 416	Waterstops
Item No. 430	Concrete Curb and Gutter
Item No. 432	Concrete Sidewalks
Item No. 433	Concrete Driveways
Item No. 510	Pipe

RELATED CROSS REFERENCE MATERIALS (Continued)
Specification 1803S, "Responsibilities of the Owner and Engineer"

City of Austin Standard Details

Designation	Description
315S-1	HMAC Pavement
430S-1	Curb and Gutter Section Dimensions Only
432S-1	Sidewalk
433S-1	Type I Driveway (1 & 2 Family residential)
1000S-10	Local Street Sections
1000S-11(1)	Residential and Neighborhood collector Street Sections
1000S-11(2)	Industrial and Collector Street Sections
1000S-12(1)	Primary Collector Street Sections
1000S-12(2)	Primary Arterial Street Sections
1000S-13(1)	Minor Arterial Street Sections (4 Lanes)
1000S-13(2)	Minor Arterial Street Sections (4 Lanes divided)
1000S-14	Major Arterial Street

SECTION 1804S
GENERAL OBLIGATIONS AND RESPONSIBILITIES

1804S.1 Keeping Construction Documents Accessible

The Owner will require the Contractor performing the Work to maintain on the work site a minimum of one complete copy of the Contract Documents including the latest as built revisions to the Drawings. The Contract Documents shall be accessible to representatives of the Director, the Owner and the Consulting Engineer at all times.

1804S.2 Adequacy of Design and Construction

It is understood that the Owner believes that he has employed competent Consulting Engineers. The Owner, therefore, shall be responsible for the adequacy of the design, compatibility of the Contract Documents, safety of all structures and construction procedures, and the practicability of operations of the completed Work. The burden of proof of such compliance shall be the responsibility of the Owner by demonstrating that he/she has complied with all requirements of the Contract Documents, along with all approved additions and alterations to the Contract Documents.

If during the Warranty Period following final acceptance by the City of Austin, the Work exhibits: (a) damage, deterioration, distress and/or failures; (b) requires excessive maintenance or rehabilitation work due to defects in materials, products or workmanship including utility backfill; and/or (c) design inadequacies are uncovered and identified, the Development, Review and Inspection Department and the Owner shall be notified of these conditions by the Director or designated representative. The Owner shall take the immediate corrective action(s), which is (are) accepted by the Director or designated representative and approved by the Development, Review and Inspection Department. Upon written request of the Director, the Development, Review and Inspection Department will suspend or revoke any new development or building permits by the Owner, until the deficiency (or deficiencies) of the Work is (are) satisfactorily corrected (Land Development Code Sections 25-1-417 and 25-1-418).

1804S.3 Materials and Workmanship

Unless otherwise specified, the materials and equipment furnished for permanent installation in the Work shall conform to all applicable requirements of the Contract Documents and shall be new, unused and undamaged when installed or otherwise incorporated in the Work. When an article of material or equipment is specified by definitive description, or identified only by using a proprietary name or name of a particular manufacturer or vendor, such description/name shall be accepted as establishing the type, function, class and quality of product specified. The Owner through the Contractor or the Consulting Engineer shall submit descriptive information and evidence to the Director or designated representative that the materials and equipment, proposed by the Contractor for incorporation in the Work, is of the kind, capacity and quality that satisfies the specified types, functions, classes and quality.

The Water and Wastewater Utility Standard Products Lists (SPLs) form a part of the Contract Documents. When the Contractor elects to use any materials/products from the Standard Products Lists, the materials/products shall be clearly and completely identified when submitted for use in the Work. Any material/product, which is proposed for use in the Work, shall be submitted to the Consulting Engineer and the Inspector for review and approval prior to the use and/or incorporation of the material/product in the Work.

The City of Austin Standard Specification Item 340, "Hot Mix Asphaltic Concrete Pavement" and Specification Item 360, "Concrete Pavement", provide for the option of possible acceptance of pavements which do not fully meet all specified requirements. If the reduced-standard pavements are otherwise acceptable in accordance with Standard Specifications 340 or 360 and to the Director or designated representative, then the Owner or the Contractor may, with the concurrence of the Director, request that the Work be made acceptable by providing a cash payment to the applicable street maintenance entity for deposit in the annual street maintenance fund. The dollar amount shall be calculated by reducing the base value of standard pavements by the percentages established by factors incorporated in Standard Specification items 340 for asphalt pavements and 360 for concrete pavements. The base values for standard pavements shall be determined by the Director from the average costs for concrete or asphalt pavement construction, respectively, in previous years under contract to the Department of Public Works and Transportation. The amount of cash payment shall be the amount of the dollar reduction.

1804S.4 Testing of Materials

Unless otherwise specified, all on site testing to establish the quality of material to be incorporated in the Work will be as required by the Director or designated representative. The frequency, time, locations and testing procedures will be coordinated and approved by the Inspector. The testing shall be accomplished by City of Austin personnel or an independent laboratory, which is designated by the Director and certified in accordance with ASTM E-329, "Standard Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials Used in Construction". Payment for all initial testing will be the responsibility of the City. All retesting of unacceptable material shall be the responsibility of the Owner. Restoration or patching required as a result of the testing shall be at no expense to the City.

The extent of investigations and retesting, related to unacceptable and/or failed tests shall be determined by the Director. The Director may require a minimum of two passing retests for each failure before acceptance will be made by the City.

The manufactured materials to be incorporated in the Work shall meet the requirements of the Contract Documents (e.g., reinforcing steel, expansion joint materials, concrete pipe, cement, miscellaneous steel, cast iron materials, flexible base, etc.). The Owner may be required to furnish a manufacturer's certificate stating that material meets the requirements specified for the Work.

1804S.5 Sidewalk Variance

If grading for sidewalks during construction will damage, adversely impact or remove desirable natural features, trees etc., the Owner may request a variance from the Development, Review and Inspection Department for the realignment of the sidewalk. The Consulting Engineer shall submit a plan which includes detailed grading, elevation and alignment information in the vicinity of natural features, shall certify that no utility lines, inlets, meters or castings will be affected and request an appropriate change in the Work.

When the plan requires an easement outside of public right of way and the Development, Review and Inspection Department concurs with the request for a waiver, the Consulting Engineer shall provide an easement signed by the Owner dedicating an easement to the public. The dedication document will be accompanied by a metes and bounds description, certified by a Registered Professional Land Surveyor licensed in the State of Texas, which is ready for recording. Submittal of this instrument is required before final acceptance can be issued by the City.

The Consulting Engineer shall record all sidewalk variances and/or waivers on reproducible Record Drawings and submit the drawings to the Department of Public Works and Transportation as part of the as-built Drawings.

1804S.6 License Agreements

When construction of the development includes retaining walls, landscaping, other privately owned improvements or provisions for future construction of these facilities within the public right-of-way, the Owner must have secured an executed License Agreement (Land Development Code Chapter 15-12, Article 1, Division 3) prior to conditional and/or final acceptance of the Work.

1804S.7 Street Signs

The street name signs at signalized intersections shall be provided to the City by the Owner. All street name signs at unsignalized intersections within and abutting the subdivision shall be installed by the Owner in accordance with Article 25-4-156 (City of Austin Code of Ordinances, Volume II, Chapter 25-4: Subdivision Regulation). The sign locations shall be based on guidelines provided in the most recent version of the Texas Department of Transportation Manual on Uniform Traffic Control Devices

1804S.8 Laws and Ordinances

The Owner and the Contractor shall observe and comply with Federal, State and local laws, ordinances and regulations, which in any manner affect the Work. The Owner and the Contractor shall defend, indemnify and hold harmless the City and its respective officers, agents and employees from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorneys fees and expenses, arising from the violation of any such laws, ordinances and regulations whether effected by the Owner, the Contractor or their employees.

1804S.9 Watershed Violations

Watershed Ordinances for the City of Austin are included in the Code of Ordinances, Volume II, Title 25: Land Development Code.

When an Inspector discovers a "Priority" violation of an ordinance requirement, cessation of the Work (Article 25-1-441, "Stop Work Order" commonly referred to as "Red Tag") shall occur and immediate corrective action shall be taken by the Owner or the Contractor.

Priority violations include the following:

1. The Work is proceeding without an approved permit, without temporary erosion and sedimentation control devices in place or without the conduct of the required on-site pre-construction meeting.

2. The Work (e.g. clearing, grading, filling) is proceeding beyond the limit delineated on the approved plans and is causing irreparable damage to protected trees and designated natural areas, critical Water Quality Zones, Critical Environmental Features or is causing immediate water quality degradation such as discharging silt from an excavation into a waterway.

All other violations of an ordinance requirement will be considered routine and the Contractor will receive a verbal warning of the condition. If corrective action is not initiated within 24 hours, the Inspector will issue a Written Notice to the Owner with copies to the Contractor, the Consulting Engineer and the Watershed Protection Utility Department.

If immediate corrective action is not undertaken within 24 hours for priority violations or within 24 hours after the issuance of the Written Notice for routine violations, the Director may initiate legal action and suspend any or all permits issued to the Owner. If corrective action is still not forthcoming, then a lawsuit for an injunction to stop all work may be filed.

When corrective action by the Owner or the Contractor brings the Work into compliance with the ordinance(s), a Written Notice of that compliance will be issued to the Contractor.

1804S.10 Contractor's License

Persons engaged in construction, reconstruction, alteration, removal, replacement or repair of sidewalks, curbs, gutters, driveways and work incidental to a pedestrian way within the City of Austin streets and alleyways shall be licensed by the Department of Public Works and Transportation.

1804S.11 Protection and Preservation of Primitive Rights and Antiquities

The Contractor shall take reasonable precaution and care to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of the Texas Department of Antiquities Protection of the Historical Commission (463-6096). When such objects are uncovered unexpectedly, the Contractor will stop all work in close proximity to the objects and notify the Inspector, the Owner and the Texas Department of Antiquities of their presence at the site. The Contractor shall not disturb the objects until written permission is received and a permit to do so is granted. All uncovered primitive rights and antiquities shall remain the property of the State of Texas Department of Antiquities Protection conforming to the Texas Natural Resources Code. When it is determined, in cooperation with the Department of Antiquities Protection, that exploration or excavation of the primitive records or antiquities on the site is necessary to prevent loss, the Contractor shall cooperate in the salvage work necessary to the preservation of the items.

1804S.12 General Environmental Protection

All construction sites shall be kept clean under the Voluntary Requirements of Keep Austin Beautiful, Clean Builder Program and any ordinance, regulation and/or law in effect.

1804S.13 Force Majeure

If the Owner, the Contractor or the City is prevented from performing all or a part of the Work or any duties related thereto: (a) as a result of fire or other calamity; (b) by order of a governmental authority at the Federal, State or Local level; (c) by acts of God, strikes, lockouts or other industrial disturbances; (d) by acts of public enemies; material or labor restrictions by governmental authority; (e) by civil riot, flood as determined by the appropriate governmental authorities or (f) by acts of the Owner or any cause beyond the reasonable control of the Owner, the Contractor and/or the City; then the party suffering the "Force Majeure" shall notify the City of Austin in writing within five days of the onset of the condition of the "Force Majeure", excusing said performance and indicating the nature, extent, and probable duration of the "Force Majeure" condition. The suffering party shall then take all steps, reasonable, to resolve the condition during its pendency and shall notify the other parties immediately upon the resolution of the condition of "Force Majeure".

If the condition of "Force Majeure" extends to 20 calendar days of endurance, the Owner, the Contractor and the City of Austin shall agree to meet and discuss a resolution to preserve the interests of the respective parties in the Work. However if all respective parties agree, a resolution meeting may be scheduled for any time less than twenty (20) days.

End

SPECIFIC CROSS REFERENCE MATERIALS
Specification 1804S, "General Obligations and Responsibilities"

Volume II, Land Development Code of the City of Austin

Designation	Description
Title 25	Land Development Code
Chaper 15-12, Art. 1, Division 3	License for Private Use of Public Property
Chapter 25-8, Art. 6	Water-Quality Controls
Article 25-4-154	Related to Street name signs - Notice Of Intent to Suspend Or Revoke - Notice Of Suspension Or Revocation
25-1-441	Stop Work Order
Chapter 25-3	Subdivision

City of Austin Standard Specifications

Designation	Description
Item No. 340	Hot Mix Asphaltic Concrete Pavement
Item No. 360	Concrete Pavement

SPECIFIC CROSS REFERENCE MATERIALS (Continued)
Specification 1804S, "General Obligations and Responsibilities"

American Society and Testing Materials (ASTM)

Designation	Description
E-329	Standard Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials Used in Construction

RELATED CROSS REFERENCE MATERIALS
Specification 1804S, "General Obligations and Responsibilities"

City of Austin Standard Contract Documents

Designation	Description
Section 00700	General Conditions

Volume II, Land Development Code of the City of Austin

Designation	Description
Article 15-12-41	Application Approval
Chapter 25-1	General Requirements and Procedures
Article 25-1-282	Preconstruction Conference Required
Article 25-1-288	Inspection of Erosion & Sedimentation Controls; Tree Protection measures
Article 25-1-286	Inspection requests
Article 25-1-287	Inspection Record Cards
Article 25-1-289	Reinspection Fee
Chapter 25-3	*Traditional Neighborhood District*
Article 25-4-35	Variance Filing and Consideration
Article 25-4-36	Variance Determination
Article 25-8-41	Planning Commission Variances
Article 25-6-351	related to Sidewalk locations/tree protection
Chapter 25-8, Art. 3	Environmental Assessment; Pollution Attenuation Plan

City of Austin Environmental Criteria Manual

Designation	Description
Section 1.2.2.3	Administrative Variances

City of Austin Standard Specifications

Designation	Description
Item No. 101S	Preparing Right of Way
Item No. 102S	Clearing and Grubbing
Item No. 110S	Street Excavation
Item No. 111S	Excavation
Item No. 130S	Borrow
Item No. 132S	Embankment
Item No. 402S	Controlled Low Strength Material
Item No. 403	Concrete for Structures
Item No. 410	Concrete Structures

RELATED CROSS REFERENCE MATERIALS (Continued)
Specification 1804S, "General Obligations and Responsibilities"

City of Austin Standard Specifications

Designation	**Description**
Item No. 414	Concrete Retaining Walls
Item No. 430	Concrete Curb and Gutter
Item No. 432	Concrete Sidewalks
Item No. 433	Concrete Driveways
Item No. 510	Pipe

City of Austin Standard Details

Designation	**Description**
432S-1	Sidewalk
433S-1	Type I Driveway (1 & 2 Family residential)
1000S-10	Local Street Sections
1000S-11(1)	Residential and Neighborhood collector Street Sections
1000S-11(2)	Industrial and Collector Street Sections
1000S-12(1)	Primary Collector Street Sections
1000S-12(2)	Primary Arterial Street Sections
1000S-13(1)	Minor Arterial Street Sections (4 Lanes)
1000S-14	Major Arterial Street

SECTION 1805S
PROTECTION OF PERSONS AND PROPERTY

1805S.1 Safety Precautions and Programs

The Owner shall be responsible for initiating and maintaining all safety precautions and programs in connection with the Work.

This specification is applicable for projects or work involving either inch-pound or SI units. Within the text, the inch-pound units are given preference followed by SI units shown within parentheses.

1805S.2 Safety of Persons and Property

The Owner shall undertake and shall require the Contractor to undertake all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the Work and all other persons who may be affected thereby;

2. All of the Work and all materials and equipment to be incorporated therein, whether in storage on-site, under the care, custody or control of the Owner, the Contractor or any Subcontractors; and

3. Other property at the site, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures, and/or utilities not designated for removal, relocation or replacement in the course of the construction.

The Owner shall and shall require the Contractor to comply with all applicable laws, ordinances, rules, regulations and lawful orders of all public authorities having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Owner shall be responsible for: (a) the erection and maintenance of all reasonable safeguards for safety and protection, as required by existing conditions and progress of the work, including the posting of danger signs and other warnings against hazards; (b) promulgating safety regulations and (c) notifying owners of adjacent utilities of potential dangers caused by this work.

1805S.3 Protection of Adjoining Property

The Owner shall be responsible for and shall require the Contractor to undertake proper means to protect the adjacent or adjoining property or any private properties, encountered in any way, which might be injured or seriously affected by any process of construction of the Work from any damage or injury by reason of said process of construction. The Owner shall be liable for any and all claims of such damage on account of the Owner's failure to fully protect all adjoining property or any private properties encountered in any way. The Owner shall agree to indemnify, save and hold harmless the City of Austin its agents and employees against any claim or claims for damages due to any injury to any adjacent or adjoining property arising or growing out of the performance of the Work regardless of whether or not the damage or injury is caused in part by a party indemnified hereunder.

1805S.4 Public Safety and Convenience

The safety of the public shall be regarded as of prime importance. All portions of the existing public streets adjacent to the Work shall be kept open and shall provide a smooth, safe and comfortable ride to the traffic. It shall be the responsibility of the Owner to ensure that two-way traffic may safely bypass the construction site and that access is provided to abutting private property. If the street is a one-way street, the Owner shall ensure that one lane of travel remains available.

The Owner shall require the Contractor to plan and execute its operations in a manner that will cause the minimum interference with public traffic and shall require that the Contractor place and maintain in good condition standard barricades at each and all entrances to the Work and at other locations where traffic is rerouted or blocked from using regular public traffic lanes. Barricades and warning signs shall be located in accordance with the latest edition of the TxDOT Manual on Uniform Traffic Control Devices.

All barricades and warning signs placed in or adjacent to the public roadway for the purpose of warning or directing traffic shall be installed in accordance with Section 8.5, "Work Zone Safety - Uniform Construction Barricading", of the City of Austin Transportation Criteria Manual.

The Owner shall require the Contractor to notify, request and receive approval from the Transportation Division of the Department of Public Works and Transportation at least four (4) days (excluding Saturdays, Sundays or Holidays) in advance of the intention to close or partially block a public roadway or any part thereof located within the City or any construction, which may affect the free flow of public traffic. If the public roadway or any portion thereof is not located within the City, then notification and approval for closure shall be received from the appropriate city, county and/or state representative.

In the event the Contractor's operations reduce an existing public two-way roadway to less than 20 feet (6 meters) in width, the Contractor shall provide flaggers and shall route traffic through the construction area one lane at a time. A flagger will be required any time it is necessary for construction equipment to move into or across a public traffic lane or at such other times as directed by the Engineer. A flagger shall be utilized to aid the exit of construction equipment from public traffic lanes to the work area and the entry of construction equipment from the work area to public traffic lanes. Flaggers will be properly dressed and operate in accordance with the latest edition of the Texas Department of Transportation Manual on Uniform Traffic Control Devices and Section 8.5, "Work Zone Safety - Uniform Construction Barricading", of the City of Austin Transportation Criteria Manual.

Barricades and signs with flashers shall be erected at each and every entry to the Work to notify and warn the public that the area is under private construction and should be entered only at their own risk. Reflectorized regulatory signs shall be installed on each side of each and every entry road in the right-of-way with the legend, "Private Road, Enter at Own Risk". The signs shall be the sizeand color combination indicated for sign R-11-2 of the latest edition of the Texas Department of Transportation Manual on Uniform Traffic Control Devices and shall be mounted on Type III barricades. If there is insufficient room in which to place the Type III Barricade, two nominal 4x4 inch (100x100 mm) posts may be used for the installation of the sign in lieu of mounting the sign on a barricade. A standard stop sign shall be installed on the right side of each existing roadway at its point of intercept with a public roadway.

These barricades and signs shall be maintained in a clean and good condition until the Work is accepted by the City of Austin, when all but the stop signs may be removed by the Owner. If at any time during the performance of the Work the Owner allows these traffic control measures to deteriorate to a condition unacceptable to theDirector, the Owner will be issued a Written Notice to repair or replace the traffic control measures. If the conditions remain the same or worsen within 1 hour after the Written Notice has been served, the Director may authorize City of Austin personnel or private contractual personnel to restore the barricades, signs and flashers to a safe condition. Continued neglect by the Owner may result in the suspension of permits and initiation of legal restraints. The Owner will make monetary restitution for City personnel or contractual costs for the restoration of the barricades, signs and/or flashers to a safe condition before the City of Austin will take final acceptance.

1805S.5 Location and Protection of Utilities

The Owner and the Contractor are solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the work area. The Contractor shall exercise due care to locate, mark, uncover or otherwise protect all such lines in the work area.

Neither the Owner nor the Contractor shall begin work in the area until the One-Call Center has been notified, a One-Call Notification Number issued and the Owner and/or the Contractor can assure that the locations of all lines and utilities are marked.

Upon request, the utility owners shall provide information on the location and grade of water, wastewater, gas, storm sewer, and telephone and electric lines and other utilities in the work area. The availability of such information, however, shall not relieve the Owner or the Contractor of the obligations hereunder, which shall be primary and non-delegatable. Any such lines damaged by Contractor's operations shall be immediately repaired by the Contractor upon the concurrence of the repair of the utility; or the Owner shall cause such damage to be repaired at his expense.

1805S.6 Public Right of Way Cut Permits

The use of City or County streets, sidewalks and other public easements by the Owner and/or the Contractor shall be subject to and in accordance with City or County ordinances, policies, standards and procedures governing said use of streets, sidewalks and public easements. The Owner's or the Contractor's use of City or County streets, sidewalks and other public easements is nonexclusive and does not establish priority for their use over other franchise holders, permit holders or the City or the County. All work conducted in street rights-of -way or public easements must be covered by a permit issued by the City, County or other appropriate authority. With the exception of any emergency repairs necessary to restore service or to protect the public, all work shall be permitted prior to the start of construction.

Permits will not be issued unless the Owner or the Contractor can provide a One-call Identification Number. This is accomplished by calling the "One-Call Center". This call will initiate action by the utility owners to respond with the location of utilities and/or appropriate advice.

In accordance with Section 5 of the Utility Criteria Manual, "Cuts in Public Rights-of-Way", the Owner or the Contractor shall call the Construction Inspection Division of the Department of Public Works and Transportation Development to initiate a request for a permit to make a cut in any public right-of-way or

easement for areas within the City of Austin. When outside the City of Austin, a call shall be required to the County Engineer Office of the county in which the Work is to done or TxDOT, if appropriate, in order to request a permit. All requests shall be made during normal hours during the workweek except for Saturdays, Sundays and Holidays.

1805S.7 Cuts in Unaccepted Public Right of Way

If cuts are made in the streets after the curb and gutter or final base lift is in place, the repairs shall be made in accordance with Section 5 of the Utility Criteria Manual, "Cuts in Public Rights-of-Way". Once a street has been paved, no cuts will be allowed. The Inspector shall be notified a minimum of 24 hours prior to repairs being undertaken. Repairs made without proper notification of the Inspector shall be unacceptable and subject to removal and replacement.

End

SPECIFIC CROSS REFERENCE MATERIALS
Specification 1805S, "PROTECTION OF PERSONS AND PROPERTY"

City of Austin Transportation Criteria Manual

Designation	Description
Section 8.5.0	Work Zone Safety – Uniform Construction Barricading
Section 8.5.5	Typical Applications
Section 8.5.5.D	Flagging
Figure 8-19	Typical Flagman Equipment
Figure 8-20	Flagging Procedures
Section 8.5.6	Maintenance and Inspection

City of Austin Utility Criteria Manual

Designation	Description
Section 5	Cuts in Public Right-of-Way
Section 5.1.0	General
Section 5.2.0	Permit Requirements for Street Cuts and Repairs
Section 5.3.0	Procedure for Permit Request
Section 5.4.0	Restoration Requirements
Section 5.5.0	Pavement Repairs

Texas Department of Transportation: Manual on Uniform Traffic Control Devices for Streets and Highways

Designation	Description
Part VI	Traffic Control for Street and Highway Construction, Maintenance, Utility and Incident Management Operations
Section 6A	Introduction and General Specifications
Section 6B	Signs
Section 6C	Barricades and Channelizing Devices
Section 6D	Markings
Section 6E	Lighting Devices
Section 6F	Control of Traffic Through Work Areas

RELATED CROSS REFERENCE MATERIALS
Specification 1805S, "PROTECTION OF PERSONS AND PROPERTY"

Volume II, Land Development Code of the City of Austin

Designation	Description
Chapter 25-6, Art. 2	Reservation and Dedication of Right-of-Way
Article 15-12-131	Permit Required
Article 15-12-132	Application Required
Article 15-12-137	Traffic Control Devices
Article 15-12-138	Restoration of Work Site
Chapter 25, Sub. B	Tree and Natural Area Protection

City of Austin Environmental Criteria Manual

Designation	Description
Section 3	Tree and Natural Area Preservation
Section 5	Construction in Parks
Section 6	Endangered Species Criteria
Appendix O	Landscape/Irrigation Notes

City of Austin Transportation Criteria Manual

Designation	Description
Section 8.5.1	Procedures
Section 8.5.2	Requirements
Section 8.5.3	Work Zone Traffic Control Principles
Section 8.5.4	Work Zone Traffic Control Devices
Table 8-1	Typical Construction Warning Sign Size and Spacing
Figure 8-7	High Level Warning Device and Approved Traffic Control Devices
Figure 8-8	Commonly Used Regulatory Signs
Figure 8-12	Type I, Type II, and Type III Barricades
Figure 8-13	Barricade Specifications
Figure 8-14	Pedestrian Barricade Standards

City of Austin Standard Specifications

Designation	Description
Item No. 610	Preservation of Trees and Other Vegetation
Item No. 703	Fencing for Excavations
Item No. 801	Construction Detours
Item No. 803	Barricades, Signs and Traffic Handling
Item No. 824	Traffic Signs
Item No. 825	Street Name Sign

City of Austin Standard Details

Designation	Description
802-5	Barricades, Construction Signs, and Typical Construction Layouts for Excavation
803-1	Street-End Barricades
803-3	Excavation and Safety Fences
803-3A	Safety Fence

RELATED CROSS REFERENCE MATERIALS (Continued)
Specification 1805S, "PROTECTION OF PERSONS AND PROPERTY"

City of Austin Standard Details

Designation	Description
803-5	Barricades, Construction Signs, and Typical Construction Layouts for Utility Line Installations
803-5A	Channeling Devices
804-5B	Barricades
803-5C	Traffic Control Signs
803-5E	Signing and Barricading Crossroad and Driveway
804-1D	Sidewalk Closures
804-2	Detours and Floggers
804-2B	Flagger Setup for Two- Lane Roadway
804-2C	Flagger Setup for Vehicles Entering and Exiting Work Site
804-2F	Use of Hand Signaling Devices

SECTION 1806S
FINAL ACCEPTANCE

1806S.1 Substantial Completion

Substantial Completion shall be defined as the date when, in the opinion of the Owner or the Consulting Engineer, the Work is sufficiently complete in accordance with the Contract Documents that the Owner can occupy or utilize the Work for its intended purpose. The Owner should also at this time require the Consulting Engineer to prepare and forward a Construction Summary Report to the Director. The Construction Summary Report is required prior to the preparation of the City of Austin Final Acceptance Letter.

This specification is applicable for projects or work involving either inch-pound or SI units. Within the text, the inch-pound units are given preference followed by SI units shown within parentheses.

1806S.2 Final Inspection

Within four (4) working days of the date when the Owner presented the Director with a Written Notice that the Work was substantially completed, the Inspector will schedule and conduct a review of the Work and will prepare a Report of the Private Development Inspection (punchlist) for the Owner with copies provided for the Consulting Engineer, the Contractor and the Supervisor of Construction. This form will include: any remaining items discovered not in compliance with Construction Documents; or other items required for the issuance of the Final Acceptance Letter.

Work that is shown on the Contract Documents as "Temporary Construction" will not be accepted by the City of Austin unless prior approval for the Work has been previously secured from the Development, Review and Inspection Department.

If the sole remaining unfinished item on the Report of the Private Development Inspection is the re-establishment of vegetation, the Owner may desire to execute a Revegetation Letter to ensure completion of this item. The Revegetation Letter will retain the fiscal posting for erosion/sedimentation control and revegetation for the Work. This Work must be accomplished within 120 days of the date of Conditional Acceptance of the Project.

The Construction Inspection Supervisor will review and sign the Report of Private Development Inspection when all items entered are completed or satisfied by the above describedRevegetation Letter. A meeting for the Final Inspection may then be scheduled by the Inspector at a time convenient to the Owner and theDirector, as outlined in Section 1806S.3.

The issuance of the Report of Private Development Inspection shall not excuse the Owner from requiring the Contractor to perform all the work required by the Contract Documents regardless of the time of discovery.

1806S.3 Acceptance by the City of Austin

A meeting for the Final Inspection will be on the site of the Work, at a time, which is mutually agreeable between the Director and the Owner. The Inspector will also invite:

1. The Contractor and sub-contractors, as appropriate,
2. The Consulting Engineer,
3. The Street and Bridge Division of the Department of Public Works and Transportation, if the Work is located within the City,
4. The County Representative , as appropriate,
5. The Water and Wastewater Utility of the City of Austin, and
6. The Watershed Protection Department of the City of Austin, if the Work is located within the City or the Work includes a sedimentation basin located within the five mile (8 kilometer) Extra Territorial Jurisdiction of the City of Austin.

A Final Acceptance Letter or Conditional Acceptance Letter will be initiated by the Director for locations within the City of Austin and for appropriate locations within a specific county. If all items listed below are completed and in proper order the City will initiate the Final Acceptance Letter. If there are any exceptions, an acceptance letter will not be issued but a Letter of Conditional Acceptance may be issued at the discretion of the Director. The Final Acceptance Letter will subsequently be issued when the exceptions are cleared. A Certificate of Occupancy will not be issued for any unit until a Final Acceptance Letter or a Conditional Acceptance Letter has been issued.

The Final Acceptance Letter will be signed by the City when the City of Austin has received the following:

1. Construction Summary Report. This summary is required 10 days in advance of the anticipated issuance of a Final Acceptance Letter,
2. Consulting Engineer Concurrence Letter,
3. Reproducible Drawings certified by the Consulting Engineer as "Record Drawings",
4. Bond or Bonds for the period of one year warranty as described in sections 1806S.4 and 1806S.5, and
5. Cash or a Cashiers Check for any money due as required under Section 1804S.3, "Materials and Workmanship."
6. Written verification of final cost and final quantities of the Work.
7. Final payment of any additional inspection fees due as results of item 6 above.

If the re-establishment of vegetation is the sole remaining item of work and the Owner has executed a revegetation letter, then a Conditional Acceptance Letter will be issued. When the permanent erosion control has been established, the City will initiate a Final Acceptance letter.

1806S.4 Guarantee Against Defective Work

The Owner and the Contractor shall warrant the Work for a period of one year from the date of the Letter of Conditional or Final Acceptance of the completed Work, unless the period is extended by mutual agreement between the City and the Owner or the Contractor, as described below. This warranty shall bind the Owner to correct any and all defective materials, workmanship (including utility backfill) and/or design inadequacies, which may be discovered within the warranty period. The Owner shall correct or cause the Contractor to correct at his own expense, such defects no later than 30 days after receipt of a Written Notice from the Director of such defects. If the Owner or the Contractor fail or refuse to correct such defects within the 30 day period or fail to provide adequate assurances that such work will be completed within a reasonable time thereafter, the City of Austin may correct, or cause to be corrected, any such defects at the expense of the Owner or the Contractor or the Contractor's bond.

If in the opinion of the Director it is desirable to extend the warranty period for questionable work rather than requiring the Contractor to remove and replace such work, the warranty period may be lengthened to an extended period of time as agreed to by the Owner and/or the Contractor.

1806S.5 Warranty Bonds

The Owner shall execute or require the Contractor to execute a Maintenance Bond or Bonds in a total sum of 10% of the final construction value, as agreed by the Director per Article 1806S.3 preceding Final Acceptance. The Maintenance Bond or Bonds will guarantee, the Work and warranties as specified in Sections 1806S.4. The Maintenance Bond or Bonds shall be made for the benefit of the City of Austin. The subdivision or development will not be accepted by the City of Austin until such bonds are furnished, approved and accepted by the Director.

The Surety Company underwriting the bonds shall be acceptable if it is included on the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States and is licensed to write such bonds in the State of Texas.

1806S.6 Warranty Bond Release

After the Letter of Conditional or Final Acceptance of the completed Work, including street and drainage work, is issued, the completed Work will be monitored by the Inspector. If failures, defects and/or damage appear in the Work, the Owner or the Contractor will be notified of the need for corrective action as required in Sections 1804S.2 and 1806S.4. Upon completion of one year warranty period for defective work caused by the development of the property with no outstanding warranty claims, the Owner or the Contractor and their bonding company will be provided a Letter of Bond Release by the City of Austin.

End

RELATED CROSS REFERENCE MATERIALS
Specification 1806S, "FINAL ACCEPTANCE"

City of Austin Standard Contract Documents, General Conditions Section 00700

Designation	Description
Article 1	Definitions
Article 5	Bonds and Insurance
Article 13	Tests and Inspections; Correction, Removal or Acceptance of Defective Work
Article 16	Claims and Dispute Resolution

The Code of the City of Austin

Designation	Description
Article 25-1-288	Inspection of Erosion & Sedimentation Controls; Tree Protection measures
Article 25-1-286	Inspection requests
Article 25-1-287	Inspection Record Cards
Article 25-1-289	Reinspection Fee
Article 15-12-138	Restoration of Work Site
Article 25-6-351	related to Sidewalk Locations/tree protection
Chapter 25, Sub. B	Tree and Natural Area Protection

City of Austin Environmental Criteria Manual

Designation	Description
Section 3	Tree and Natural Area Preservation
Appendix O	Landscape/Irrigation Notes

City of Austin Utility Criteria Manual

Designation	Description
Section 5.4.0	Restoration Requirements
Section 5.5.0	Pavement Repairs

City of Austin Standard Specifications

Designation	Description
Item No. 610	Preservation of Trees and Other Vegetation

SECTION 1807S
MISCELLANEOUS

1807S.1 Venue

In the event of any suit at law or in equity involving the Work, venue shall be in Travis County, Texas, and the laws of the State of Texas shall apply to the interpretation and enforcement of the Contract Documents.

1807S.2 Cumulative Remedies

The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights or remedies available to any or all of them which are otherwise imposed or available by laws or regulation, by special warranty or guarantees or by other provisions of the Contract Documents, and 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.

1807S.3 Severability

If any word, phrase, clause, sentence or provision of the Contract Documents, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision and such finding shall not effect the remaining provisions of the Contract Documents; this being the intent of the parties in entering into the Contract; and all provisions of the Contract Documents are declared to be severable for this purpose.

End

RELATED CROSS REFERENCE MATERIALS
Specification 1807S, "Miscellaneous"

City of Austin Standard Contract Documents, General Conditions Section 00700

Designation	Description
Article 17	Miscellaneous
Article 17.1	Venue
Article 17.2	Extent of Agreement
Article 17.3	Cumulative Remedies
Article 17.4	Severability

The following Special Provisions amend or supplement items of the City of Austin Construction Standards and shall govern and take precedence whenever in conflict with the Standard Specifications. All provisions which are not amended or supplemented remain in full force and effect.

GENERAL

ADD the following paragraph prior to the first sentence of all City of Austin Construction Standards:

"If the work specified in this section is not included as a specific bid item in the Bid Form, then this work shall be considered incidental and payment will be subsidiary to the cost of other bid items."

FLEXIBLE BASE

"Flexible Base will be measured at the depths specified for the area indicated, as measured from 12 inches behind the back of curb for the entire street length as shown in the plans, complete in place."

CONCRETE VALLEY GUTTERS

"Accepted work performed as prescribed by this item will be measured per each by street width in accordance with the details shown in the plans including the monolithic curb placed at the ends of the valley gutter."

MANHOLES

"All manholes with precast grade rings or brick adjustment courses may have a maximum vertical rise of 12 inches (the maximum includes the depth of the ring casting)."

TRENCH SAFETY SYSTEMS

"Trench Safety Systems shall be measured by linear foot of pipe through manholes and other appurtenances along the centerline of trench conforming to Contractor's Plans and Specifications. Carrier pipe lengths through boring encasement pipe shall not be measured for payment under Trench Safety Systems."

"Trench Safety Systems for pipes greater than or equal to 6-inches in diameter shall be measured by linear foot of pipe installed along the centerline of the trench. Trench safety systems required for pipes less than 6-inches in diameter will not be paid for directly but will be considered subsidiary to the cost of the pipe. Payment for Trench Safety Systems will be made based on the linear feet of pipe, 6-inch diameter and greater installed."

PIPE

"All labor, pipe and other materials that are not indicated on the plans and are required to reconnect or plug existing pipelines shall be considered subsidiary to the bid"

"**For fittings**; Only those specific items included as a separate pay item in the Bid Form will be paid for separately. In such cases, cast iron and ductile iron fittings of the class indicated furnished in accordance with these specifications will either be paid for at the unit price bid per each or at the unit price bid per ton, complete in place, as indicated in the Bid Form. If measured by the ton, then payment will be in accordance to scheduled weights for mechanical joint fittings furnished, including glands, bolts and gaskets, as published in the following standards:"

TREE PROTECTION

"During excavation, if major roots of trees are encountered, the contractor shall exercise caution and may use hand tools to excavate around tree roots and prune tops as instructed by the City of Austin".

BARRICADES, SIGNS AND TRAFFIC HANDLING

"Construction fences to separate work activities from pedestrians must be a minimum of six feet in height and shall be made of wood, orange polyurethane plastic or chain link fence material."

End

Special attention is directed to the following Special Specifications:

Number	Description	Date	Pages
Item No. SS-9001	Preservation and Restoration of Property Pins	06/15/95	1
Item No. SS-9010	Construction Staking	07/16/00	1
Item No. SS-9400	Water Quality or Wet Pond	06/25/00	1
Item No. SS-9900	Restoration	06/15/95	1

End

Special Specifications Item No. SS-9001
Preservation and Restoration of Property Pins

9001.1 Description

This item shall consist of the preservation of existing property pins and reference marks and restoration of all property pins removed, buried, exposed, destroyed or damaged during construction of this project prior to final acceptance by the OWNER.

9001.2 Requirements

Prior to the beginning of construction CONTRACTOR shall verify to his satisfaction that all property pins are installed in accordance with the approved final plat for the subdivision and/or easements related to the improvements. CONTRACTOR shall provide a letter to the OWNER stating that he has reviewed the site and all property pins exist. If pins are missing CONTRACTOR shall notify OWNER and OWNER shall have the pins restored prior to the start of construction.

During the course of construction CONTRACTOR shall make all efforts to preserve all engineering and surveyor's stakes, marks, property corners, etc. and in case of destruction , removal, burying, etc. shall replace them. Property pins buried or exposed due to mass grading shall be restored or replaced to new finished grade. All property pins shall be reset under the supervision of a Registered Professional Licensed Surveyor (RPLS) in accordance with the standards of practice and tolerances set forth in House Bill 663.13 adopted by the Texas Board of Professional Land Surveying (TBPLS).

Upon completion of the Project, CONTRACTOR shall provide to OWNER a certification, sealed and signed by a Registered Professional Licensed Surveyor, that all property pins within the limits of construction of the Project are in place. The final payment will not be released to the OWNER until all property corners in the Project have been verified to be in place to the satisfaction of the OWNERS representative.

9001.3 Measurement and Payment

Preservation and Restoration, complete in place, of all property pins damaged, destroyed, removed buried or exposed during construction of this project shall be considered subsidiary to the street and drainage improvements bid items and no measurement for additional payment shall be made.

END

9910.1 Description

This item shall consist of construction staking, necessary to perform all layout work and to transfer all controls for grades, lines, levels and measurements required to successfully carry out work under supervision of a Texas Registered Professional Land Surveyor.

9910.2 Requirements

The Contractor shall complete all the work in accordance with 1803S.8 and also fulfill the obligations identified as "Owner". CONTRACTOR shall provide grading/cut sheets prepared by a Professional Engineer or Registered Professional Land Surveyor, (as evidenced by their seal), either of whom is registered in the state of Texas.

All Work shall be done to the lines, grades and elevations indicated on the drawings. Information concerning basic horizontal and vertical control points can be obtained from the design surveyors, **Interstate Surveying, Inc.**. These points shall be used as datum under this Contract. All work to transfer any controls for grades, lines, levels, layout and measurements shall be performed by the CONTRACTOR. The CONTRACTOR shall place grade stakes and establish construction staking layout sheets. References to lines and grades as established by the CONTRACTOR's surveyor shall be in reference to these stake lines. The CONTRACTOR shall allow a minimum of five (5) days after submission to the CITY OF AUSTIN for approval of construction staking layout sheets. Construction layout sheets shall be in a format acceptable to the CITY OF AUSTIN. No Work shall be performed without the CITY OF AUSTIN approved construction staking layout sheets .

The CONTRACTOR shall provide a registered surveyor, an experienced instrument man, competent assistants, and such instruments, tools, stakes and other materials as required to complete the survey layout and measurement work to conform to the Texas Society of Professional Surveyors Manual of Practice for Land Surveying in the State of Texas, Category 5, Section 1-9 inclusive, and in a format to be established by the CITY OF AUSTIN.

The CONTRACTOR shall keep the OWNER and/or CITY OF AUSTIN informed, a reasonable time in advance of the times and places at which he wishes to do Work, so that any checking deemed necessary by the OWNER and/or CITY OF AUSTIN may be done with minimum inconvenience to the OWNER and/or CITY OF AUSTIN and minimum delay to the CONTRACTOR. Surveying will be coordinated between the OWNER and/or CITY OF AUSTIN and CONTRACTOR in a manner convenient to both.

Any Work done without being properly located may be ordered removed and replaced at the CONTRACTOR's expense.

The Engineer has furnished benchmarks as indicated on the construction Drawings. The CONTRACTOR shall carefully preserve all monuments, benchmarks, reference points, and stakes. In case of the destruction thereof, the CONTRACTOR shall be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks which must be removed or disturbed shall be protected until properly referenced for relocation. The CONTRACTOR shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.

The CONTRACTOR shall satisfy himself before commencing Work as to the meaning and correctness of all control stakes, marks, etc., and no claim will be entertained by the OWNER for or on account of any alleged inaccuracies, unless the CONTRACTOR notifies the OWNER thereof in writing before commencing work thereon.

9910.3 Measurement and Payment

Construction Staking shall be considered subsidiary to the bid and no measurement for additional payment shall be made.

END

9400.1 Description

This item shall consist of construction of the Water Quality or Wet Pond Facility and appurtenances as shown in the construction drawings C-1 through C-5, for "Paving and Drainage Improvements".

9400.2 References

In general, unless described otherwise in this specification, the materials, construction methods and testing required to accomplish the work for this item, except measurement and payment, shall be performed in accordance with the following specifications:

a. City of Austin Standard Technical Specifications
b. Special provisions to City of Austin Standard Specifications
c. SS-9001 Preservation and Restoration of Property Pins
d. SS-9900 Restoration

9400.3 Requirements

Prior to construction all erosion and sedimentation controls shall be installed. CONTRACTOR shall salvage and stockpile topsoil and remove all brush, unprotected trees, stumps, roots, vegetation, rubbish and other objectionable materials. CONTRACTOR shall coordinate grading of the pond with consideration to subcontractors and other utility construction. CONTRACTOR shall construct pond to the lines and grades shown on the Water Quality or Wet Pond Plan included in the "Paving and Drainage Improvements" construction drawings. Embankments in fill areas shall be accomplished by placing loose lifts not to exceed 8 inches and compacted in accordance with Specification No. 132, Embankment. Upon completion CONTRACTOR shall install permanent erosion controls in accordance with Item No. 604, Seeding for Erosion Control, as soon as practical to insure the timely acceptance of revegetation by the City of Austin, and Travis County.

9400.4 Measurement

Work and acceptable material for "Water Quality or Wet Pond West #2" will be measured per lump sum, except for the following items which will be measured as separate bid items:

1. Seeding for Erosion Control.
2. Silt Fence.
3. Rock Berms.
4. Wetlands Planting Plan

9400.5 Payment

This item will be paid for on a lump sum basis and shall be full compensation for all work herein described and as indicated in the drawings, including the furnishing of all materials, compaction, excavation, embankment, grading, splitter boxes, sand filtration system, gabions, riprap, piping(excluding stormsewer entering the splitter box), retaining walls, trickle channels, fencing, landscaping, equipment, tools, labor, water, borrow, and other incidentals and appurtenances as may be necessary to complete the work.

END

9900.1 Description

This item shall consist of the restoration, complete in place, to City standards of all improvements damaged during construction of this project which are not included as a contract pay item.

9900.2 Material and Construction Methods

The applicable items contained within this manual and the City of Austin Construction Standards shall govern the improvements to be restored.

9900.3 Measurement and Payment

Restoration, complete in place, of improvements, which are not included as a contract pay item, damaged during construction of this project shall be considered subsidiary to the bid and no measurement for additional payment shall be made.

END

THE ROAD DISTRICT MEETING ADJOURNED AT 1:40 P.M. ON TUESDAY, JANUARY 29, 2002.

THE FOREGOING MINUTES recorded on Minutes Pages **1** through **785**, inclusive had at a Special Session of Commissioners' Court of Williamson County, Texas, having been read are hereby approved this 5th day of February, 2002.

John C Doerfler

John C. Doerfler, County Judge

ATTEST: Nancy E. Rister, Clerk County Court & Ex-officio Clerk,
Commissioners' Court, Williamson County, Texas

By: Marilyn Carender
Deputy Clerk