

AGENDA ITEM 25

Consider approving General Conditions of Agreement, construction contract revisions for Williamson County Road Bond Projects.

Moved: **Judge Doerfler**

Seconded: **Commissioner Limmer**

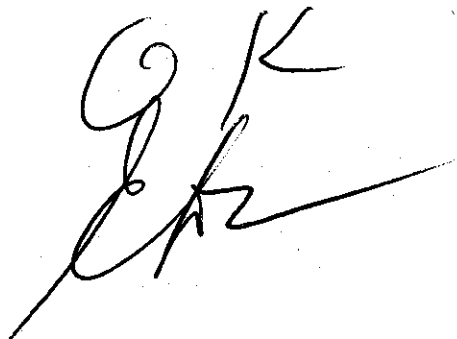
Motion: To approve General Conditions of Agreement, construction contract revisions for Williamson County Road Bond Projects.

Vote: 5 – 0

< Attachment >

March 8, 2004

Mr. Eugene D. Taylor
Williamson County Attorney's Office
405 Martin Luther King
Georgetown, Texas 78626



Subject: Construction Contract Revisions for the Williamson County Road Bond Projects

Dear Mr. Taylor:

I am attaching a revised copy of the General Conditions and Special Conditions for your review and approval. These documents were revised mainly to add language related to lien waivers. The other changes are minor. All the changes are in bold text highlighted by a vertical line on one side of the page. Following is a brief summary of the reasoning for the lien waiver addition.

Partial Lien Waivers will increase awareness of financial difficulties of contractors including nonpayment to subcontractors and suppliers. These changes will further protect Williamson County from the expensive defense of inappropriate liens and litigious claims from subcontractors/creditors.

The Final Waiver of Lien will also protect Williamson County from liens following acceptance and close out of the project by documenting and certifying payment to all subcontractors and suppliers used on the project. Final payment and payment of retention will not be made until this final waiver allowing Williamson County to maintain control of retained funds that may possibly be needed to satisfactorily complete the contract work and/or remedy substandard construction.

Please advise if you have any comments on the revisions so we can address them before we request a Commissioners Court agenda item to approve these contract changes. Please feel free to contact Paul Petrich at 447-5590 or myself should you have any questions.

Sincerely,


Michael J. Weaver,
Prime Strategies, Inc.

approved 4-13-04
John C. Daehler

PRIME
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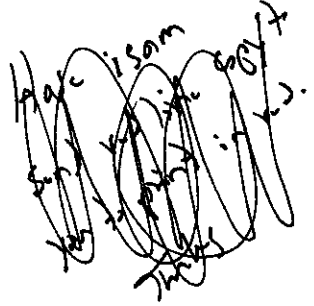
mail@primestrategies.net



Enclosure

cc: Richard Ridings (HNTB) w/o encl.
Paul Petrich (HNTB) w/o encl.
Joe England, P.E., County Engineer, w/o encl.

General Conditions of Agreement



1. Definition of Terms

1.01 County, Contractor, Construction Observer and Project Engineer

Williamson County, Texas (County), the Contractor, the Construction Observer (Observer) and the Project Engineer (Engineer) 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 Observer means the County's representative during construction. The term Project Engineer (Engineer) means the consulting engineering firm representing and assisting the County in the design, review, and coordination of the design and construction phases of the project. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the Engineer and the Contractor or between the Observer and the Contractor.

1.02 Contract Documents

The Contract Documents shall consist of the Special Conditions, Notice for Bidders, Proposal, signed Agreement, Performance and Payment Bonds, Special Bonds (when required), General Conditions of Agreement, Technical Specifications, Plans and all modifications thereof incorporated in any such documents before the execution of the agreement.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Agreement, Performance and Payment Bonds, Special Bonds (if any), Proposal, Special Conditions of Agreement, Technical Specifications, Plans, and General Conditions of Agreement.

1.03 Subcontractor

The term "Subcontractor", as employed herein, includes only those having a direct contract with the Contractor. It includes one who furnishes material worked to special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

1.04 Sub-Subcontractor

The term "Sub-Subcontractor" means one who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. It includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

1.05 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or to an officer of the corporation for whom it is intended, or if delivered to or sent by registered mail to the last business address known to him who gives the notice.

1.06 Work

The Contractor shall provide and pay for all materials, machinery, equipment, tools, superintendence, labor, services, 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 new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which, when so applied, have a well-known technical or trade meaning shall be held to refer to such recognized standards.

1.07 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 Engineer or the County to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under Section 2.13 "Changes and Alterations" herein.

1.08 Working Day

The term "Working Day" is defined as any day not including Saturdays, 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.

1.09 Calendar Day

The term "Calendar Day" is defined as any day of the week or month, no days being excepted.

1.10 Substantially Completed

The term "Substantially Completed" shall be understood to mean that the structure has been made suitable for use or occupancy or that the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

2. Responsibilities of the Engineer and the Contractor

2.01 County-Observer Relationship

The Observer will be the County's representative during construction. The duties, responsibilities and limitations of authority of the Observer as the County's representative during construction are as set forth in the Contract Documents and shall not be extended or limited without written consent of the County, the Observer and the Engineer. The Observer will advise and consult with the County, and all of the County's instructions to the Contractor shall be issued through the Observer.

2.02 Inspection by the Construction Observer

The Observer 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 Observer 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 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. Notwithstanding any other provision of this agreement or any other Contract Document, the Engineer and the Observer shall not be responsible or liable for any acts, errors, omissions or negligence of the Contractor, any Subcontractor or any of the Contractor's or Subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the work.

2.03 Payments for Work

The Observer shall review the Contractor's applications for payment and supporting data, determine the amount owed to the Contractor and recommend, in writing, payment to the Contractor in such amounts; such recommendation of payment to the Contractor constitutes a representation to the County of the Observer's professional judgment that the work has progressed to the point indicated to the best of his knowledge, information and belief, but such recommendation of an application for payment to the Contractor shall not be deemed as a representation by the Observer that the Observer has made any examination to determine how or for what purpose the Contractor has used the monies paid on account of the contract price.

2.04 Initial Determinations

The Observer initially shall determine all claims, disputes and other matters in question between the Contractor and the County relating to execution or progress of the work or interpretation of the Contract Documents. The Observer's decision shall be rendered in writing within a reasonable time, which shall not be construed to be less than ten (10) days.

2.05 Objections

In the event the Observer renders any decision which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this contract, either party may file with the Observer within thirty (30) days his written objection to the decision, and by such action may reserve the right to submit the question so raised to litigation as hereinafter provided.

2.06 Lines and Grades

Unless otherwise specified, all lines and grades shall be furnished by the Contractor at his own expense. Whenever necessary, construction work shall be suspended to permit performance of this work, but such suspension will be as brief as practicable and the Contractor shall be allowed no extra compensation therefor.

2.07 Contractor's Duty and Superintendence

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 to supervise and direct the work. 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 County and the Observer 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 and safety of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder. Engineering construction drawings and specifications, as well as any additional information concerning the work to be performed passing from or through the Observer, shall not be interpreted as requiring or allowing the Contractor to deviate from the plans and specifications; the intent of such drawings, specifications and any other such information being to define with specificity the agreement of the parties as to the work the Contractor is to perform.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the Observer, the Engineer or the County, 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 methods, 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 the 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 not limited to 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 Observer, the Engineer, or any of their representatives, whether called to the Contractor's attention or not, shall in no way relieve the Contractor from his responsibility to complete all work in accordance with said plans and specifications.

2.08 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.

2.09 Character of Workers

The Contractor agrees to employ only orderly and competent workers, skillful in the performance of the type of work required under this contract, to do the work; and agrees that whenever the Observer shall inform him in writing that any workers on the work are, in his opinion, incompetent, unfaithful or disorderly, or refuse instructions from the Observer in the absence of the Superintendent, such worker shall be discharged from the work and shall not again be employed on the work without the Observer's written consent. No illegal alien may be employed by any Contractor for work on this project, and a penalty of \$500.00 per day will be assessed for each day and for each illegal alien who works for the Contractor at this project.

2.10 Shop Drawings

The Contractor shall submit to the Engineer, with such promptness as to cause no delay in his own work or in that of any other Contractor, four (4) checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the Engineer shall pass upon them with reasonable promptness, making desired corrections. The Contractor may not submit more than four shop drawing plans for review in any one week. The Engineer shall return the shop drawings to the contractor within three weeks of his having received them, with appropriate comments. The Contractor shall make any corrections required by the Engineer, file with him two (2) corrected copies and furnish such other copies as may be needed. The Engineer's acceptance 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 Engineer's attention to such deviations 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. Any shop drawings which are required for temporary supports must be signed and sealed by an Engineer registered in the State of Texas.

Such review by the Engineer shall be for the sole purpose of determining the sufficiency of said shop 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 Engineer 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 the Contractor's performance hereunder.

2.11 Preliminary Approval

The Observer 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 Observer 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 without limitation, the obligation to at once tear out, remove and properly replace any defective work or material at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the Observer shall, upon request of the Contractor, inspect and accept or reject any material furnished, and in the event the material has been once accepted by the Observer, such acceptance shall be binding on the County 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 Observer, prior to final acceptance, and if found not in accordance with the plans and/or 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 County; 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 Observer.

2.12 Defects and Their Remedies

It is further agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the Observer as

unsuitable or not in conformity with the plans, specifications, or the intent thereof, the Contractor shall, after receipt of written notice thereof from the Observer, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.

2.13 Changes and Alterations

The Contractor further agrees that the County may make such changes and alterations as the County 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 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 and 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 the event the County makes such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the County shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change, due to actual expense incurred in preparation for the work as originally planned.

3. General Obligations and Responsibilities

3.01 Keeping of Plans and Specifications Accessible

The Contractor shall keep one (1) copy of the plans and specifications constantly accessible on the work, with the latest revisions noted thereon. The Contractor shall give the work his constant attention to facilitate the progress thereof and shall cooperate with the Construction Observer in every way possible. The Contractor shall designate, to the Construction Observer in writing, the name of a Superintendent, employed by the firm, regardless of how much of the work may be sublet. The Superintendent will be available at all time. In the event a competent superintendent is not available, the Construction Observer may suspend work until one is available.

3.02 Ownership of Drawings

All drawings, specifications and copies thereof furnished by the Engineer shall not be reused on other 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, drawings, specifications and copies thereof are the property of the County.

3.03 Adequacy of Design

It is understood that the County believes it has employed competent engineers and designers. It is therefore agreed that the County and Engineer shall be responsible for the adequacy of the design, sufficiency of the Contract Documents, the safety of the structure and the practicability of the operations of the completed project provided that the Contractor has complied with the requirements of the said Contract Documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the County. The burden of proof of such compliance shall be upon the Contractor to show that he has complied with the said requirements of the Contract Documents, approved modifications thereof, and all approved additions and alterations thereto.

3.04 Contractor's Responsibility for Work

Until final written acceptance of the project by the Observer, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non execution of the work.

In case of suspension of work for any cause, the Contractor shall be responsible for the preservation of all materials. He shall provide suitable drainage of the roadway in good and passable condition until final acceptance, except as outlined below for opening the roadway to traffic.

Whenever in the opinion of the Observer, any roadway or portion thereof is in suitable condition for travel, it shall be opened to traffic, as may be directed, and such opening shall not be held to be in any way the final acceptance of the roadway or any part of it or as a waiver of any of the provisions of the contract. Where it is considered by the Observer to be in the public interest and so ordered in writing by him, any substantially completed roadway or portion thereof may be opened to traffic as follows:

- (1) When required by plans, job sequence or the approved traffic control plan, with the County accepting responsibility for maintaining that portion of the roadway opened to traffic.
- (2) When work is suspended for a period of time at the convenience of the County, the County will assume the responsibility for maintaining the entire roadway during the period of suspension; or
- (3) When the roadway or portion thereof is opened to traffic during construction operations at the convenience of the County, the County will assume responsibility for the maintenance of the traveled way and shoulders during the period in which it is opened to traffic.

The County in assuming responsibility for maintenance under this provision may require the work to be done in accordance to article 1.07, "Extra Work".

Except for damage by the Contractor or that caused by the Contractor's operations, the Contractor will not be responsible for repair of damage to existing facilities or completed and accepted work such as guard fence, bridge wings, and railing, illumination assemblies, underpass structure, traffic barriers, delineator assemblies, signs, sign bridges, changeable message signs, vehicle impact attenuators (crash cushions and guardrail end treatments) and traffic signals, where such damage is caused by (a) motor-vehicle, seacraft, aircraft or railroad-train collision: (b) vandalism: (c) Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of natures: or (d) Acts of Governmental Authorities.

Upon completion of all work provided for in the contract for any individual limits, control or project, the Observer may make an inspection, and if the work is found to be satisfactory, the Contractor will be released from further maintenance on that portion of the work, except for damage caused by the Contractor or his operations. Such partial acceptance will be made in writing and shall in no way void or alter any terms of the contract. Other specific units of the project will be accepted on an individual basis when shown on the plans or as approved by the Observer.

3.05 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 all 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, ladders, bridges, gangplanks, and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility of the Contractor, acting at his discretion as an independent contractor.

In the event there is an accident involving injury to any individual on or near the work, the Contractor shall immediately notify the County and the Observer 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 of medical reports and other documentation that defines the event. Copies of such documentation shall be provided to the County and the Observer for their records.

3.06 Performance and Payment Bonds

Unless otherwise specified, it is further agreed by the parties to the contract that the Contractor will execute separate performance and payment bonds, each in the sum of one hundred (100%) percent of the total contract price, on standard forms for this purpose, guaranteeing faithful performance of the work and the fulfillment of any guarantee required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the contract. It is agreed that the contract shall not be in effect until such performance and payment bonds are furnished and approved by the County.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the price bid by the Contractor for the work under this contract, and no extra payment for such bonds will be made by the County.

Unless otherwise approved in writing by the County 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.

3.07 Protection of Adjoining Property

The said 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 County, the Observer and the Engineer 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 regardless of whether or not it is caused in part by a party indemnified hereunder, but any such indemnity shall not apply to any claim of any kind arising solely out of the existence or character of the work.

3.08 Protection Against Claims of Subcontractors, Laborers, Materialmen and Furnishers of Machinery, Equipment and Supplies

The Contractor agrees that he will indemnify and save the County, the Observer and the Engineer harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workers, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the County, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails to do so, then the County may either pay directly any unpaid bills of which the County has written notice, or may withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims. When satisfactory evidence is furnished that all liabilities have been fully discharged, payments to the Contractor shall be resumed in full in

accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligation upon the County by either the Contractor or his surety.

3.09 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 letter 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 County, the Observer and the Engineer harmless from any loss on account thereof, except that the County 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 or manufacturers is specified or required by the County; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then the Contractor shall indemnify and save the County harmless from any loss on account thereof. If the material or process specified or required by the County is known by the Contractor to be an infringement, the Contractor shall be responsible for such loss unless he promptly gives such information to the County.

3.10 Laws and Ordinances

The Contractor shall at all times observe and comply with all federal, state and local laws, ordinance and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the County, the Observer and the Engineer against any claim arising from the violation of any such laws, ordinances, and regulations whether by the Contractor or his employees, except where such violations are called for by the provisions of the Contract Documents. If the Contractor observes that the plans and specifications are at variance therewith, he shall promptly notify the Observer in writing, and any necessary changes shall be prepared as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Observer, he shall bear all costs arising therefrom.

In case the County is a body politic and corporate, the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the County may enter into contract, shall be controlling and shall be considered as part of this contract to the same effect as though embodied herein.

3.11 Assignment and Subletting

The Contractor further agrees that he will retain personal control and will give his personal attention to the fulfillment of this contract and that he will not assign by Power of Attorney or otherwise, or sublet said contract without the written consent of the Observer, and that no part or feature of the work will be sublet to anyone objectionable to the Observer or the County. The Contractor further agrees that the subletting of any portion or feature of the

work, or materials required in the performance of this contract, shall not relieve the Contractor from his full obligations to the County as provided by this agreement.

3.12 Indemnification

The Contractor shall defend, indemnify and hold harmless the County, the Observer and the Engineer and their respective officers, agents and employees, from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, arising out of or resulting from the performance of the work, provided that any such damage, claim, loss, demand, suit, judgment, cost or expense:

1. is attributable to bodily injury, sickness, disease or death of any person including Contractor's employees and any Subcontractor's employees and any Sub-subcontractor's employees, or to injury to or destruction of tangible property including Contractor's property (other than the work itself) and the property of any Subcontractor or Sub-subcontractor including the loss of use resulting therefrom; and,
2. is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, any Sub-subcontractor or anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The obligation of the Contractor under this paragraph shall not extend to the liability of the Observer, the Engineer, their agents or employees arising out of the preparation of maps, plans, reports, surveys, change orders, designs or specifications, or the approval of maps, plans, reports, surveys, change orders, designs or specifications or the issuance of or the failure to give directions or instructions by the Observer, his agents or employees, provided such is the sole cause of the injury or damage.

In any and all claims against the County, the Observer or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 3.12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.13 Insurance

The Contractor at his own expense shall purchase, maintain and keep in force such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- (1) Workman's compensation claims, disability benefits and other similar employee benefit acts;
- (2) Claims for damages because of body injury, occupational sickness or disease, or death of his employees, and claims insured by usual bodily injury liability coverages;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual bodily injury liability coverages; and
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

CERTIFICATE OF INSURANCE. Before commencing any of the work, Contractor shall file with the County valid Certificates of Insurance acceptable to the County and the Observer. Such Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County.

The Contractor shall also file with the County valid Certificates of Insurance covering all sub-contractors.

3.14 Final Clean-up

Upon the completion of the work and before acceptance and final payment will be made, the Contractor shall clean and remove from the site of the work all surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition at least equal to that which originally existed. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Observer.

In the event the Contractor fails or refuses to clean and remove surplus materials and debris as above provided, the County or the Observer may do so, or cause same to be done, at the Contractor's expense, and the reasonable cost thereof shall be deducted from the final payment.

4. 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 County is having other work done, either by contract or by his own force, the Observer may direct the time and manner of constructing the work done under this contract, so that conflict will be avoided and the construction of the various works being done for the County shall be harmonized.

The Contractor shall submit, at such times as may reasonably be requested by the Observer, 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 County, the Observer or the Engineer, or of any employee of either, or by other contractors employed by the County, 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 Observer 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 Observer; provided, however, that the Contractor shall give the Observer prompt notice in writing of the cause of such delay. Adverse weather conditions will not be justification for extension of time on "Calendar Days" contracts.

4.03 Hindrances and Delays

No claims shall be made by the Contractor for damages resulting from hindrances or delays from any cause (except where the work is stopped by order of and for the convenience of the County) during the progress of any portion of the work embraced in this contract. In case said work shall be stopped by the act of the County, then such expense as in the judgment of the Observer is caused by such stoppage of said work shall be paid by the County to the Contractor.

5. 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 estimate, 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 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 differences which may be found between the quantities of work actually done, the material actually 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-five percent (25%) more than, or twenty-five percent (25%) less than the estimated or contemplated quantity for such items, then either party to this agreement, upon demand, shall be entitled to revised consideration upon the portion of the work above or below twenty-five 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 contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this agreement, as provided under Section 6.03 "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 on the delivery of all material embraced in this contract in full conformity with the specifications and stipulations herein contained, the County 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 thereof in the manner and according to this agreement.

5.04 Partial Payments

On or before the ~~5th day~~ first wednesday of each month, the Contractor shall submit to the Observer a statement showing the total value of the work performed up to and including the last day of the preceding month. The statement shall also include the value of all sound

materials delivered on the job site and to be included in the work and all partially completed work whether bid as a lump sum or a unit item which in the opinion of the Observer is acceptable. The Observer shall examine and approve or modify and approve such statement.

The County shall then pay the Contractor on or before the 25th day of the current month the total amount of the approved 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 all further sums that may be retained by the County under the terms of this agreement. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, then the County may, upon written recommendation of the Observer, pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor, at the County's option, may be relieved of the obligation to fully complete the work and, thereupon, the Contractor shall receive payment of the balance due him under the contract subject only to the conditions stated under Section 5.07 "Final Payment".

Partial Waiver of Lien

A Partial Waiver of Lien for the full amount of the payment is required from the submitting Contractor with each pay request.

Waivers for subcontractors and suppliers are not required with the first payment package, unless the Contractor is requesting more than 50% of the total contract value. Each subsequent payment must include Partial Waivers of Lien from each subcontractor and supplier included in the immediately preceding payment package in the full amount of that prior payment.

All waivers must bear the signature of the president or vice-president and secretary or assistant secretary. If waiver is for a corporation, name should be used, corporate seal affixed and title of officer signing waiver should be set forth. If waiver is for a partnership, partner should sign and designate himself as partner.

The Engineer will provide a copy of the Partial Waiver of Lien form to be used to the Contractor.

5.05 Final Inspection

The Contractor shall notify the Observer when, in the Contractor's opinion, the contract is "substantially completed" and when so notifying the Observer, the Contractor shall furnish to the Observer in writing a detailed list of unfinished work, the punch list. The Observer will review the Contractor's list of unfinished work and will add thereto such items as the Contractor has failed to include. The "substantial completion" of the structure or facility shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the structure or facility in accordance with the Contract Documents.

5.06 Final Completion and Acceptance

Within ten (10) days after the Contractor has given the Observer written notice that the work for the punch list items has been completed, ~~or substantially completed~~, the Observer and the County shall inspect the work and within said time, if the work is found to be completed in accordance with the Contact Documents, the Observer shall issue to the County and the Contractor his Certificate of Completion, and thereupon it shall be the duty of the County to issue a Certificate of Acceptance to the Contractor or to advise the Contractor in writing of the reason for non-acceptance.

5.07 Final Payment

Upon the issuance of the Certificate of Completion, the Observer shall proceed to make final measurements and prepare final statement for the value of all work performed and materials furnished under the terms of the agreement and shall certify same to the County, who shall pay to the Contractor on or after the 30th day, and before the 35th day after the date of the Certificate of Completion, the balance due the Contractor under the terms of this contract; and said payment shall become due in any event upon said performance by the Contractor. Neither the Certificate of Acceptance nor the final payment, nor any provision in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required.

Final Waiver of Lien

Upon receipt of the Contractor's Certificate of Completion from the County, the Contractor shall submit a Final Waiver of Lien. A Final Waiver of Lien must also be submitted from all subcontractors and suppliers. Final payment will not become due prior to the receipt of the Final Waivers of Lien.

Signatures and seals for the Final Waiver of Lien shall be as referenced in General Condition 5.04 Partial Waiver of Lien.

The Engineer will provide a copy of the Final Waiver of Lien form to be used to the Contractor.

5.08 Payments Withheld

The County 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 or other obligations hereunder not done.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.

- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to the County or another contractor's work, material or equipment.
- (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.
- (g) Other causes affecting the performance of the contract.

When the above grounds are removed or the Contractor provides a surety bond satisfactory to the County, which will protect the County in the amount withheld, payment shall be made for amounts withheld because of them.

5.09 Delayed Payments

Should the County fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, then the County shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six percent (6%) per annum, unless otherwise specified, from date due as provided under Section 5.04 "Partial Payments" and Section 5.07 "Final Payment", until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment. It is expressly agreed that delay by the County in making payment to the Contractor of the sum named in any partial or final statement shall not constitute a breach of this contract on the part of the County nor an abandonment thereof nor shall it to any extent or for any time relieve the Contractor of his obligations to fully and completely perform hereunder.

Alternative: but the right is expressly reserved to the Contractor in the event payments be not promptly made, as provided under "Partial Payments", to at any time thereafter treat the contract as abandoned by the County and recover compensation, as provided under "Abandonment of Contract", unless such payments are withheld in accordance with the provisions of "Payments Withheld".

6. Extra Work and Claims

6.01 Change Orders

Without invalidating this agreement, the County 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 Observer for execution by the County 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 Observer and executed by the County, the Observer may in writing instruct the Contractor to proceed with the work as set forth in the Change Order and the Contractor may make claim against the County for Extra Work involved therein, as hereinafter provided.

6.02 Minor Changes

The Observer 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 Observer involves extra work and entitles him to an increase in the contract price, the Contractor shall make written request to the Observer for a written Field Order.

In such case, the Contractor by copy of his communication to the Observer or otherwise in writing shall advise the County of his request to the Observer for a written Field Order and that 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 of 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 the unit prices upon which this contract was bid to the extent such work can be fairly classified within the various work item descriptions and for work items that cannot be so classified by one or more of the following methods:

Method (A)

By agreed unit prices; or

Method (B)

By agreed lump sum; or

Method (C)

If neither Method (A) nor Method (B) is agreed upon before the extra work is commenced, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said extra work is performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost

to the Contractor of all workmen, such as foremen, 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 equipment, for the time actually employed or used on such extra work, plus actual transportation charges necessarily incurred, together 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 rateable proportion of premiums on performance and payment bonds and maintenance bonds, public liability and property damage and workers' compensation, and all other insurance as may be required by any law or ordinance, or directed or agreed to by the County. The Observer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Observer. The Observer or the County 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 Associated 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 superintendence 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 Observer. 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 Observer 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 therefor, and the Observer 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).

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 Observer within thirty (30) days after the Observer has given any directions, order or instruction to which the Contractor desires to take exception. The Observer shall reply within thirty (30) days to such written exceptions by the Contractor and render his final decision in writing. In case the Contractor should appeal from the Observer's decision, the Contractor may file with the County his objection. It is further agreed that final acceptance of the work by the County and the acceptance by the

Contractor of the final payment shall be a bar to any claims by either party, except claims by the County for defective work or enforcement of warranties and except as noted otherwise in the Contract Documents.

6.05 Continuing Performance

The Contractor shall continue performance of the contract during all disputes or disagreements with the County. The production or delivery of goods, the furnishing of services and the construction of projects or facilities shall not be delayed, prejudiced or postponed pending resolution of any disputes or disagreements, except as the County may otherwise agree in writing.

7. Abandonment of Contract

7.01 Abandonment by Contractor

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the County, the Observer or the Engineer, or if the Contractor fails to comply with the orders of the Observer when such orders are consistent with the Contract Documents, then and in that case, where performance and payment bonds exist, the sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment, the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the County or the surety on the performance bond, or another contractor in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with extra work, where credit shall be allowed as provided for under Section 6, Extra Work and Claims, herein), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such notice, then the County may provide for completion of the work in either of the following elective manners:

- (1) The County may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as the County may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to the Contractor, and expense so charged shall be deducted and paid by the County out of such monies as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this agreement. In case such expense is

less than the sum which would have been payable under this contract if the same had been completed by the Contractor, then the Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract if the same had been completed by the Contractor, then the Contractor and/or his surety shall pay the amount of such excess to the County, or

- (2) The County, under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the area of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case there is any increase in cost to the County under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete any such contract prove to be less than would have been the cost to complete under this contract, the Contractor and/or his surety shall be credited therewith.

When the work shall have been substantially completed, the Contractor and his surety shall be so notified and Certificates of Completion and Acceptance, as provided in Section 5.06 hereinabove, shall be issued. A complete itemized statement of the contract accounts, certified by the Observer as being correct, shall then be prepared and delivered to the Contractor and his surety, whereupon the Contractor and/or his surety, or the County as the case may be, shall pay the balance due as reflected by said statement within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the County had the work been completed by the Contractor under the terms of this contract, or when the Contractor and/or his surety shall pay the balance shown to be due by them to the County, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his surety. Should the cost to complete the work exceed the contract price, and the Contractor and/or his surety fail to pay the amount due the County within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his surety at the respective addresses designated in this contract; provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his surety subject only to the duty of the County to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the County may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his surety. Such sale may be made at either public or private sale, with or without notice, as the County may elect. The County shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the Contractor or his surety, to

their proper owners. The books on all operations provided herein shall be opened to the Contractor and his surety.

7.02 Abandonment by the County

In case the County shall fail to comply with the terms of this contract, and should fail to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the Contractor and have not been wrought into the work. Thereupon, the Observer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the County and all other sums that may be retained by the County under the terms of this agreement and shall certify same to the County who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor the balance shown by said final statement as due the Contractor, under the terms of this agreement.

8. Subcontractors

8.01 Award of Subcontracts for Portions of the Work

Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the contract, shall furnish to the Observer in writing for acceptance by the County and the Engineer a list of the names of the Subcontractors proposed for the principal portions of the work. The Observer shall promptly notify the Contractor in writing if either the County or the Engineer, after due investigation, has objection to any Subcontractor on such list and does not accept him. Failure of the County or the Engineer to make objection promptly to any Subcontractor on the list shall constitute acceptance of such Subcontractor.

The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) proposed for portions of the work designated in the Contract Documents or in the Instructions to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the work who has been rejected by the County and the Engineer. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection.

If the County or the Engineer refuses to accept any Subcontractor or person or organization on a list submitted by the Contractor in response to the requirements of the Contract Documents or the Instructions to Bidders, the Contractor shall submit an acceptable substitute and the contract amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the contract amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or lists of names as required by the Contract Documents or the Instructions to Bidders.

If the County or the Engineer requires a change of any proposed Subcontractor or person or organization previously accepted by them, the contract amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate change order shall be issued.

The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the County and the Engineer, unless the substitution is acceptable to the County and the Engineer.

8.02 Subcontractual Relations

All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

- (1) preserve and protect the rights of the County, the Observer and the Engineer under the contract with respect to the work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- (2) require that such work be performed in accordance with the requirements of the Contract Documents;
- (3) require submission to the Contractor of the applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with this contract;
- (4) require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the County;
- (5) obligate each subcontractor specifically to consent to the provisions of this section.

A copy of all such subcontract agreements shall be filed by the Contractor with the Observer before the Subcontractor shall be allowed to commence work.

8.03 Payments to Subcontractors

The Contractor shall pay each Subcontractor, upon receipt of payment from the County, an amount directly based upon the value of the work performed and allowed to the Contractor on account of such Subcontractor's work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to his subcontractors.

If the Observer fails to approve a payment for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay the Subcontractor on demand made at any time after the Certificate for Payment should otherwise have been issued, for his work to the extent completed, less the retained percentage.

The Observer may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

Neither the County, the Observer nor the Engineer shall have any obligation to pay or to see to the payment of any monies to such Subcontractor except as may otherwise be required.

9. Protection of Persons and Property

9.01 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

9.02 Safety of Persons and Property

The Contractor shall take 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 the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- (3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

All blasting, including methods of storing and handling explosives and highly inflammable materials, shall conform to federal, state, local laws and ordinances.

The following is a list of requirements in addition to federal, state, and local laws and ordinances:

1. The Contractor shall furnish the County with a Certificate of Blasting Insurance in the amount of \$300,000.00 for each contract, at least twenty-four (24) hours prior to using explosives. A blasting permit must be obtained from the appropriate jurisdictions at least five (5) days prior to use of explosives. If blasting is covered under the Contractor's General Insurance Certificate for each contract, a separate blasting certificate will not be required.
2. The following public utility companies and departments will be notified by the Contractor, on every occasion, at least twenty-four (24) hours prior to the use of explosives: Water and Wastewater, Electric, Gas, Telephone and the County Engineering Department.
3. Explosive materials to be used shall be limited to blasting agents and dynamite, unless prior approval of other materials is obtained in writing from the Engineering Department.
4. During blasting, all reasonable precautions shall be taken to protect pedestrians, passing vehicles, and public or private property. Blasting mats or protective cover shall be used when required by the Observer, the permit, or by safe blasting practices.
5. All explosives shall be stored in accordance with all applicable laws and codes.
6. The Director of Engineering or his representative shall have the right to limit the use of explosives and/or blasting methods which in his opinion are dangerous to the public or nearby property of any kind.

7. The Contractor, at his expense, shall promptly repair or replace all items known to be damaged as a result of blasting. All claims of damage shall be investigated by the County or by consulting firms approved by the County.
8. The Contractor shall maintain accurate records throughout the blasting operations showing the type explosive used, number of holes, pounds per hole, depth of hole, total pounds per shot, delays used, date and time of blast and initials of the Observer. The Contractor is fully responsible for all claims resulting from his blasting operation.

All damage or loss to any property referred to in this article caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable solely to faulty drawings or specifications or solely to the acts or omissions of the County or the Engineer or anyone employed by either of them, and not attributable in any degree to the fault or negligence of the Contractor.

The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the County and the Engineer.

9.03 Location and Protection of Utilities

Notwithstanding any other provision of this contract, the Contractor shall be 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 and to mark, uncover or otherwise protect all such lines in the construction zone and any of the Contractor's work or storage areas. Upon request, the County shall provide such information as it has about the location and grade of water, sewer, gas, and telephone and electric lines and other utilities in the work area but such information shall not relieve or be deemed to be in satisfaction of the Contractor's obligation hereunder, which shall be primary and nondelegable. Any such lines damaged by the Contractor's operations shall be immediately repaired by the Contractor or he shall cause such damage to be repaired at his expense.

10. Termination

10.01-Termination by the County for Cause

Conditions for termination are as follows:

- A. Without prejudice to any other legal or equitable right or remedy which it would otherwise possess hereunder or as a matter of law, the County shall be entitled by giving Contractor five (5) days prior written notice to terminate this contract in its entirety at any time:
1. If the Contractor becomes insolvent, voluntarily files for bankruptcy, is the subject of an involuntary petition for bankruptcy commenced by its creditors, makes a general assignment for the benefit of creditors or becomes the subject of any other proceeding commenced under any statute or law for the relief of debtors; or
 2. If a receiver trustee or liquidator of any of the property or income of Contractor shall be appointed; or
 3. If Contractor:
 1. Shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; and shall fail to take such steps to remedy such default within ten (10) days after written notice thereof from the County; or
 4. If Contractor:
 1. Shall fail for any reason other than the failure by the County to make payments called upon when due, and
 2. Shall fail to take such steps to remedy such default within ten (10) days after written notice thereof from the County; or
 5. If Contractor:
 1. Shall commit a substantial default under any of the terms, provisions, conditions, or covenants contained herein; or
 2. Shall fail to take such steps to remedy such default within ten (10) days after written notice thereof from the County; or
 3. In the event of such termination, Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the County may have against Contractor under other provisions of this agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.
- B. If this Contract is terminated for cause, the County shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the County shall be entitled to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of Contractor under its subcontracts, purchase orders, or otherwise; and Contractor shall promptly assign such rights, options and privileges to the County. If the County elects to complete the work itself or by others, pursuant to the foregoing, the Contractor will reimburse the County for all costs incurred by the County (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by Contractor which fails to meet contract requirements.

Nothing contained in the preceding sections shall require the County to pay for any work which is unsatisfactory as determined by the Director or which is not submitted in compliance with the terms of this Contract. The County shall not be required to make any payments to Contractor when Contractor is in default under this Contract, nor shall this Article constitute a waiver of any right, at law and at equity, which the County may have if Contractor is in default, including the right to bring legal action for damages or to force specific performance of this Contract.

10.02-Termination for Convenience

In connection with the work outlined in the Contract, it is agreed and fully understood by Contractor, that the County may cancel or indefinitely suspend further work hereunder or terminate this Contract either for cause as outlined above, or for the convenience of the County, upon fifteen (15) days written notice to Contractor, with the understanding that immediately upon receipt of said notice all work and labor being performed under this Contract shall cease. Contractor shall invoice the County for all work satisfactorily completed and shall be compensated in accordance with the terms of this Contract for work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits.

After receipt of a notice of termination and acceptance otherwise directed by the County, Contractor shall, in good faith, and to the best of his ability, do all things necessary, in the light of such notice and of such request and implementation thereof as the County may make to assure the efficient proper closeout of the terminated work (including the protection of County property). Among other things, the Contractor shall, except as otherwise directed or approved by the County:

1. Stop the work on the date and to the extent specified in the notice of termination.
2. Place no further orders for subcontracts for services, equipment or materials, except as may be necessary for completion of such portion of the work as is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination.
4. Assign to the County, in the manner and to the extent directed by it, all right title, and interest of Contractor under the orders or subcontracts so terminated; in which case, the County shall have the right to settle or pay any or all claims arising out of such termination of such orders and/or subcontracts.
5. With the approval of the County, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts.
6. Deliver to the County, all documents, property, plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of the County upon termination of this Contract, in a reasonably organized form, without restriction on future use. Should the County subsequently contract with a new contractor for continuation of services under this Project, Contractor shall cooperate in providing information.

7. In the event of such termination, no cost incurred after the effective date of the notice of termination shall be treated as reimbursable costs unless it relates to carrying out the unterminated portion or taking closeout measures.

SPECIAL CONDITIONS**I. County:**

Williamson County, a government corporation, organized and existing under the laws of the State of Texas, acting through its respective executive officer, or his/her designee, agents or employees, whom Contractor has entered into the Agreement and for whom the work is to be performed, is referred to as "County". The County shall be contacted through its Purchasing Department for Contract related subjects and through the County Engineer's office for design and construction related subjects:

Purchasing Department
Williamson County
710 Main Street, Suite 303
Georgetown, TX 78626

County Engineer
Williamson County
1900 Inner Loop
Georgetown, TX 78626

The County may elect to use any combination of bid items in this proposal for the completion of the project. However, The successful bidder; however, will be determined using all the items listed.

The Contractor will then have full responsibility for proper construction as required to obtain final Certificate of Acceptance from the County Engineer.

The successful bidder shall enter into a contract with the County to perform the specified work.

II. The Project Engineer:

_____ is the County's design professional, who shall provide professional engineering services as defined in the Texas Government Code Chapter 2254, Subchapter A, and referred to as the "Project Engineer" in the "General Conditions of Agreement" contained in the Contract Documents. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the Project Engineer and the Contractor.

III. The Construction Observer:

_____ is the "Construction Observer" referred to herein and in the Contract Documents. The Construction Observer will be responsible for observing the construction of the project including, but not limited to, observation of work, daily reports, quantity verification, record drawings, Quality Assurance material sampling and testing, and Contractor payments.

IV. Insurance:

The Contractor will carry Workmen's Compensation Insurance, Public Liability and Property Damage Insurance, and Automobile Insurance sufficient to provide adequate protection against damage claims which may arise from operations under this Contract in compliance with the following:

Contractors Insurance: Without limiting any of the other obligations or liabilities of the Contractor, during the term of the contract, the Contractor and each subcontractor, at their own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the

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County. Certificates of each policy shall be delivered to the County before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the County. Prior to the effective date of cancellation, Contractor must deliver to the County a replacement certificate of insurance or proof of reinstatement. A model Certificate of Insurance is illustrated herein. Coverage shall be of the following types and not less than the specified amounts:

- (a) workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the County; employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease--each employee, \$500,000 disease-policy limit.
- (b) commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or subcontractor's) liability for injury to or death of County's employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$1,000,000
Products--Components/ Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$600,000
Each Occurrence	\$600,000
Fire Damage (any one fire)	\$50,000
Medical Expense (any one person)	\$5,000

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with County.

- (c) comprehensive automobile and truck liability insurance, covering owned, hired and **non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident) and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.**

"Umbrella" Liability Insurance: The Contractor shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring Contractor for an amount of not less than \$1,000,000 **per occurrence combined** limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required herein above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. County and Project Engineer shall be named as additional insured.

Policy Endorsements and Special Conditions:

- (a) Each insurance policy to be furnished by Contractor shall include the following conditions by endorsement to the policy:

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- (1) name the County, the Manager, the Manager's agents, the Construction Observer and the Project Engineer as an additional insured as to all applicable coverage;
 - (2) each policy shall require that 30 days prior to the cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to County by certified mail.
 - (3) the term "County" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the County and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the County;
 - (4) the "Manager" represents and assists the County in the planning, design, review, and coordination of the design and construction phases of the project.
 - (5) the policy phrase "other insurance" shall not apply to the County where the County is an additional insured on the policy; and
 - (6) all provisions of the contract concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- (b) Insurance furnished by the Contractor shall be in accordance with the following requirements:
- (1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Contractor. The County's decision thereon shall be final;
 - (2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
 - (3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.
- (c) Contractor agrees to the following:
- (1) Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the County, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
 - (2) companies issuing the insurance policies and Contractor shall have no recourse against the County for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor;
 - (3) approval, disapproval or failure to act by the County regarding any insurance supplied by the Contractor (or any subcontractors) shall not relieve the Contractor of full responsibility or liability for damages and

accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Contractor from liability; and

- (4) no special payments shall be made for any insurance that the Contractor and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

The Contractor shall furnish the County with satisfactory proof that he has provided adequate insurance coverage in amounts and by approved carriers as required by these contract documents.

V. **"As-Built" Drawings:**

The Contractor shall mark all changes and revisions on all of his copies of the working drawings during the course of the Project as they occur. Upon completion of the Project and prior to final acceptance and payment, the Contractor shall submit to the Construction Observer one set of his working drawings, dated and signed by himself and his project superintendent and labeled as "As-Built", that shows all changes and revisions outlined above and that shows field locations of all above ground appurtenances including but not limited to valves, fire hydrants and manholes. These as-built drawings shall be forwarded to the Project Engineer and then to the County and become the property of the County. Each appurtenance shall be located by at least two (2) horizontal distances measured from existing, easily identifiable, immovable appurtenances such as fire hydrants or valves. Property pins can be used for as-builts tie-ins provided no existing utilities as previously described are available. Costs for delivering as-built drawings shall be subsidiary to other bid items.

VI. **Limit of Financial Resources:**

The County has a limited amount of financial resources committed to this Project; therefore, it shall be understood by all bidders that the County may be required to change and/or delete any items which he may feel is necessary to accomplish all or part of the scope of work within its limit of financial resources. Contractor shall be entitled to no claim for damages or anticipated profits on any portion of work that may be omitted. At any time during the duration of this contract, the County reserves the right to omit any work from this contract. Unit prices for all items previously approved in this contract shall be used to delete or add work per change order.

VII. **Limits of Work and Payment:**

It shall be the obligation of the Contractor to complete all work included in this Contract, so authorized by the County, as described in the contract documents and technical specifications. All items of work not specifically paid for in the bid proposal shall be included in the unit price bids. Any question arising as to the limits of work shall be left up to the interpretation of the Project Engineer.

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VIII. State Sales Tax:

On a contract awarded by municipality for the construction of a publicly-owned improvement in a street right-of-way or other easement which has been dedicated to the Public and to the City, an Organization which qualifies for exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act, the Contractor can probably be exempted in the following manner:

The Contractor may buy tax-free any materials incorporated into the project by issuing a resale certificate in lieu of paying the sales tax at the time of purchase. The Contractor may then accept an exemption certificate from the City for the materials.

Even with a separated contract, the rental of equipment and the purchase of items which do not ultimately become part of the physical structure will still be subject to state and local sales taxes.

IX. Completion of Work on Time:

The Contractor agrees that time is of the essence for this Contract and that the definite value of damages which would result from delay would be incapable of ascertainment and uncertain, so that for each day of delay beyond the number of days herein agreed upon for the completion of the work herein specified and contracted for, after due allowance for such extension of time as is provided for under the provisions of Section 4.02 of the General Conditions, the County may withhold permanently from the Contractor's total compensation, not as penalty but as liquidated damages, the sum of \$_____ per calendar day.

X. Layout and Construction Stakes:

All construction staking shall be performed by the Contractor at the Contractor's expense.

XI. Safety:

The Contractor must use methods of construction that meet or exceed Occupational Safety and Health Administration Standards and any other local, state or federal regulations for safety that are in effect. The contractor will have a trench safety plan prepared and sealed by a registered professional engineer.

XII. Maintenance Bond Term & Amount:

The required maintenance bond amount for this project shall be twenty percent (20%) of the total amount bid and the bond period shall be two years from date of final acceptance of completion as noted on the Certificate of Completion.

XIII. Safety Restrictions - Work Near High Voltage Lines:

The following procedures shall be followed for work near high voltage lines on this contract.

- A. A warning sign not less than five (5) inches by seven (7) inches, painted yellow with black letters that are legible at twelve (12) feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows: "Warning-Unlawful to Operate This Equipment Within Six Feet of High Voltage Lines".

- B. Equipment that may be operated with ten (10) feet of high voltage lines shall have an insulating cage guard around the boom or arm (except backhoes or dippers), and insulator links on the lift hook connections.
- C. When necessary to work within six (6) feet of high voltage electrical lines, notify the power company. The electric company will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. All such work done by the power company shall be at the expense of the contractor. The contractor shall maintain an accurate log of all such calls to the electric company.
- D. No person shall work within six (6) feet of high voltage lines without protection measures having been taken as outlined in Paragraph C.

XIV. Erosion Control:

Contractor shall comply with all laws prohibiting the pollution of any lake, stream, river, or wetland by the dumping of any refuse, rubbish, dredge material, or debris therein.

Contractor shall be responsible for the maintenance of all temporary and permanent water quality and erosion control measures proposed under the Storm Water Pollution Prevention Plan (SWPPP) or the Water Pollution Abatement Plan (WPAP) for the duration of the project construction. Upon completion of construction and before the Construction Observer issue the "Certificate of completion", Contractor shall be responsible for the removal of all temporary measures and the cleaning and resetting of all permanent measures. All costs associated with this work shall be considered subsidiary to other bid items and no additional compensation shall be allowed.

Contractor shall take special precautions during all periods of heavy rainfall and at all locations where storm water, groundwater and/or mud and debris may enter the sewer systems. All mud, stones, and debris that enter the sewer systems due to Contractor's operations, or his neglect, shall be cleaned from the system by Contractor. It shall be Contractor's responsibility to see that such storm water, groundwater and debris do not enter the sewer system. All costs for such work shall be merged in the unit prices bid and no additional compensation shall be allowed.

If it is necessary in the prosecution of the work to interrupt existing surface drainage, sewers, or under drainage, temporary drainage shall be provided until permanent drainage work is completed. The construction of all temporary drainage installations shall be considered as incidental to the construction of the work. Drainage ways shall be kept clear or other satisfactory provisions made for drainage.

Contractor shall be responsible for and shall take all reasonable and necessary precautions to preserve and protect all existing tile drains, sewers, and other subsurface drains, or parts thereof, which may be continued in service without change. Contractor shall repair at his own expense any and all damage to such facilities resulting from negligence or carelessness on the part of his operations.

XV. Discovery of Hazardous Materials:

If, during the course of this work, the existence of hazardous material, including asbestos containing material, is observed in the work area, the Contractor shall immediately notify the County in writing. The Contractor shall not perform any work pertinent to the hazardous material prior to receipt of special instructions from the County. Asbestos containing material includes transite pipe.

XVI. Submittals – Certificate of Compliance:

The Contractor shall submit to the Construction Observer a Certificate of Compliance from the manufacturer and/or supplier of each and every specified material or manufactured equipment item. The Certificate shall state that the material or the item of equipment to be furnished has been manufactured with materials in accordance with the applicable sections of all required codes, specifications, and standards as required by the specifications.

XVII. Unavailability of Materials:

Bids must be based on use of the materials specified. If the Contractor is unable to furnish or use any of the materials or equipment specified because of any order by a governmental agency limiting the manufacture or use, or because of the supply situation in the general market for such material or equipment, the Contractor shall offer substitutes therefor. The substitutes shall be suitable for the purpose, considering the factors of quality, serviceability, appearance, and maintenance. No substitute shall be used until the Project Engineer has approved it.

No consideration will be given to the use of substitutes on account of market conditions unless the Contractor demonstrates that, for the item in question, he placed his order without delay, that he has shown due diligence in attempting to locate the item as specified, and that the unavailability is due to market conditions in general throughout the particular industry.

If substitutes are used in the work, the compensation to be paid to the Contractor shall be subject to review and adjustment. As a general principle, if the Project Engineer shall determine that the substitute will be less satisfactory, the Contractor shall allow a credit to the County; only under unusual circumstances shall there be an increase in compensation to the Contractor on account of substitution. The basis upon which the amount of price and adjustments will be founded shall be the cost of the appropriate items at the time the bids were opened.

XVIII. Traffic Control:

Access shall be provided for residents and emergency vehicles at all times. When it becomes necessary to restrict access, the Contractor shall notify all applicable agencies (ie. Fire Department, E.M.S., Public Works, etc.). At the end of each day two lanes of traffic shall be opened to the public, unless otherwise stated in the plans.

XIX. Temporary Traffic Handling Devices:

The Contractor shall furnish, erect and maintain all necessary barricades, lights, warning signs and temporary pavement markings as shown on the Plans and/or in accordance with the Texas Manual on Uniform Traffic Control Devices and with the Specifications in the Contract Documents. In Addition, the Contractor shall provide flagpersons and take necessary precautionary measures for the protection of persons, property and the work, when deemed necessary by the County or the Construction Observer.

XX. Roadway Signs:

All permanent and temporary roadway signing designated in the plans shall be in accordance with the Texas Manual on Uniform Traffic Control Devices.

XXI. Project Signs:

The Contractor shall erect at the site of construction, and maintain during construction, signs satisfactory to the County identifying the Project and indicating that the Government is participating in the development of the project. Two project signs will be required for this contract. The signs shall be 8' X 4' and made out of white 10 mm corrugated plastic with pressure sensitive vinyl lettering to include: Road Bond Project, County tax dollars at work, Williamson County seal, Project name and brief description, Estimated date of completion, contact phone number, website address and Commissioner's name and precinct number. For more information, call Mr. Tom Green at (512) 251-5517. These signs shall be considered subsidiary to Item 502, "Barricades, Signs and Traffic Handling".

XXII. Permits:

The Contractor will obtain any and all required permits. Contractor agrees to comply with all conditions of the permits and to maintain copies of the permits at the site at all times while the Work is in progress.

XXIII. Landscape Restoration:

If not designated as a specific pay item in the Proposal, the Contractor shall take the means necessary to protect all trees, shrubbery and sod. Protection, removal and replacement of existing landscaping will be in accordance with the Plans and Specifications.

XXIV. Existing Fencing:

All fences encountered during construction within the ROW shall be removed by the contractor under Preparation of Right-of-Way. Permanent fencing, designating the ROW, will be provided by others. The Contractor will be required to coordinate his Preparation of Right-of-Way operations with fence building contractors.

XXV. Easements:

Any easements, both temporary and permanent, required for this project will be provided by the County as shown on the plans. Other easements required or desirable by the Contractor shall be arranged by the Contractor at his sole expense. The easements shall be cleaned after use and restored to their original conditions, or better by the Contractor. In the event additional work is required by the Contractor, it shall be the Contractor's responsibility to obtain written permission from the property owners involved for the use of additional property required. No additional payment will be allowed for this item.

XXVI. Limits of Contractor's Operation:

The Contractor shall limit construction operations to within the right-of-way or the easement unless otherwise directed by the County or its authorized representative. The Contractor's equipment, materials, stockpiles, etc., shall be limited to one construction week use at a time, along the construction route.

XXVII. Maintenance of Pedestrian Walkways:

The Contractor will be required to maintain clear walkways for pedestrians during construction in a manner to provide access in the most convenient and safest manner consistent with essential construction operations. Specifically, the following will be enforced.

Pedestrian traffic may be blocked at a location where work is actually in progress. Signs, barricades, and warning devices must be placed at nearest crosswalks approaching the construction site from every direction advising pedestrians of the blockage and advising them to use alternate routes.

Access to doorways and pedestrian entrances must be maintained at all times during hours that access is needed by business. Paving by sections or providing temporary access may be required.

No more than one corner of any intersection may be under construction at any one time. Work must be completed and opened for use by pedestrians before starting work on any other corner of the intersection.

The Contractor will be expected to diligently pursue construction from start to completion at every location to avoid prolonged and unnecessary disruptions to pedestrian traffic.

This work shall be considered incidental and not a separate pay item, unless provided in the proposal.

XXVIII. Spoil:

All excavated material unfit for backfill, waste material accumulated on the job, and any material surplus to that needed in the prosecution of the work shall be removed from the site by the Contractor and disposed of at his expense. The Contractor shall indemnify and save harmless the County, all of its officers, agents, and employees from all suits, actions, or claims of any character resulting from his arrangements for the disposal of spoil. This shall be incidental and not a separate pay item.

XXIX. Materials Testing:

Quality Control testing of all materials, construction items or products incorporated in the work shall be performed by the Contractor at the Contractor's expense, and shall be performed in accordance with the Quality Control (QC) / Quality Assurance (QA) Program outlined in Appendix A .

Quality Assurance sampling and testing may be required for quality assurance of used materials as directed by the Construction Observer or the County. The cost of such tests will be incurred by the County and coordinated by the Construction Observer through funds made available to the Construction Observer under his/her agreement with the County for the observing the project construction. This testing shall be in accordance with the QC / QA program in Appendix A.

The Contractor shall furnish for review by the Construction Observer, not later than 10 days after receipt of notice to proceed, a Quality Control Plan consisting of plans, procedures, and organization necessary to produce an end product which complies with the contract documents. The Contractor will be allowed the latitude to develop standards of control subject to approval by the County. As a minimum, the plan shall include description of the type and frequency of inspection staffing, materials handling and construction procedures, calibration and maintenance of equipment, production process control, and testing deemed necessary to measure and control quality as specified by the contract documents.

XXX. Pre-Construction Conference:

Before the project work order is issued, a pre-construction conference shall be held with representatives of the County and the successful Contractor. The Contractor shall submit a schedule of operations at the pre-construction conference. See Section XXXIV-Prosecution and Progress for additional construction schedule requirements.

XXXI. Weight Tickets:

The Contractor will be responsible for providing asphalt and aggregate tickets for quantity verifications on all asphaltic concrete used for this project.

XXXII. Confined Space Entry Program:

It shall be the responsibility of the contractor to implement and maintain a variable "Confined Space Entry Program" which must meet OSHA requirements for all its

employees and subcontractors at all times during construction. OSHA defines all active sewer manholes, regardless of depth, as "permit required confined spaces". Contractors shall submit an acceptable "Confined Space Entry Program" for all applicable manholes and maintain an active file for these manholes. The cost of complying with this program shall be subsidiary to the pay items involving work in confined spaces.

XXXIII. Tree and Plant Protection:

Scope: Provide complete protection and maintenance of existing trees and shrubs designated to remain within construction limits.

Coordination: Coordinate protection of existing trees with other trades so as to prevent damage to trees.

Payment for Damages: If existing trees are destroyed, killed or badly damaged as a result of construction operations, Contract sum will be reduced by the amount of assessed damages. Damages will be evaluated by the Construction Observer, using International Shade Tree Conference Standards and following formula: measurement of a cross section of tree trunk will be made at a point 2 feet above existing grade level to determine cross section area in square inches. Assessment for damage will be \$27.00 per square inch.

Materials: Tree Protection lumber dimensions shall be 4X4 and 2X4 sizes.

Protection: Protect existing trees and shrubs within construction limits from the following damage:

1. Compaction of root area by equipment, vehicles or material storage;
2. Trunk damage by moving equipment material storage, nailing or bolting;
3. Strangling by tying ropes or guy wires to trunks or large branches;
4. Poisoning by pouring solvents, gas, paint or other chemicals on or around trees and roots;
5. Cutting of roots by excavating or ditching;
6. Damage of branches by improper pruning;
7. Drought from failure to water or by cutting or changing normal drainage pattern past roots;
8. Changes of soil pH factor by disposal of lime base materials such as concrete or plaster;
9. Do not cut roots 1-1/2" in diameter or over. Excavation and earthwork within drip line of trees shall be done by hand.

Install barricade protection around trees and shrubs, constructed of 4X4 posts and 2X4 stringers top and bottom. Install protection prior to demolition or excavation operations. Leave protection until construction operations are essentially complete.

Maintenance:

1. Water trees and shrubs within construction limits as required to maintain their health during course of construction operations.
2. Pruning will be performed by County.

XXXIV. Prosecution and Progress:

At the Pre-construction meeting, the Contractor shall submit for acceptance a schedule of all planned work activities and sequences that is intended to follow in order to complete the contract within the allotted time. The purpose of the County requiring the project schedule shall be to:

1. Ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working/ calendar days and all milestones;
2. Assure coordination of the efforts of the Contractor, County, Manager, Construction Observer, Utilities and others that may be involved in the project;
3. Assist the Contractor, County, Manager and Construction Observer in monitoring the progress of the work and evaluating proposed changes to the contract; and
4. Assist the County, Manager and Construction Observer in administering the contract time requirements.

Either Type A or Type B Schedule will be required on all projects. Unless specifically noted on the plans or in the Specifications, Type A Schedule will be required on all projects. Following is the schedule requirements of both types:

Type A Schedule:

The Schedule should include major material procurements, known utility relocations and other activities which may affect the project completion. The schedule may be prepared in either a bar chart or a critical path method (CPM) format unless the CPM format is specifically required by general note. A beginning date, and ending date, and a duration in working/ calendar days shall be shown for each work activity. If a CPM schedule is specified by general note the schedule shall be prepared using the Precedence Diagram Method (PDM), and the activity float and the relationships between the work activities shall also be shown. The duration of work activities for either type of schedule shall not exceed 20 working days, unless otherwise accepted by County, Program Manager or Observer. An estimated production rate for each activity shall also be shown.

The schedule shall be updated on a monthly basis and submitted to the Observer, Program Manager or County. Updating the project schedule shall be defined as adding actual progress made during the previous month and making minor changes in activity relationships. The Program Manager, Observer, or County may require a monthly project status meeting to review the progress of the work. In the event the progress review indicates the Contractor will not complete the project within the

allowable number of working days, then the Contractor shall notify the Observer, Program Manager or County in writing of their intentions of revising the project schedule, accelerating the work, or incurring liquidated damages.

If the Contractor desires to make major changes in the project schedule, the Contractor shall notify the County, Program Manager or Observer in writing. The written notification shall include the reason for the proposed revision, what the revision is comprised of, and how the revision was incorporated into the schedule. Major changes are hereby defined as those that may affect compliance with the contract requirements or those that change the critical path, if applicable. All other changes may be accomplished through the monthly updating process without written notification.

No direct compensation will be allowed for fulfilling these requirements, as such work is considered subsidiary to the various bid items of the contract.

Type B Schedule:

The Contractor shall create and maintain a Critical Path Method (CPM) Project Schedule showing the manner of prosecution of work that he intends to follow in order to complete the contract within the allotted time. The project schedule shall employ computerized CPM for the planning, scheduling and reporting of the work as described in this specification. The CPM project schedule shall be prepared using the Precedence Diagram Method (PDM). The Contractor shall create and maintain the schedule using the latest version, at the time of the award of the contract, of Primavera System, Inc. Primavera Project Planner or Suretrak Project Scheduler computer scheduling software, except when a general note requires otherwise. No direct compensation will be allowed for fulfilling these requirements, as such work is considered subsidiary to the various bid items of the contract.

(1) Personnel. The Contractor shall provide an individual, referred to hereafter as the Scheduler, to create and maintain the CPM schedule. He shall be proficient in CPM analysis and shall be able to perform required tasks on the specified software. The Scheduler shall be made available for discussion or meetings when requested by the County, Construction Observer or Manager.

(2) Schedule. The project schedule shall show the sequence and interdependence of activities required for complete performance of the work. The Contractor shall be responsible for assuring all work sequences are logical and show a coordinated plan of the work.

Each activity on the schedule shall be described by: An activity number utilizing an alphanumeric designation system tied to the traffic control plans, and that is agreeable to the County, Manager, or Construction Observer; concise description of the work represented by the activity; and activity durations in whole working days with a maximum of twenty (20) working days. Durations greater than twenty (20) working

days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between the Contractor and County, Manager or Construction Observer. The Contractor shall provide a legend for all abbreviations. The activities shall be coded so that organized plots of the schedule may be produced. Typical activity coding includes: Traffic control phase, location and work type. If allowed and if the Contractor chooses to use Suretrak Project Manager to create the schedule, the Contractor shall not use the independent activity type. This would cause the schedule to be incompatible with Primavera Project Planner.

The activity durations shall be based on the quantity for the individual work activity divided by a production rate.

The Contractor shall plan and incorporate major resources into the schedule. Major resources are defined as crews and equipment that constrain the Contractor from pursuing available work. The resources shall accurately represent the Contractor's planned equipment and manpower to achieve the productivity rates specified above.

Seasonal weather conditions shall be considered and included in the CPM schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (NOAA). These effects will be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.) Project and work calendars should be updated each month to show days actually able to work on the various work activities.

Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the schedule. Float time in the schedule is a shared commodity between the County and the Contractor.

Only County responsible delays in activities that affect milestone dates or the contract completion date, as determined by CPM analysis, will be considered for a time extension.

The schedule shall show the sequence and interdependence of activities required for complete performance of the work. The schedule shall be prepared and maintained in accordance with the scheduling requirements stated in this Section and shall include two (2) organized plots with the activities logically grouped using the activity coding. The Contractor shall also provide an electronic copy of the schedule on diskette or CD-ROM.

The schedule shall encompass the time from the start of the contract time to the project Completion. The longest path through the schedule shall be readily discernable on the plot of the schedule.

(3) Joint Review, Revision and Acceptance. Within twenty (20) calendar days of receipt of the Contractor's proposed schedule, the County or its authorized agents shall evaluate the schedule for compliance with this specification, and notify the Contractor of the findings. If the County or its authorized personnel request a revision or justification, the Contractor shall provide a satisfactory revision or adequate justification to the satisfaction of the Construction Observer or County authorized personnel within seven (7) calendar days.

If the Contractor submits a CPM schedule for acceptance which is based on a sequence of work not in the plans, then the Contractor shall notify the County or its authorized entities in writing, separate from the schedule submittal.

The County's review and acceptance of the Contractor's project schedule is for conformance to the requirements of the contract documents only. Review and acceptance by the County or other authorized personnel of the Contractor's project schedule does not relieve the Contractor of any of its responsibility for the project schedule, or of the Contractor's ability to meet interim milestone dates (if specified) and the contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Contractor's project schedule. In the event the Contractor fails to define any element of work, activity or logic and the County's review does not detect this omission or error, such omission or error, when discovered by the Contractor or County and its authorized personnel, shall be corrected by the Contractor at the next monthly schedule update and shall not affect the project completion date.

(4) Updates. The Project Schedule shall be updated on a monthly basis. The Project Schedule update shall be submitted on the first working day of each month. The Contractor shall meet with the Construction Observer or County authorized personnel each month at a scheduled update meeting to review actual progress made through the data date of the schedule update. The review of progress will include dates activities actually started and/or completed, and the percentage of work completed or remaining duration on each activity started and/or completed. The percentage of work complete shall be calculated by utilizing the quantity and productivity rate information. The Project Schedule update shall include one (1) copy of the following information:

- a) Electronic copy of the updated schedule including revisions and changes on diskette or CD-ROM.
- b) One (1) logically organized plot of the schedule update if requested by the County or its authorized personnel.

(5) Project Schedule Revisions. If the Contractor desires to make major changes in the project schedule, the Contractor shall notify the County or Construction Observer in writing. The written notification shall include the reason for the proposed revision, what the revision is comprised of, and how the revision was incorporated into the

schedule. In addition to the written notification of the revision, the Contractor shall provide an electronic copy and one logically organized plot of the schedule including the revision if requested by the County or Construction Observer.

Major changes are hereby defined as those that may affect compliance with the contract requirements or those that change the critical path. All other changes may be accomplished through the monthly updating process without written notification.

(6) Time Impact Analysis. The Contractor shall notify the County or Construction Observer when an impact may justify an extension of contract time or adjustment of milestone dates. This notice shall be made in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to the Contractor. Not providing notice to the County or Construction Observer by the end of the next estimate period will indicate the Contractor's approval of the time charges as shown on that time statement. Future consideration of that statement will not be permitted and the Contractor forfeits his right to subsequently request a time extension or time suspension unless the circumstances are such that the Contractor could not reasonably have knowledge of the impact by the end of the next estimate period.

When changes are initiated or impacts are experienced, the Contractor shall submit to the County or Construction Observer a written time impact analysis describing the influence of each change or impact.

A time impact analysis is an evaluation of the effects of changes in the construction sequence, contract, plans, or site conditions on the Contractor's plan for constructing the project, as represented by the schedule. The purpose of the time impact analysis is to determine if the overall project has been delayed, and if necessary, to provide the Contractor and the County a basis for making adjustments to the contract.

A time impact analysis shall consist of one or all of the steps listed below.

Step 1. Establish the status of the project before the impact using the most recent project schedule update prior to the impact occurrence.

Step 2. Predict the effect of the impact on the most recent project schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. The Contractor shall demonstrate how the impact was inserted into the schedule showing the added or modified activities and the added or modified relationships. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

Step 3. Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing, and mitigation efforts.

Step 4. Compare the status of the work prior to the impact (Step 1) to the prediction

of the effect of the impact (Step 2), and to the status of the work during and after the effects of the impact are over (Step 3). Note that if an impact causes a lack of access to a portion of the project, the effects of the impact may extend to include a reasonable period for remobilization.

The time impact analysis shall include an electronic copy of the complete schedule prepared in Step 2. If the project schedule is revised after the submittal of a time impact analysis but prior to its approval, the Contractor shall promptly indicate in writing to the County or Construction Observer the need for any modification to its time impact analysis.

Only one (1) copy of each time impact analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. The County or Construction Observer may require Step 1 and Step 2 of the time impact analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of contract time.

Approval or rejection of each time impact analysis by the County, Construction Observer or Manager shall be made within fourteen (14) calendar days after receipt unless subsequent meetings and negotiations are necessary.

The time impact analysis shall be incorporated into and attached to any relevant change order(s) and/or supplemental agreement(s).

AGENDA ITEM 26

Consider approving Center Line Pipe Assignment Agreement out of Jim Forrest Avant, Jeff Wood Avant, and Jamie Avant Dyhle tract.

Moved: **Commissioner Hays**

Seconded: **Commissioner Boatright**

Motion: To approve Center Line Pipe Assignment Agreement out of Jim Forrest Avant, Jeff Wood Avant, and Jamie Avant Dyhle tract with a stipulation to non-exclusive easement.

Vote: 5 – 0

< Attachment >