

CONSTRUCTION CONTRACT DOCUMENTS

ROGERS ROAD WEST
WATER AND SEWER IMPROVEMENTS

CITY OF MANVEL
BRAZORIA COUNTY, TEXAS

CITY OF MANVEL
DELORES M. MARTIN, MAYOR
KYLE JUNG, CITY MANAGER
20025 MORRIS (STATE HIGHWAY 6)
MANVEL TX 77578
(281) 489 - 0630

ENGINEER:
DANIEL SCOTT ENGINEERING, LLC
19701 MORRIS (STATE HIGHWAY 6)
MANVEL TX 77578
TBPE F-9827
(281) 519 - 8530

SEPTEMBER 2016

ROGERS ROAD WEST
WATER AND SEWER IMPROVEMENTS

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**DOCUMENT 00110
INVITATION TO BIDDERS**

Notice is hereby given that Sealed Bids, in duplicate, addressed to the Mayor and City Council, City of Manvel, Manvel, Texas, will be received at the City Secretary's' Office at City Hall, 20025 Morris, Manvel TX 77578 until **10:00 A.M., September 29, 2016** and then publicly opened and read for furnishing all labor, material, and equipment and performing all work required for the construction of:

**ROGERS ROAD WEST
WATER AND SEWER IMPROVEMENTS**

Bids shall be submitted in sealed envelopes upon the blank forms provided and marked in the upper left hand corner "Bid for Construction of Rogers Road West - Water and Sewer Improvements" to be opened at **10:00 A.M., September 29, 2016.**" Bids received after that time shall be returned unopened to the Bidder.

All Bids shall be accompanied by a cashier's or certified check drawn on a state or local bank in the amount of five percent (5%) of the total maximum bid price, and payable without recourse to the City of Manvel, Manvel, Texas, or a Bid Bond in the same amount from a reliable surety company authorized to do business in the State of Texas, as a guarantee that the Bidder will enter into a Contract. The Notice of Award of Contract shall be given by the City within sixty days (60 D) following the opening of bids and bids shall remain valid for sixty days (60 D). Bid security shall be returned to the respective Bidders within thirty days (30 D) after bids are opened, except checks or bonds which the City elects to hold until the successful Bidder has executed the Contract. Thereafter, all the remaining securities, including the security of the successful Bidder, shall be returned within seventy days (70 D) following the opening of bids.

The successful bidder must furnish a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the Contract Price and upon the forms, which are attached hereto. A Payment Bond shall be furnished for any contract in excess of Twenty-Five Thousand Dollars (\$25,000) and a Performance Bond shall be furnished for contracts in excess of One Hundred Thousand Dollars (\$100,000), and each shall be furnished within five days (5 D) after receipt of the Contract Documents. Payment and Performance Bonds shall be issued from sureties with a minimum "A-" rating from Best's Key Rating Guide and who are licensed by the Texas Department of Insurance to do business in the State of Texas and to issue said bonds. The bonds must be signed by an authorized representative of the surety, who is licensed by the State Board of Insurance.

Plans, Technical Specifications and Bid Documents may be secured for a non-refundable deposit of Fifty Dollars (\$50.00) per set at the following locations:

City of Manvel (281) 489-0630
20025 Morris (State Highway 6)
Manvel TX 77578
www.cityofmanvel.com

Daniel Scott Engineering, LLC (281) 519-8530
19701 Morris (State Highway 6)
Manvel TX 77578

Attention is called to the fact that the successful bidder must comply with:

- Paying not less than the federally determined prevailing (David-Bacon and Related Acts) wage rate, as issued by the Department of Labor and contained in the contract documents.
- Ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, age or national origin.
- Section 3 of the Housing and Urban Development Act of 1968, as amended, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders.

In conformance with applicable statutes, the general prevailing wage rates in the locality in which the Work is to be performed have been ascertained, and such rates shall be the minimum paid for labor employed upon this project. The Contractor shall forfeit as a penalty, to the City of Manvel, Sixty Dollars (\$60.00) for each laborer, workman or mechanic employed, for each working day, or portion thereof, if such laborer, workman or mechanic is found to be paid less than the stipulated rates for any work done under this Contract. A copy of such current wage rates is included in the Contract Documents, Document 00435 – Wage Scale for Engineering Projects.

This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act as codified in Chapter 151 of the Texas Tax Code. Because of Amendments to Section 151.311 of the Tax Code made by Section 14.07 of Chapter 5 (House Bill No. 11), 72nd Leg., 1st C.S., Acts 1991 at 188, in order for non-consumable materials and equipment to qualify for resale to the City and be exempt from sales tax, the contract and proposals must comply with the following requirements:

- A. The proposal and contract must separately identify:
 - 1. charges for non-consumable materials and equipment that are permanently incorporated into the project and
 - 2. charges for skill, labor and consumable materials, tools and equipment that are permanently incorporated into the project. Bidders are required to have a sales tax permit issued by the Comptroller of the State of Texas in order to qualify under separated contract procedure.

- B. The City will issue to the Contractor a specific exemption certificate for this Contract in order that he does not have to pay taxes on qualifying materials, equipment or other tangible personal property purchased for and permanently incorporated into City realty in performing this Contract. The Contractor performing this contract must issue to his suppliers an exemption certificate complying with all applicable State Comptroller's rulings, along with a copy of the certificate issued to him by the City.

- C. Total Stipulate Price contract, in which the above charges are not separated, do not qualify for sales tax and use exemption.

Attention is directed to the liquidated damages provision of this Contract (as specified in the General Conditions) and the fact that rainy weather shall constitute justification for any delay in the time for completion only under certain conditions (as specified in the General Conditions).

Under Section 231.006, Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:

- (1) receive payments from state funds under a contract to provide property, materials, or services; or

- (2) receive a state-funded grant or loan.

A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

The City reserves the right to reject any proposal and to waive informalities in the proposals. In case of ambiguity or lack of clearness in stating the prices in any proposal, the City reserves the right to consider the most advantageous construction thereof, or to reject the proposal. The award shall be made to the most responsible Bidder submitting the best value for the City of Manvel.

The City shall, after review and approval of the City Council, enter into Contract negotiations with the apparent lowest responsible Bidder using City Contracts and Documents contained in the Specification Books. Bidder shall not send their own Contract Documents or in any way alter, change or amended the City's Contract Documents.

City of Manvel

Kyle J. Jung
City Manager

END OF DOCUMENT

**DOCUMENT 00115
INSTRUCTIONS TO BIDDERS**

PART I: DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders are defined in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

PART II: COPIES OF BIDDING DOCUMENTS

- 2.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, may be obtained as stated in the Invitation to Bidders. The cost of the plans and specifications are also identified in the Invitation to Bidders. The deposit shall not be refunded to Bidders.
- 2.2 Complete sets of Bidding Documents shall be used in preparing Bids; the City shall not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 The City in making copies of Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant permission for any other use.

PART III: QUALIFICATION OF BIDDER

- 3.1 To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five (5) days of the City's request written evidence of the types of insurance and other data as set forth in the Supplementary Conditions, such as financial data, previous experience and evidence of authority to conduct business in the jurisdiction where the Project is located. Each Bid shall contain evidence of Bidder's qualification to do business in the State of Texas or covenant to obtain such qualification prior to award of the Contract.

PART IV: EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 4.1 Before submitting a Bid, each Bidder shall:
- A. Examine the Contract Documents and Drawings thoroughly.
 - B. Visit the site to familiarize themselves with local conditions that may in any manner affect cost, progress or performance of the Work.

- C. Familiarize themselves with federal, state, and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work.
 - D. Study and carefully correlate Bidder's observations with the Contract Documents.
 - E. Perform Constructability Review. If no ambiguities are brought to attention before or at the Mandatory Pre-Proposal meeting, City shall assume there are none and project is deemed Constructible as designed.
- 4.2 Bidders Responsibility - Bidders are required to inform themselves of the conditions under which the work is to be performed and all other factors that might affect the manner or method of work. The City does not make any representations as to the conditions under which the Work is to be performed. The Bidder, if awarded the contract, shall not be allowed any extra compensation by reason of any condition which affects the work if such condition could have been discernible by the Bidder prior to the bidding.
 - 4.3 Before submitting his Bid, each Bidder shall, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
 - 4.4 Upon request, the City shall provide each Bidder access to the site to conduct such investigations and tests, as each Bidder deems necessary for submission of his Bid.
 - 4.5 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Supplementary Conditions, the General Requirements or the Drawings.
 - 4.6 The submission of a Bid shall constitute an incontrovertible representation by the Bidder that they has complied with every requirement, scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

PART V: INTERPRETATIONS

- 5.1 All questions about the meaning or intent of the Contract Documents shall be submitted to the City in writing. Replies shall be issued by Addenda mailed or delivered to all parties recorded by the City as having received the Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids shall not be answered. Only questions answered by formal written Addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect.

PART VI: BID SECURITY

- 6.1 Bid Security shall be made payable to the City, in amount of five percent (5%) of the Bidder's maximum Bid price and in the form of a cashiers or certified check from a state or local bank or a Bid Bond issued by a Surety meeting the requirements of the General Conditions.
- 6.2 The Bid Security of the Successful Bidder shall be retained until such Bidder has executed the Agreement and furnished the required Contract Security, whereupon it shall be returned; if the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within five (5) days of the Notice of Award, the City may chose to annul the Notice of Award and the Bid Security of that Bidder shall be forfeited. The Bid Security of any Bidder whom the City believes to have a reasonable chance of receiving the award shall be retained by the City until the earlier of the seventh (7th) day after the "effective date of the Agreement" (which term is defined in the General Conditions) or the sixty-first (61st) day after the Bid opening. Bid Security of other bidders shall be returned within seven (7) days of the Bid opening.

PART VII: CONTRACT TIME

- 7.1 The number of working days within which, or the date by which, the Work is to be completed is set forth in the Bid Form and shall be included in the Agreement.

PART VIII: LIQUIDATED DAMAGES

- 8.1 Provisions for liquidated damages, if any, are set forth in Article IV of Document 00400 – Standard Agreement for Contracting Services.

PART IX: SUBSTITUTE MATERIAL AND EQUIPMENT

- 9.1 The Contract, if awarded, shall be on the basis of material and equipment described in the Drawings or specified in the Specifications without considerations of possible substitute or "or-equal" items. Whenever it is indicated in the drawings or specified in the Technical Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by the Contractor if acceptable to the City, application for such acceptance shall not be considered by the City until after the "effective date of the Agreement". Appropriate adjustment to the price or time of the Contract shall be made thereafter. The procedure for submittal of any such application by the Contractor and consideration by the City is set forth in the General Conditions.

PART X: SUBCONTRACTORS, ETC.

- 10.1 If the Supplementary Conditions require the identity of certain Subcontractors and other persons and organizations to be submitted to the City in advance of the Notice of Award, the apparent Successful Bidder, and any other Bidder so requested, shall within seven (7) days after the day of the Bid opening submit to the City a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work as to which such identification is so required. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such Subcontractor, person and organization if requested by the City. If the City, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, may before giving the Notice of Award request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent Successful Bidder declines to make any such substitution, the Contract shall not be awarded to such Bidder, but his declining to make any such substitution shall not constitute grounds for sacrificing his Bid Security. Any Subcontractor, other person or organization so listed and to whom the City does not make written objection prior to the giving of the Notice of Award shall be deemed acceptable to the City.
- 10.2 No Contractor shall be required to employ any Subcontractor, other person, or organization against whom they has reasonable objection.

PART XI: BID FORM

- 11.1 The Bid Form is attached hereto; additional copies may be obtained from the City.
- 11.2 Bid Forms shall be completed by typewriter or computer. The Bid price of each item on the form must be stated in words and numerals; in case of a conflict, words shall take precedence.
- 11.3 Bids by Corporations shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 11.4 Bids by partnerships shall be executed in the partnership name and signed by a partner, whose title shall appear under the signature and the official address of the partnership shall be shown below the signature.
- 11.5 All names shall be typed or printed below the signature.
- 11.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).
- 11.7 The address to which communications regarding the Bid are to be directed shall be shown.
- 11.8 The Bid Form includes supplemental pay items to facilitate payment for charges and alterations that may be required to complete work. Quantities have been established for Supplemental Items shown on Document 00300 – Unit Price Form. The Contractor shall bid unit prices and provide extension of unit prices and quantities for total amount bid. The actual work as provided by the General Provisions, Technical Specifications, and shown on the Drawings and/or the Exhibits is described in the Bid Form items other than supplemental pay items. When work covered by supplemental items is requested by the City or the Contractor and approved by the City, payment shall be based on the quantity actually constructed and unit prices bid in Bid Form. Award shall be based on Total Base Bid.

PART XII: SUBMISSION OF BIDS

- 12.1 Bids shall be submitted at the time and place indicated in the Invitation to Bidders and shall be included in an opaque sealed envelope, marked with the Project title and name and address of the bidder and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof.
- 12.2 The City Secretary's Office shall receive Bids at 20025 Morris (State Highway 6), Manvel, Texas, 77578 until **10:00 A.M.** local time as shown on the clock in the City Secretary's Office, on **September 29, 2016**.

PART XIII: MODIFICATION AND WITHDRAWAL OF BIDS

- 13.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- 13.2 If within twenty-four (24) hours after Bids are opened, any Bidder who files a duly signed written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of his Bid, that Bidder may withdraw his Bid and his Bid Security shall be returned. Thereafter, that Bidder shall be disqualified from further bidding on the Work.

PART XIV: OPENING OF BIDS - BIDS SHALL BE OPENED PUBLICLY

- 14.1 When Bids are opened publicly, they shall be read aloud and an abstract of the amounts of the base Bids and major alternates (if any) shall be made available after the date of Bid opening.

PART XV: BIDS TO REMAIN OPEN

- 15.1 All Bids shall remain open for sixty (60) days after the day of the Bid opening, but the City may, at the City's sole discretion, release any Bid and return the Bid Security prior to the end of the sixty (60) day period.

PART XVI: AWARD OF CONTRACT

- 16.1 The City reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the Apparent Low Bidder, and the right to disqualify all nonconforming, nonresponsive or conditional Bids. Discrepancies between words and figures shall be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the correct sum.
- 16.2 In evaluating Bids, the City shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements and alternates and unit prices if requested in the Bid Forms. It is the City's intent to accept alternates (if any are accepted) in the order in which they are listed in the Bid form but the City may accept them in any order or combination to the benefit of the City.
- 16.3 The City may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations shall be submitted as provided in the Supplementary Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the City.
- 16.4 The City may conduct such investigations as they deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the Work in accordance with the Contract Documents to the City's satisfaction within the prescribed time.
- 16.5 The City reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to the City's satisfaction.
- 16.6 If the Contract is to be awarded, it shall be awarded to the lowest responsible Bidder who has met all requirements of the bidding process and whose evaluation by the City indicates to the City that the award shall be in the best value for the City.
- 16.7 If the Contract is to be awarded, the City shall give the Successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

PART XVII: REQUIRED BONDS

- 17.1 The General Conditions and the Supplementary Conditions set forth the City's requirements as to required Bonds. When the Successful Bidder delivers the executed Agreement to the City it shall be accompanied by the required Contract Security.
- 17.2 If the Contract exceeds Twenty-five Thousand Dollars (\$25,000.00), a Payment Bond shall be furnished, and if the contract exceeds One Hundred Thousand Dollars (\$100,000.00) a Performance Bond also, shall be furnished on the prescribed forms in the amount of one hundred percent (100%) corporate surety duly authorized to do business in the State of Texas. Attorneys-in-fact who sign Bonds must file with each Bond a certified and effective date copy of their Power of Attorney.

PART XVIII: INSURANCE

- 18.1 All insurance shall be written by an insurer licensed to conduct business in the State of Texas. The Contractor shall, at his own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of or result from operations under this Contract, whether the operations be 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 of the following types and limits [No insurance policy or certificate of insurance required below shall contain any aggregate policy year limit unless a specific dollar amount (or specified formula for determining a specific dollar amount) aggregate policy year limit is expressly provided in Section 00320 – Insurance Requirements]. The City of Manvel, its officers, agents and employees must be named as an additional Insured on all insurance policies. Proof of such shall be verified before Contract is executed.
- A. Standard Worker's Compensation Insurance (with waiver of subrogation in favor of the City of Manvel, its officers, agents and employees). (The City and the Contractor and all persons providing services shall comply with the workers compensation insurance requirements of Section 406.096 of the Texas Labor Code and 28 TAC Section 110.110 (c)(2), a copy of which is attached hereto and is incorporated by reference).
- B. Commercial General Liability occurrence type insurance. No. "XCU" restrictions shall be applicable. Products/completed operations coverage must be included.
- C. Comprehensive Automobile Liability (including owned, non-owned and hired vehicle coverage).

D. Contractual Liability Insurance covering the indemnity provision of this Contract in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, bid number and location.

E. All-Risk Builder's Risk of the non-reporting type (not required for paving projects, water and sewer line projects or projects involving lump sum payments).

18.2 The Contractor shall cause the Contractors insurance company or insurance agent to fill in all information required (including names of insurance agency, the Contractor and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into a valid certificate of insurance and pertaining to the above listed items in Paragraph 18.1 of this Document before commencing any of the work and within the time specified. The Contractor shall file said forms with the City.

18.3 Said Certificate of Insurance coverages afforded under the policies shall not be altered, modified or cancelled unless at least fifteen (15) days prior written notice has been given to the City. The Contractor shall also file with the City valid Certificate(s) of Insurance for all from or for all Subcontractors and showing Subcontractor(s) as the Insured.

18.4 The original Builder's Risk policy shall provide for fifteen (15) days written notice of alteration, modification or cancellation and shall be furnished to the City. Provided, however, until the Original Policy is issued and furnished to the City a Certified Insurance Binder with the identical notice shall be acceptable in place of the original policy, which original policy shall be received by the City not later than thirty (30) days after the issuance of the Notice to Proceed for the project. Notwithstanding any other provision in the Contract Documents, it is further mutually understood and agreed that no payment will be due and owing or made to the Contractor for any work performed under the Contract until after all of the required insurance documentation, including the original policy specified above, are received by the City.

PART XIX: SIGNING OF THE AGREEMENT

19.1 When the City gives a Notice of Award to the Successful Bidder, it shall be accompanied by at least three (3) unsigned counterparts of the Agreement and all other Contract Documents attached. Within ten (10) working days thereafter the City shall deliver one (1) fully signed counterpart to the Contractor.

PART XX: SPECIAL REQUIREMENTS

- 20.1 Preparation of Bids: Unless otherwise directed in the Invitation of Bidders, bids shall be submitted in duplicate upon the forms provided, or copies thereof. The bids shall be prepared in compliance with the requirements of the Invitation to Bidders, these instructions, and any instructions printed on the prescribed forms. All blank spaces on the Bid Forms shall be filled in as noted, typed, with both words and figures; amounts shall be extended and totaled and no change shall be made in the phraseology of the forms or of the bid items thereon. If optional items are shown on the Bid form, and the Bidder elects not to bid on these optional items, then "No Bid" shall be entered in the blank spaces provided. Any bid may be deemed irregular which contains any omission, alteration, erasure, addition, or change of any nature, or which does not include prices for each and every bid item (excluding optional items). In order to ensure consideration, the bid must be enclosed in a sealed envelope that is clearly marked with the notation "Bid Enclosed" and further identified by the name and number of the project. Unless directed otherwise in the Invitation and to Bidders, the bid shall be addressed to the City.
- A. A Bidder may withdraw his bid before the time of closing by submitting a written request for its withdrawal to the person who holds the bid.
- B. Further, any bid in which the prices are obviously unbalanced, or which fails in any manner to conform to the bidding procedures as set forth, shall also be considered irregular.
- C. The Bids shall have the Cashier's or Certified check or Bid Bond at the front of the Bid Documents.
- 20.2 Irregular bids as described in Paragraph 19.1 of this Document shall conform to the following rules:
- A. Bid Forms having blank spaces or change in phraseology shall be rejected.
- B. Bid Forms with a conflict between the written amount and the figures; the written amount shall be used.
- C. Bid Forms with a conflict between Individual Unit Prices and the Extension of that Unit price; the Individual Unit Price times the Estimated Quantity shall be used.
- D. Bid Forms with a conflict between Unit Price Extensions and the total of the Unit Price Extensions; the sum of all of the Unit Price Extensions shall be used.

E. Bid Forms with a conflict between Individual Alternate and total of all Alternates; the sum of all individual Alternates shall be used.

F. Bid Forms with a conflict between Individual subtotals for Stipulated Price, Base Unit Prices, Cash Allowances and Alternates; the sum of Individual subtotals for Stipulated Price, Base Unit Prices, Extra Unit Prices, Cash Allowances and Alternates.

20.3 Subsurface Information: Any information provided in regard to subsurface data, test borings, etc., shall be considered approximate. Any soils report that the City has obtained shall be provided to the Bidders for their use. The interpretation of soils information, results of soil borings, etc., is in no way guaranteed.

20.4 Open Specifications: Where equipment or materials are specified by a trade or brand name, it is not the intention of the City to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality and/or performance; and to establish an equal basis for the evaluation of bids. Where the words "equivalent", or "equal to" are used, they shall be understood to mean that the product or item referred to shall be the equivalent to or equal to, in the opinion or judgment of the City, the product or item specified by name. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be, in all cases, fully equivalent to approved samples. Notwithstanding that the words "equivalent", "equal to", or other such expressions may be used in the specifications in connection with a material, manufactured article or process, the material, article, or process, specifically designated shall be used. The City has the right to require the use of such specifically designated materials, articles, or processes.

20.5 Price of Materials and Sales Tax: The Contractor shall be responsible for compliance with all current State Laws and Provisions of the State Comptroller's office on price of materials and sales tax. The City is a tax-exempt organization and materials that become the property of the City upon acceptance of contract may be provided without tax if the Contractor maintains proper records and procedures.

PART XXI: MANDATORY PRE-BID CONFERENCE

21.1 There is not a Mandatory Pre-Bid Conference for this project.

**PART XXII: FINANCIAL STATEMENT AND STATEMENT OF
QUALIFICATIONS**

- 22.1 The Bidder shall, upon request by the City, furnish such information and date as the City may request to determine the ability of the Bidder to perform the Work, including, without limitation, a list of all jobs completed within the last twenty-four (24) months giving the name of the Owner, amount of the Contract, description of the job, and name of the Owners representative who is familiar with the work performed by the Contractor.

PART XXIII: CONFLICT HIEARCHY

- 23.1 Conflicts of the Drawings shall rule as follows:
- A. Details shall overrule the Drawings.
 - B. City of Manvel Standard Details shall overrule Details.
 - C. Special Details shall overrule all.
 - D. Dimensions or Stationing shall overrule scaled measurements.
- 23.2 Conflicts in Bidding Instructions shall rule as follows:
- A. Special Instructions to Bidders shall overrule Instructions to Bidders.
 - B. Addenda shall overrule Special Instructions.
- 23.3 Conflicts in the Conditions shall rule as follows:
- A. Supplemental Conditions shall overrule General Conditions.
 - B. Addenda shall overrule Supplemental Conditions.
- 23.4 Conflicts in the Technical Specifications shall rule as follows:
- A. Special Specifications shall overrule Technical Specifications.
 - B. Special Provisions shall overrule Special Specifications.
 - C. Addenda shall overrule all.

- 23.5 Conflicts between Instructions to Bidders, Drawings, Conditions and Technical Specifications shall rule as follows:
- A. All Bidders Instructions shall overrule all Conditions.
 - B. All drawings shall overrule all Bidders Instructions.
 - C. All Specifications shall overrule all Drawings.
 - D. Addenda shall overrule all.

PART XXIV: LAWS

- 24.1 All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over the construction of the project shall apply to the Contract throughout.

24.1 Under Section 231.006, Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:

- (1) receive payments from state funds under a contract to provide property, materials, or services; or
- (2) receive a state-funded grant or loan.

A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.

PART XXV: PERMITS, FEES, AND REGISTRATION

- 25.1 All contractors and subcontractors that are bidding on portions of work that is residential or commercial in nature and is not an integral part of public infrastructure shall register with the City of Manvel.
- A. The registration fee is \$100.00 and is a one (1) time fee.
 - B. All contractors and subcontractors must fill out the "Contractors Registration Form" which can be obtained at the City of Manvel Building Department.
 - C. All contractors and subcontractors shall provide proof of General Liability insurance.

- 25.2 The following trades must also have in addition to the above:
- A. General Contractor – the owner shall provide drivers license number and contractors license.
 - B. Electrical Contractor – the owner shall provide drivers license number and Master License.
 - C. HVAC – the owner shall provide drivers license number and Master License.
 - D. Plumbing - the owner shall provide drivers license number and Master License.
 - E. Irrigation - the owner shall provide drivers license number and Irrigation License.
- 25.3 The trades listed in Paragraph 25.2 of this Section must also apply for their permits (i.e. Building, Electrical, HVAC, Plumbing, and Irrigation) and all fees shall be waived for City projects.

END OF DOCUMENT

**DOCUMENT 00300
UNIT PRICE FORM**

To: The Honorable Mayor and City Council of the City of Manvel
20025 Morris (State Highway 6)
Manvel, Texas 77578

Project: **Rogers Road West - Water and Sewer Improvements**

Bidder: _____
(Print or type full name of proprietorship, partnership, corporation, etc.)

PART I: OFFER

- 1.1 Total Bid Price: Having examined the Project location and all matters referred to in the Bid Documents for the Project, we, the undersigned, offer to enter into a Contract to perform the Work for the Total Bid Price shown on the signature page of this Document
- 1.2 Security Deposit: Included with the Bid is a Security Deposit in the amount of five percent (5%) of the Total Bid Price subject to terms described in Document 00115 – Instructions to Bidders.
- 1.3 Period for Bid Acceptance: This offer is open to acceptance and is irrevocable for sixty days (60 D) from Bid Date. That period may be extended by mutual written agreement of the City and Bidder.
- 1.4 Addenda: All Addenda have been received. Modifications to Bid Documents have been considered and all related costs are included in the Total Bid Price.
- 1.5 Bid Supplements: The following documents are attached:
 - A. Security Deposit (as defined in Document 00115 – Instructions to Bidders).
 - B. Document 00310 – Child Support Affidavit (only required on State or Federal Projects).
- 1.6 This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

PART II: CONTRACT TIME

- 2.1 If offer is accepted, Contractor shall achieve Date of Substantial Completion within **90 Calendar Days** after the date of Notice To Proceed, subject to adjustments of Contract Time as provided in the Contract.
- 2.2 It is also understood and agreed that the Work shall be completed in full within **120 Calendar Days** after the date of Notice To Proceed, subject to adjustments of Contract Time as provided in the Contract

PART III: CONTRACT PRICE

- 3.1 Total Bid Price has been calculated by Bidder, using the following component prices and process (Print or Type numerical amounts).
- 3.2 The Total Base Bid Price for the Bid will be the determining factor for Contract of the successful low Bidder.

PART IV: ACKNOWLEDGEMENT

- 4.1 The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the Invitation to Bidders, Instructions to Bidders, this Form, the Agreement, the General Conditions, the Supplementary Conditions, the Technical Specifications, the Special Provisions, and the Drawings therein referred to and has carefully examined the locations, conditions, and classes of materials of the proposed work; and agrees that he shall provide all necessary labor, machinery, tools, apparatus and other items incidental to construction and will do all the work and furnish all the materials called for in the Contract and the Technical Specifications in the manner prescribed herein and according to the requirements of the City's Design Engineer as therein set forth.
- 4.2 It is understood that the following quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids. It is further understood that all items of work for which there are no specific pay items are included in the bid items shown on this Form and are considered incidental to the Work.
- 4.3 It is further understood that the quantities of work to be done at the unit prices and materials to be furnished may be considered necessary, in the opinion of the City's Design Engineer, to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased are to be performed at the unit prices set forth below except as provided for in the Technical Specifications.

- 4.4 It is further agreed that the lump sum prices may be increased to cover additional work ordered by the City's Design Engineer or the City, but not shown on the Drawings or required by the Technical Specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover the deletion of work so ordered.
- 4.5 Usual disposition of bid securities is cited in paragraph three (3) of Document 00110 – Invitations to Bidders and Part VI – Bid Security in Document 00115 – Instructions to Bidders; however, if bidder, whose bid is accepted by the City fails to execute the Agreement and/or fails to execute a Performance Bond and a Payment Bond within ten days (10 D) of Notice to Award, the bid security shall become the property of the City, and shall be considered as payment for damages due to delay, and other inconveniences suffered by the City on account of such failure of the Bidder. Further, should the City bring suit in court to enforce any terms of this bid, it is agreed that the Bidder or his surety shall pay to the City the cost and reasonable attorney's fees.
- 4.6 In the event of the award of a contract to the undersigned, the undersigned shall furnish a Performance Bond for the full amount of the Contract, to secure proper compliance with the terms and provisions of the Contract, to insure and guarantee the Work until final completion and acceptance, and shall furnish a Payment Bond in the same amount to guarantee payment of all lawful claims for labor performed and materials furnished in fulfillment of the Contract.
- 4.7 The work proposed to be done shall be accepted when fully complete and finished in accordance with the Drawings and Technical Specifications to the satisfaction of the City. The undersigned certified that the bid prices contained in this Form have been carefully checked and submitted as correct and final.
- 4.8 Unit and lump sum prices shall be shown in words and figures for each item listed in this proposal, and in the event of discrepancy, the words shall control. Should bid prices on any item be omitted, the right to apply the lowest prices submitted by any other bidders for the omitted items in payment for work done under this proposal.
- 4.9 Bidder understands that the City reserves the right to reject any and all bids and to waive any informalities in the bidding. In addition, the City reserves the right to award the Contract on the basis of the Total Base Bid.
- 4.10 Bids shall be good for sixty days (60 D) from the date of the bid opening.

PART V: UNIT PRICE FORM

5.1 The following form shall constitute the Unit Price Form.

City of Manvel ROGERS ROAD WEST WATER AND SEWER IMPROVEMENTS					
Contractor:		_____			
Date:		_____			
Item	Base Bid	Unit	Quantity	Unit Cost	Amount
1	8" Water Line (Open Cut)	LF	1,500		
2	8" Water Line (Bored) with Casing	LF	160		
3	8" Water Line (Bored) without Casing	LF	75		
4	Fire Hydrant Assembly*	Ea	4		
5	8" Gate Valve and Box	Ea	4		
6	4" Gate Valve and Box	Ea	1		
7	Water Connection to Existing 8" Line	Ea	1		
8	Water Connection to Existing 1" Line	Ea	1		
9	8"x8" MJ Tee	Ea	2		
10	8"x4" TS&V	Ea	1		
11	8" Gravity Sanitary Sewer	LF	1,450		
12	Manhole	Ea	5		
13	Sewer Connection to Existing Line	Ea	1		
14	Traffic Control	LS	1		
15	Trench Safety	LF	3,000		
16	Water Service Connection	EA	5		
17	Sewer Service Connection	EA	1		
Bid Total					

* w/ 6" MJ GV&B & 5' Lead

5.2 ADDENDA ACKNOWLEDGEMENT

ADDENDA NUMBER	ADDENDA DATE	DATE RECEIVED	BIDDERS INITIALED
1			
2			
3			
4			
5			

PART VI: SIGNATURES

6.1 By signing this Document, I agree that I have received and reviewed all Addenda and considered all costs associated with the Addenda in calculating the Total Bid Price. I furthermore state that I have reviewed all the Contract Documents, Drawings, and Project site and have performed a constructability review.

Company: _____
(Print Company Name)

Signed: _____
(Authorized Signature)

By: _____
(Print Name)

Title: _____
(Print Title)

ATTEST:

(Seal, if Bidder is a Corporation)

(Mailing Address)

(City, State, and Zip Code)

(Delivery Address)

(City, State, and Zip Code)

(Telephone Number)

(Fax Number)

(email)

PART VII: AFFIDAVIT

All pages in offers' bid proposal containing statements, letters, etc. shall be signed by a duly authorized officer of the company, whose signature is binding on the proposal.

The undersigned offers and agrees to one (1) of the following:

- I hereby certify that I do not have outstanding debt with the City of Manvel. Further, I agree to pay succeeding debts as they become due during this agreement.
- I hereby certify that I do have outstanding debts with the City of Manvel and agree to pay said debts prior to execution of this agreement.
- I hereby certify that I do have outstanding debts with the City of Manvel and agree to enter into an agreement for the payment of said debts. I further agree to pay succeeding debts as they become due.

Name of Bidder: _____

Title: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Signature: _____

SWORN AND SUBSCRIBED by me on this _____ day of _____,
A. D. 20____.

Notary Public in and for _____ County, Texas.

Notary Public Signature

Print or Type Notary Public Name

NOTARY SEAL My Commission Expires: _____

END OF DOCUMENT

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

THE STATE OF TEXAS

§
§
§

COUNTY OF BRAZORIA

**DOCUMENT 00400
STANDARD AGREEMENT FOR
CONTRACTING SERVICES**

THIS AGREEMENT, entered into as of this _____ day of _____, 2016, by and between the City of Manvel, Texas (hereinafter called the "CITY") acting herein by its City Manager, duly authorized by the City Council of the City of Manvel and _____ (hereinafter called the "CONTRACTOR") acting herein by its duly authorized agent:

WITNESSETH THAT:

WHEREAS, the CITY and the CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE I: WORK

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

Rogers Road West - Water and Sewer Improvements

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

Construction of an 8" water line and an 8" sanitary sewer line from Masters Road to Pine Street.

ARTICLE II: DESIGN PROFESSIONAL

2.1 The Project has been designed by the City of Manvel. The City Manager or designee is to act as the City's Representative, assume all duties and responsibilities and shall have the rights and authority assigned to the Design Professional in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE III: CONTRACT TIME

3.1 The Work shall be Substantially Complete within **90 Calendar Days** after the date when the Contract Time commences to run as provided by the General Conditions.

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

3.2 The Work shall have Final Completion and be ready for Final Payment in accordance with the General Conditions within **120 Calendar Days** after the date when the Contract Time commences to run as provided by the General Conditions.

ARTICLE IV: LIQUIDATED DAMAGES

4.1 The City and the Contractor recognize that time is of the essence of this Agreement and that the City shall suffer financial loss if the Work is not completed within the time specified in Article 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (not as a penalty) the Contractor shall pay the City FIVE HUNDRED Dollars (\$500.00) for each day that expires after the time specified in Article 3.1, in this Agreement, for Substantial Completion until the Work is Substantially Complete.

4.2 After Substantial Completion, if the Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in Article 3.2 for Final Completion and readiness for Final Payment or any proper extension thereof granted by the City. The Contractor shall pay the City FIVE HUNDRED Dollars (\$500.00) for each day that expires after the time specified in Article 3.2, in this Agreement, for Final Completion until the Work is Finally Complete and ready for Final Payment.

4.3 Contractor agrees any assessed liquidated damages may be offset against retainage held by the City.

ARTICLE V: CONTRACT PRICE

5.1 The City shall pay the Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of \$_____

5.2 TOTAL AMOUNT OF BID \$_____

5.3 As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the City as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions. Unit prices specified as per lump sum have been computed in accordance with those of the General Conditions.

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

ARTICLE VI: PAYMENT PROCEDURES

- 6.1 The Contractor shall submit a Contractor Pay Request in accordance with the General Conditions. Payment Applications shall be processed by the City as provided in the General Conditions.
- 6.2 Progress Payments; The City shall make progress payments on account of the Contract Price on the basis of the Contractor's Payment Application on or about the twentieth (20th) day of each month during construction as provided in Paragraphs 6.3 below. All such payments shall be measured by the schedule of value established in the RFQ (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- 6.3 Prior to Substantial Completion progress payments shall be made equal to the percentage of the Work completed, as established above, and materials and/or equipment not incorporated in the work completed but delivered, suitably stored, and accompanied by suitable documentation satisfactory to the City as provided in the General Conditions. Progress payments shall be made less retainage as indicated in Paragraph 6.4 and 6.5 below, but in each case, less the aggregate of payments previously made less such amounts as the City shall determine or withhold, in accordance with of the General Conditions.
- 6.4 Retainage prior to Substantial Completion; The agreed retainage until Substantial Completions shall be fifteen percent (15%).
- 6.5 N/A

ARTICLE VII: INTEREST

- 7.1 All monies except retainage, not paid when due as provided in the General Conditions shall bear interest at the maximum rate allowed by the law.

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

ARTICLE VII: CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Agreement the Contractor makes the following representations:

- 8.1 The Contractor has examined and carefully studied the Contract Documents (including the Addenda, if any) and other related data identified in the Bid Documents including "technical data" and performed a constructability review.
- 8.2 The Contractor has visited or had the opportunity to visit the site and become familiar with and is satisfied as to the general local and site conditions, including utilities that may affect cost, progress, performance and furnishing of the Work.
- 8.3 The Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.
- 8.4 The Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data of the building are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with other terms and conditions of the Contract Documents.
- 8.5 The Contractor is aware of the general nature of work to be performed by the City and others at the site that relates to the Work as indicated in the Contract Documents.
- 8.6 The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 8.7 The Contractor has given the City written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and the written resolution thereof by the City is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

ARTICLE IX: THE CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the City and the Contractor concerning the Work consists of the following:

- 9.1 Standard Agreement for Contracting Services (this agreement, pages 1 through 8 INCLUSIVE).
- 9.2 Certificates of Insurance, included herein.
- 9.3 Document 00110 – Invitation to Bidders, included herein.
- 9.4 Document 00115 - Instructions to Bidders, included herein.
- 9.5 Document 00300 – Unit Price Form, included herein.
- 9.6 Document 00470 - Performance Bond, included herein.
- 9.7 Document 00475 - Payment Bond, included herein.
- 9.8 Document 00500 – General Conditions, included herein.
- 9.9 Document 00600 – Supplemental Conditions, included herein.
- 9.10 Document 00800 – One-Year Maintenance Bond, included herein.
- 9.11 Document 00985 – Payment Affidavit, included herein.
- 9.12 Document 00990—Waiver of Lien
- 9.14 Addenda as may be issued.
- 9.15 Any modification, including Change Orders, duly delivered after Execution of the Agreement.

There are no Contract Documents other than those listed above in this Article IX. The Contract Documents shall only be altered, amended, or repealed by a modification (as defined in the General Conditions).

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

ARTICLE X: MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated in the General Conditions.
- 10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents shall be binding on another party hereto without written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due but may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.3 The City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision.
- 10.5 Other Provisions – None.

ARTICLE XI: ADDRESSES FOR GIVING NOTICES

11.1 The City:

City of Manvel
20025 Morris Avenue
Manvel, Texas 77578

11.2 The Contractor:

**CITY OF MANVEL
STANDARD CONTRACT AGREEMENT**

ARTICLE XII: VENUE

12.1 Any action brought by either party based on any claim arising under or as a result of this contract shall be brought in a court of competent jurisdiction in Brazoria County, Texas.

EXECUTED IN Three (3) counterparts (each of which is an original) on behalf of the Contractor and on behalf of the City by their duly authorized individuals on this _____ day of _____, 20_____.

ACCEPTED:

PROPOSED AND AGREED TO:

CITY:

CONTRACTOR:

CITY OF MANVEL, TEXAS

BY: _____

CITY MANAGER

NAME: _____

DATE: _____

DATE: _____

ATTEST:

ATTEST:

CITY SECRETARY

(OFFICER OR SECRETARY)

APPROVED AS TO FORM:

CITY ATTORNEY

**DOCUMENT 00470
PERFORMANCE BOND**

THAT WE, _____, as Principal, hereinafter called Contractor, and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Manvel, a municipal corporation, in the sum of _____ for the payment of which sum well and truly to be made to the City of Manvel and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Manvel for

**Rogers Road West
Water and Sewer Improvements**

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the City may suffer in consequence thereof, as more fully set forth herein.

IT IS FURTHER PROVIDED herein that pursuant to this undertaking, the Principal hereof and the Surety shall both be bound for such period of warranty as shall be expressed and set out in the General Conditions of Agreement, under the terms and conditions thereof and for an additional period of one (1) year as is provided for in Chapter 2253, Texas Government Code, as amended.

It is further understood and agreed that the Surety does hereby relieve the City or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City shall retain

certain amounts due the Contractor until the expiration of thirty days (30 Days) from the acceptance of the Work, which is intended for the City's benefit, and the City shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

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

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify, defend and save harmless the City from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the City gives Surety notice of Contractor's default, Surety shall, within forty-five days (45 Days), take one of the following actions:

1. Arrange for Contractor, with consent of the City, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the City shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Brazoria County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other Party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

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

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

Name of Contractor

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS: (SEAL)

(Full Name of Surety)

(Physical Address of Surety for Notice)

(Mailing Address of Surety for Notice)

(Telephone Number of Surety, with area code)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

CERTIFICATE AS TO _____ PRINCIPAL

1. I, _____, certify that I am the secretary of the _____ named as principal in the within Bond, that _____, who signed the said Bond on behalf of the principal, was then _____ of said _____, that I know his/her signature thereto is genuine, and that Bond was duly signed, sealed, and attested for and in behalf of said _____ by authority of its governing body.

Corporate Seal (required if a Corporation)

2. Surety shall provide current power-of-attorney.
3. Date of Bond and surety power-of-attorney shall not be dated prior to the date of the Agreement.
4. Surety companies executing bonds shall appear on the Treasury Departments most current list (Circular 570 amended) and be authorized to transact business in the State of Texas.

END OF DOCUMENT

**DOCUMENT 00475
PAYMENT BOND**

THAT WE, _____ as Principal, hereinafter called Contractor, and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Manvel, a municipal corporation, in the sum of _____ for the payment of which sum well and truly to be made to the City of Manvel and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a contract in writing with the City of Manvel for:

**Rogers Road West
Water and Sewer Improvements**

all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein;

NOW, THEREFORE, if the said Contractor shall pay all claimants supplying labor and materials to him or a Subcontractor in the prosecution of the Work provided for in the Contract, then, this obligation shall be void and shall no further force and affect; otherwise the same is to remain in full force and effect;

PROVIDED HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

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

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

Name of Contractor

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS: (SEAL)

(Full Name of Surety)

(Physical Address of Surety for Notice)

(Mailing Address of Surety for Notice)

(Telephone Number of Surety, with area code)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

CERTIFICATE AS TO _____ PRINCIPAL

1. I, _____, certify that I am the secretary of the _____ named as principal in the within Bond, that _____, who signed the said Bond on behalf of the principal, was then _____ of said _____, that I know his/her signature thereto is genuine, and that Bond was duly signed, sealed, and attested for and in behalf of said _____ by authority of its governing body.

Corporate Seal (required if a Corporation)

2. Surety shall provide current power-of-attorney.
3. Date of Bond and surety power-of-attorney shall not be dated prior to the date of the Agreement.
4. Surety companies executing bonds shall appear on the Treasury Departments most current list (Circular 570 amended) and be authorized to transact business in the State of Texas.

END OF DOCUMENT

**SECTION 00500
GENERAL CONDITIONS**

1. THE AGREEMENT AND THE CONTRACT DOCUMENTS

The Drawings, Technical Specifications and Addenda, enumerated in the Agreement, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. DEFINITIONS

The following terms, as used in this Contract, are respectively defined as the following:

- A. "ADDENDA": Written or graphic instrument issued prior to Bid opening, which clarifies, modifies, corrects, or changes the Bid Documents.
- B. "ALTERNATE": The total amount bid for additions to the Work. Each Alternate includes cost of effects on adjacent or related components, and Bidder's overhead and profit.
- C. "APPARENT LOW BIDDER": The bidder at the time of the bid opening who has the lowest documented bid before tabulation of the Bid Form.
- D. "BID": A complete and properly signed offer or proposal on Document 00300 – Unit Price Bid Form or Document 00305 – Total Stipulated Price Form, setting forth price for the Work that shall be performed.
- E. "BID DATE": The date and time set for receipt of Bids as stated in Documents 00110 – Invitation to Bidders and 00115 – Instructions to Bidders, or as modified by Addenda.
- F. "BID DOCUMENTS": The Project Manual, the Drawings, and Addenda.
- G. "BIDDER": The person or firm who submits a Bid to the City.
- H. "CHANGE ORDER": A document which is signed by the Contractor and the City which authorizes an addition, deletion or revision to the Work or an adjustment of the Contract Price or the Contract Time.
- I. "CITY": The City of Manvel, Texas.

- J. "CODE": The City of Manvel Code of Ordinances (CFCO).
- K. "CONTRACT DOCUMENTS": Those documents so designated Article IX of Document 00400 – Standard Agreement for Contracting Services.
- L. "CONTRACT PRICE": The monies payable by the City to the Contractor for Final Completion of the Work in accordance with the Contract Documents and as stated in Article V of Document 00400 – Standard Agreement For Contracting Services.
- M. "CONTRACT TIME": The number of Working Days to achieve Substantial and/or Final Completion as stated in Article III of Document 00400 – Standard Agreement For Contracting Services.
- N. "CONTRACTOR": A person, firm or corporation with whom the Contract is made with the City.
- O. "DRAWINGS": The part of the Contract Documents prepared and/or approved and sealed by the City's Representative which graphically shows the scope, extent and character of the Work to be performed.
- P. "REPRESENTATIVE": The individual or entity with whom the City contracted for design and construction of the Work and named as such in Article II of Document 00400 – Standard Agreement For Contracting Services.
- Q. "FINAL COMPLETION": The time at which all punch list items, start up procedures and other Closeout functions have been completed by the Contractor and verified by the Project Manager and recommends Final Acceptance of the Work to the City Council, and to release the Final Payment to the Contractor.
- R. "LOW BIDDER": The Bidder that submits a Bid with lowest Total Bid Price and has been verified by Bid Tabulation.
- S. "PROJECT MANAGER": The person designated by the City to represent the City during bidding, post-bid and construction periods.
- T. "PROJECT MANUAL": A volume assembled for the Work that includes the bidding requirements, sample forms, the Conditions of the Contract, and the Technical Specifications.
- U. "SECURITY DEPOSIT": A certified check, cashier's check, or bid bond in the amount of five percent (5%) of the Total Bid Price.

- V. "SUBCONTRACTOR": A person, firm or corporation supplying labor and materials or only labor for the Work, and under a separate Contract Agreement with the Contractor.
- W. "SUBSTANTIAL COMPLETION": The time as specified in Paragraph 3.1 of Document 00400 – Standard Agreement For Contracting Service, at which time the Work has progressed to a point whereas the Work is sufficiently complete so that the Work, at the City's discretion, can be utilized and/or occupied.
- X. "SUCCESSFUL BIDDER": The lowest responsible bidder to whom the City awards the Contract.
- Y. "SUPPLEMENTAL CONDITIONS": The part of the Contract Documents which amends or supplements the General Conditions.
- Z. "TECHNICAL SPECIFICATIONS": The City of Manvel Technical Specifications (CFTS) and all other Specifications added to the Project Manual by the City's Representative for necessary completion of the Work.
- AA. "TOTAL BID PRICE": The total amount bid for performing the Work as identified by Bidder and including any and all alternates and allowances.
- AB. "WORK": The entire construction required to be provided under the Contract Documents which includes, but is not limited to, performing or providing labor, services, documentation and the furnishing, installation and incorporation of materials and equipment as required by the Contract Documents.
- AC. "WORKING DAY": Any calendar day from Monday through Friday, excluding City Holidays, in which four (4) or more consecutive hours of work on the Critical Path can be performed between the hours of seven (7) A.M. and eight (8) P.M inclusive.

3. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this Contract, or if the Contract shall violate any of the covenants, agreements or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor and specifying the effective date thereof, at least five days (5 D) before the effective date of such termination. In such event, all finished or unfinished Documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed

hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the virtue of any breach of the Contract by the Contractor, and the City shall withhold any payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

4. PERSONNEL

- A. The Contractor represents that he has, or will secure at his own expense, all personnel required in performing the Work under the Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All work required hereunder shall be performed by the Contractor or under his supervision and all personnel engaged in the Work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. None of the Work covered by this Contract shall be subcontracted without prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

5. REPORTS AND INFORMATION

The Contractor, at such times and in such forms as the City shall require, shall furnish the City such periodic reports as it may request pertaining to the Work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

6. RECORDS AND AUDITS

The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal.

These records shall be made available for audit purposes to the City or any authorized representative, and shall be retained for three years (3 Yrs) after the expiration of this Contract unless permission to destroy them is granted by the City.

7. FINDINGS CONFIDENTIAL

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

8. COPYRIGHT

No report, maps or other Documents produced in whole in part under this Contract shall be subject of an application for copyright by or on behalf of the Contractor.

9. COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable laws, ordinances, rules, orders, regulations and codes of federal, state and local governments relating to performance of the Work herein, the protection of adjacent property and the maintenance of passageways, guard fences or other protective facilities.

Failure of the Contractor to comply with all federal, state and local applicable laws, ordinances, rules, order, regulations and codes, whether through lack of knowledge or negligence, does not relieve the Contractor to bring the Work into compliance at no additional cost to the City.

10. INTEREST OF MEMBERS OF THE CITY

No member of the governing body of the City, and no other officer, employee or agent of the City, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the Contractor shall take appropriate steps to assure compliance.

11. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the Contractor shall take appropriate steps to assure compliance.

12. INTEREST OF CONTRACTOR AND EMPLOYEES

The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

13. INCORPORATION OF PROVISIONS REQUIRED BY LAW

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enhanced herein and the Contract shall be read and enforced as though each were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion on application by either party.

14. CERTIFICATES AND PERMITS

Except for required permits issued by the City, which shall be issued at no cost to the Contractor, the Contractor shall secure, at their own expense, from other public authorities all necessary certificates, licenses, approvals and permits required in connection with the Work of this Contract or any part thereof, and shall give all notices required by law, ordinance or regulation. The Contractor shall pay all fees and charges incident to the due and lawful prosecution of the Work of this Contract, and any extra work performed by the Contractor. It shall be the Contractor's duty to inquire and find out what certificates, licenses, permits, etc are needed.

15. GUARANTEE OF WORK

A. Neither the Notice of Final Completion, the Final Payment nor any other provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any warranties or responsibility for faulty materials or workmanship. The Contractor guarantees and warrants that all materials and equipment which are to become part of the Work shall be new unless otherwise specified and that all work shall be of good quality and free from faults and defects and in accordance with the Contract Documents and of any inspections, tests or approvals required by the Contract Documents, law, ordinance, rules, regulations or orders of any public authority having jurisdiction. The City shall give notice of observed defects within reasonable promptness.

- B. Neither observations by the City's representatives nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from their obligations to perform the Work in accordance with the requirements of the Contract.
- C. The provisions of this paragraph shall be cumulative of and not in limitation of the responsibility of the Contractor for defects in the Work or materials or damages resulting therefrom as otherwise provided by the law of the State of Texas or this Contract, including, without limitation, the implied warranty of fitness of the Work and the implied obligation to perform the Work in a good and workmanlike manner.

16. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Contractor shall be furnished additional instructions and detail drawings as necessary to carry out the Work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and shall be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions. The Contractor and the City's Representative shall jointly (a) a schedule, fixing the dates at which special drawings will be required, such drawings, if any, to be furnished by the City's Representative in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the Work; each schedule to be subject to change from time to time in accordance with the progress of the Work.

17. SHOP OR SETTING DRAWINGS

The Contractor shall submit promptly to the City's Representative two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the City's Representative and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the City's Representative with two (2) corrected copies. Regardless of corrections made in or approval given to such drawings by the City's representative(s), the Contractor shall nevertheless be responsible for the accuracy of such drawings and for their conformity to the Drawings and Technical Specifications, unless the Contractor notifies the City's Representative in writing of any deviations at the time such drawings are furnished.

18. MATERIALS, SERVICES AND FACILITIES

- A. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendents, temporary construction of every nature and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- B. Any work necessary to be performed after regular working hours on Saturdays, Sundays or legal (city) Holidays shall be performed without any additional expense to the City. Such work shall only be performed after written notice is given to and approval given by the City. Notice shall be a minimum of forty-eight hours (48 Hrs) previous to the commencement of such work and only within the specifications specified in Section 01140 – Work Restrictions.

19. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale Contract or other agreement by which an interest is retained by the seller. The Contractor warrants that they have good title to all materials and supplies used by the Contractor in the Work, free from all liens, claims or encumbrances.

20. INSPECTION AND TESTING OF MATERIALS

- A. All materials and equipment used or any infrastructure produced in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be approved by the City. The City shall pay for all first (1st) laboratory inspection services directly and not as a part of the Contract. Should any materials, equipment or infrastructure fail the first (1st) test, the Contractor shall pay for all subsequent testing to show that items meet the specifications of the Contract.
- B. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with the Technical Specifications and suitability for uses intended.

21. "OR EQUAL" CLAUSE

Whenever a material, article or piece of equipment is identified on the Drawings or in the Technical Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which shall perform adequately the duties imposed by the general design shall be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the City's Representative, of equal substance and function. It shall not be purchased or installed by the Contractor without the City's Representative's written approval.

The "or equal" clause shall only pertain to materials, articles or equipment specified or identified as such. Material, articles or equipment not listed as such shall not be substituted.

22. PATENTS

- A. The Contractor shall hold, indemnify, defend, and save the City and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Contract Documents.
- B. License or Royalty Fees: License and/or royalty fees for the use of a process which is authorized by the City for a project shall be reasonable and paid to the holder of the patent or their authorized licensee, direct by the City and not by or through the Contractor.
- C. If the Contractor uses any design, device or materials covered by letters of patent or copyright, he shall provide for each use by suitable agreement with the City of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the Work. The Contractor and/or his Sureties shall indemnify, defend, and save harmless the City from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify, defend and save harmless the City for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

23. SURVEYS

Unless otherwise expressly provided for in the Technical Specifications, the City shall furnish the Contractor all surveys necessary for the execution of the Work.

At the beginning of the project the City shall have a surveyor set vertical and horizontal control points. All other surveying for construction and progression of the Work shall be the Contractors responsibility and incidental to the Contract.

24. CONTRACTORS OBLIGATIONS

The Contractor shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except otherwise expressly specified, necessary or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and any said Technical Specifications and in accordance with the Drawings covered by this Contract and any and all supplemental drawings and specifications, and in accordance with the directions of the City's Representative as given from time to time during the progress of the Work. The Contractor shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with and be subject to all terms, conditions, requirements and limitations of the Contract and Technical Specifications, and shall do, carry on and complete the entire work to the satisfaction of the City and the City's Representative.

The Contractor, by entering into Contract with the City, agrees and acknowledges that the Work described in the Drawings, Technical Specifications and Contract Documents is buildable as stated, and further acknowledges that they have reviewed all Drawings, Technical Specifications and Contract Documents as well as having visited the Project Site and have no objections to performing the Work within the parameters so stated in the Drawings, Technical Specifications and Contract Documents.

25. INSURANCE

The Contractor shall not commence and work under this Contract until all insurance required herein has been obtained and such insurance has been approved by the City, nor shall the Contractor allow any Subcontractor to commence work on this Subcontract until the insurance required of the Subcontractor has been so obtained and approved (See Document 00115 – Instructions to Bidders, Part XVIII).

All insurance shall be written by an insurer licensed to conduct business in the State of Texas.

26. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS
AND ACCIDENT PREVENTION

A. Lead Based Paint Hazards:

(Applicable to Contracts for construction or rehabilitation of residential structures.) The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-base paint hazards under subpart B of said regulations. The City shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives:

When use of explosives is necessary for the prosecution of the Work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property and all underground structures and utilities.

The Contractor shall notify all owners of public utility property of the intention to use explosives at least forty-eight hours (48 Hrs) before blasting is done, close to such property. Any supervision or direction of use of explosives by the City does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

The Contractor shall subcontract to a company or firm that is licensed by state and federal entities for the purchase, transport and use of such explosives. Subcontractor shall have a minimum of ten years (10 Yrs) experience and shall be subject to the approval and verification of the City.

C. Danger Signals and Safety Devices (Modify as Required):

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. The Contractor shall put up and maintain in condition sufficient of red or warning lights at night, suitable barricades and other devices and signage necessary to protect the public. In case the Contractor fails or neglects to take such precautions or maintain same, the City shall have such lights, barricades, devices and/or signage installed and charge the cost of this work to the Contractor. Such action by the City does not relieve the Contractor of any liability incurred under these Technical Specifications or Contract. All such Signals or devices shall comply with the latest edition of The Texas Manual on Uniform Traffic Control Devices (TMUTCD).

27. SUSPENSION OF WORK

Should the City be prevented or enjoined from proceeding with work or from authorizing its prosecution either before or after its prosecution, by reason of any litigation, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time completion of the Work shall be extended to such reasonable time as the City shall determine will compensate for time lost by such delay with such determination to be set forth in writing.

28. SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

In order to protect the lives and health of the Contractor's employees under the Contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on the Work under this Contract.

The Contractor alone shall be responsible for the safety, efficiency and adequacy of the project, appliance and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

29. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY OWNER

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the City, provided the City:

- A. Secures written consent of the Contractor except in the event, in the opinion of the City or the City's Representative, the Contractor is chargeable with unwarranted delay in completing the Contract requirements;
- B. Secures consent of Surety;
- C. Secures endorsement from insurance carrier(s) permitting occupancy of the building or use of the project during the remaining period of construction; or,
- D. When the project consists of more than one (1) building and one (1) of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit from the insurance construction.

Use and occupancy shall not be allowed without the approval of the Project Manager, the Director of Community Development and the City Manager. All conditions and terms for occupancy prior to acceptance shall be written and agreed to by the Contractor and the City.

30. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at the Contractors expense:

- A. To take every precaution against injuries to persons or damage to property;
- B. To store apparatus, materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of the Work or any other Contractor or Subcontractors work;
- C. To place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work;
- D. To clean up frequently all refuse, rubbish, scrap materials and debris caused by construction operations, to the end that at all times the site of the Work shall present a neat, orderly and workmanlike appearance;
- E. Before Final Payment to the Contractor, removal of all surplus material not to be kept and stored, false work temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from the Contractor's operations, and to put the site in a neat, orderly condition.
- F. To effect all cutting, fitting or patching of the Contractors work required to make the same to conform to the Drawings and Technical Specifications and, except with the consent of the City or the City's Representative, not to cut or otherwise alter the Work of any other Contractor.

31. QUANTITIES OF ESTIMATE

Wherever the estimated quantities of the Work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right shall be reserved, except herein otherwise specifically limited , to increase or diminish them as deemed reasonably necessary or desirable by the City to complete the Work contemplated by the Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

All quantities shall be based on exact or near exact usage of items actually installed and incorporated into the Work.

32. LAND AND RIGHTS-OF-WAY

[N/A]

33. NOTICE AND SERVICE THEREOF

Any notice to any Contractor from the City relative to any part of this Contract shall be in writing and considered delivered and service thereof completed when said notice is posted, certified or registered mail, to the said Contractor at the last given address or delivered in person to the said Contractor or duly authorized representative on the Work.

34. SEPARATE CONTRACT

The Contractor shall coordinate operations with those of other Contractors. Cooperation shall be required in the arrangement for the storage of materials and in detailed execution of the Work. The Contractor, including the Subcontractors, shall keep informed of the progress and detail work of other Contractors and shall notify the City's Representative immediately of lack of progress or defective workmanship on the part of other Contractors.

Failure of a Contractor to keep informed of the Work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the Work as being satisfactory for proper coordination with the Contractors own work.

35. SUBCONTRACTING

- A. The Contractor may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors.
- B. The Contractor shall not award any work to any Subcontractor without prior written approval of the City, which approval shall not be given until the Contractor submits to the City a written statement concerning the proposed award to the Subcontractor, which statement shall contain information as the City may require.
- C. The Contractor shall be as fully responsible to the City for the acts or omissions of Subcontractors performing work under the Contractors supervision, and of persons directly or indirectly employed by said Subcontractor, as the Contractor is for acts and omission for persons directly employed by the Contractor.
- D. The Contractor shall cause appropriate provisions to be inserted in all Subcontracts relative to the Work to bind Subcontractors to the Contractor by terms of the General Conditions and Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any Subcontractor that the City may exercise over the Contractor under any provision of the Contract Documents.

- E. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City.

36. THE CITY'S REPRESENTATIVES AUTHORITY

The City's Representative shall give all orders and directions contemplated under this Contract and Technical Specifications, relative to the execution of the Work. The City's Representative shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials which shall be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The City's Representative's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any questions shall arise between the parties hereto relative to said Contract or Technical Specifications, the determination or decision of the City's Representative shall be condition precedent to right of the Contractor to receive any monies or payment for work under this Contract affected in any manner or to any extent by such question.

37. MEANING AND INTENT

The City's Representative shall decide the meaning and intent of any portion of the Technical Specifications and of any Drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor, under this Contract and other Contractors, performing work for the City, shall be adjusted and determined by the City's Representative.

38. CONTRACT SECURITY

If the Contract amount exceeds Twenty-Five Thousand Dollars (\$25,000), a Payment Bond shall be furnished, and if the Contract amount exceeds One Hundred Thousand Dollars (\$100,000) a Performance Bond also shall be furnished, on prescribed forms in the amount of one hundred percent (100%) of the Contract amount as prescribed by the state, territorial or local law, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract and as security for faithful performance of this Contract.

39. ADDITIONAL OR SUBSTITUTE BOND

If at any time the City, for justifiable cause, shall be or become dissatisfied with any Surety or Sureties for the Performance and/or Payment Bonds, the Contractor shall, within five working days (5 wD) after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such Surety or Sureties as may be satisfactory to the City. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new Surety or Sureties shall have furnished such an acceptable bond to the City.

For Final Acceptance, the Contractor shall supply a One Year Maintenance Bond dated the date of City Council Acceptance, and effective for one year (1 Yr), in the total amount of the Contract.

40. ASSIGNMENTS

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the City. In case the Contractor assigns all or part of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the Work called for this Contract.

41. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, and other Contractor or any Subcontractor shall suffer loss or damage on the Work, the Contractor agrees to settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor shall so settle. If such other Contractor or Subcontractor assert any claim against the City on account of damage alleged to have been sustained, the City shall notify the Contractor, who shall indemnify and hold harmless the City against any such claim.

42. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of the Final Payment shall be and shall operate as a release to the City of all claims and all liability to the Contractor for all things done or furnished in connection with this work. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractors Sureties from any obligations under this Contract or the Performance, Payment or Maintenance Bonds.

43. PAYMENTS BY THE CONTRACTOR

The Contractor shall pay the following:

- A. For all transportation and utility services no later than the twentieth (20th) day of the calendar month following that in which the services are rendered;
- B. For all materials, tools, and other expendable equipment to extent of ninety percent (90%) cost thereof, no later than the twentieth (20th) day of the calendar month following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof, no later than the thirtieth (30th) day following the completion of that part of the Work in or on which such materials, tools and equipment are incorporated or used; and
- C. To each of the Subcontractors under contract to the Contractor, no later than the fifth (5th) day following each payment to the Contractor, the respective amounts allowed the Contractor on account of work performed by said Subcontractors to the extent of each Subcontractors interest therein.

44. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after execution and delivery of the Contract, and before the first progress payment is made, the Contractor shall deliver to the City an estimated construction progress schedule in form satisfactory to the City, showing proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that shall become due the Contractor in accordance with the project schedule. The Contractor shall also furnish on forms to be supplied by the City:

- A. A detailed estimate giving complete breakdown of the Contract Price and;
- B. Periodic itemized estimates of work done for the purpose of making progress payments thereon. The costs employed in making up any of these schedules shall be used only for determining the basis of progress payments and shall not be considered as fixing basis for additions to or deductions from the Contract Price.

45. PAYMENTS TO THE CONTRACTOR

- A. Not later than the twentieth (20th) day of each calendar month, the City shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure proper performance of the Contract, the City shall retain fifteen percent (15%) of the amount of each estimate until Final Completion and acceptance of all work covered by this Contract; provided that the Contractor shall submit the estimate no later than the fifth (5th) day of the calendar month. Each pay estimate shall be accompanied by a Certification by Contractor - Statement of Compliance with Labor Standards; Affidavit of Bills Paid, and a Waiver and Lien release. Provided further, that on completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, payment may be made in full, including retained percentages thereon, less authorized deductions.
- B. In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration. Materials shall only be taken into consideration with validation by invoice.
- C. All material and work covered by progress payments made shall thereupon become the sole property of the City, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the City to require the fulfillment of all of the terms of the Contract.
- D. The City's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that they will indemnify, defend, and save the City harmless from all claims growing out of lawful demands of Subcontractors, labors, workmen, 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. The Contractor shall, at the City's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails to do so, the City shall, after having served written notice on the said Contractor, the City shall either:
 - 1) Withhold from said Contractors unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall provisions of this sentence be construed to impose any obligations upon the City to either the Contractor or the Contractors Surety; or

- 2) Pay unpaid bills direct on which the City has given written notice. In paying any unpaid bills of the Contractor, the City shall be deemed the agent of the Contractor, and any payment so made by the City shall be considered as a payment made under the Contract by the City and the Contractor and the City shall not be liable to the Contractor for any such payments made in good faith. This provision shall not be construed to give rise to any third party beneficiary rights in claimants.
 - 3) If in the opinion of the City the Contractor cannot in due diligence make payment to Subcontractors, suppliers or other debt incurred as a result of the Work or the non-payment is a recurring problem, the City shall immediately notify the Contractors Surety and make claim on the Payment Bond.
- E. Monies in dispute, either due to non-payment as specified above, if more monies withheld from the Contractor than can be justified, and payment to the Contractor has passed beyond one (1) progress payment, the Contractor shall be due interest on the unjustified part of the amount withheld. If the Contractor fails to pay Subcontractors, suppliers or other debt past one (1) progress payment, subcontractors, supplies or other debt shall be entitled to interest payments on monies owed from the Contractor.

Payments due and unpaid under Contract Documents shall bear interest from the date payment is due at such rate as the legal rate prevailing at the time at the place where project is located.

46. CORRECTION OF WORK

All work, all materials, whether incorporated in the Work or not, all processes of manufacture and all methods of construction shall be at all times and places subject to inspection of the City's Representative who shall be the final judge of the quality and suitability of the Work, materials, processes for manufacture and methods of construction for the purposes for which they are used. Should they fail to meet the City's Representative's approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at the Contractor's expense. If, in the opinion of the City's Representative, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the City and the City's Representative is determined to be equitable.

If the Contractor cannot or will not remedy the Work that the Contractor has been notified is defective, the City shall give written notice for the Contractor to bring such defective work into compliance with the Contract Documents in a reasonable number of days. If the Contractor fails to take corrective action, then the City shall have the defective work corrected and deduct the cost from the Contract.

47. SUBSURFACE CONDITIONS

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the Drawings or indicated in the Technical Specifications, the Contractor shall immediately give notice to the Project Manager and the City's Representative of such conditions before they are disturbed. The City's Representative shall thereupon promptly investigate the conditions and, if the City's Representative finds that they materially differ from those shown on the Drawings or indicated in the Technical Specifications, the City's Representative shall at once make such changes in the Drawings and/or Technical Specifications as shall be necessary. Any increase or decrease of the cost resulting from such changes shall be adjusted in the manner provided in Paragraph 49 of the General Conditions.

48. CLAIMS FOR EXTRA COST

No claim for extra work or cost shall be allowed unless the same was done pursuant to a written order of the City's Representative and approved by the City, as aforesaid, and the claim presented with the first (1st) estimate after the changed or extra work is done. When work is performed under the terms of Paragraph 49.C of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the City, shall give the City access to accounts relating hereto.

49. CHANGES IN WORK

No changes in the Work covered by the approved Contract Documents shall be made without having prior written approval of the City. Any work undertaken by the Contractor that changes work covered by the approved Contract Documents shall be at the Contractors own risk and no claim shall be made against the City if said work is not approved for change.

- A. Unit Bid Prices previously approved by the Contract Documents.
- B. An agreed Lump Sum.

C. Time and material, in which the actual cost shall be:

- 1) Labor, including foreman;
- 2) Materials entering permanently into the Work;
- 3) Ownership or rental cost of construction plant and equipment during the time of use on the extra work;
- 4) Power and consumable supplies for operation of power equipment;
- 5) Insurance;
- 6) Social Security and old age unemployment contributions.

To the cost under subparagraph C of Paragraph 49 there shall be added a fixed fee to set at ten percent (10%) of the extra work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

50. EXTRAS

Without invalidating the Contract, the City may order extra work or make changes, to the extent permitted by laws governing change orders, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly, and consent of the Surety being first (1st) obtained where necessary or desirable. All the Work of the kind bid upon shall be paid for at the price stipulated in the proposal and no claims for any extra work or materials shall be allowed unless the work ordered in writing by the City or the City's Representative and approved by the City, acting officially for the City, and the price stated in such order.

51. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- A. It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning and the time of completion as specified in the Contract of work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date specified in the Notice To Proceed.
- B. The Contractor agrees that said Work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure fill completion thereof within in the time specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time for completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and industrial conditions prevailing in this locality. City reserves the right to breach this Contract by anticipatory repudiation, without penalty to City, if the rate of progress is so behind that the project cannot be reasonably completed on time.

- C. If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the City, the Contractor does hereby agree, as a part consideration for awarding of this Contract, to pay to the City the amount specified in the Contract, not as a penalty, but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every consecutive working day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.
- D. The said amount stated in Document 00400 – Standard Agreement For Contracting Services is fixed and agreed upon by and between the Contractor and City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.
- E. It is further agreed that time is of the essence of each and every portion of this Contract and of the Technical Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with any liquidated damages or any excess cost when the City determines that any part of the liquidated damages was not the fault of the Contractor and the City determines that the request for extension by the Contractor is justified and due to:
- 1) Any preference, priority or allocation duly issued by the government;
 - 2) The following unforeseeable causes namely acts of the public enemy, unjustified acts of the City, acts of another Contractor in performance of a Contract with the City, fires, floods, earthquakes, hurricanes, tornadoes, epidemics and any other acts of nature, quarantine restrictions, strikes, freight embargos; and rainy days claimed by the Contractor; however rainy days shall be considered only if the Contractor notifies the City on the day the Contractor claims he cannot work because of rainy weather that day. Rainy day must be as is specified in Paragraph 51.E.3 below. Failure to report the rainy day and to claim said rainy day shall eliminate any claim for time extension because of rain or inclement weather on that day.
 - 3) Rainy day shall be described as when a minimum of sixty percent (60%) of the Contractors workforce cannot work for four (4) or more consecutive hours on critical path activities and providing that the Contractor has complied with the conditions under Paragraph 51.E.2.

- 4) Any delays of Subcontractors or suppliers occasioned by any of the causes specified in subparagraphs one (1) and two (2) of this Paragraph.
- F. Provided, further, that the Contractor shall, within ten days (10 D) from beginning of such delay, unless the City shall grant a further period of time prior to the date of final completion of the Contract, notify the City, in writing, of the causes of delay, who shall ascertain the facts and extent of delay and notify the Contractor within reasonable time of the City's decision in the matter.
- G. Provided, that this provision for liquidated damages shall be cumulative of and not in limitation of any other remedy available to the City, including, but without limitation, the right to terminate as provided in Paragraph 3 of the General Conditions and recover additional damages for any excess cost in otherwise completing the Work.

52. WEATHER CONDITIONS

In the event of temporary suspension of work, or during inclement weather, or whenever the City's Representative shall direct, the Contractor shall cause the Subcontractors to protect carefully all work and materials against damage or injury from the weather. If, in the opinion of the City's Representative, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of the Subcontractors so to protect the Work, such materials and work shall be removed and replaced at the expense of the Contractor.

53. PROTECTION OF THE WORK AND PROPERTY – EMERGENCY

- A. The Contractor shall at all times safely guard the City's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect the Work and that of adjacent property, from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract, by the City or the City's duly authorized representatives.
- B. In case of an emergency which threatens loss or injury of property and/or safety of life, the Contractor shall be allowed to act, without previous instructions from the City or the City's Representative, in a diligent manner. The Contractor shall notify the City or the City's Representative immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall promptly be submitted to the City or the City's Representative.

- C. Where the Contractor has not taken action but has notified the City or the City's Representative of an emergency threatening injury to persons or damage to the Work or any adjoining property, the Contractor shall act as instructed by the City or the City's Representative.
- D. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided for in the General Conditions.

54. INSPECTION

The authorized representatives and agents of the City shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data. The Contractor shall not impede and shall allow unrestricted access to the Project Mangers, Building Official and Testing Laboratory personnel.

55. SUPERINTENDENCE BY CONTRACTOR

At the site of the Work, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that the representative shall be acceptable to the City's Representative and shall remain in such capacity for the particular job involved unless superintendent ceases to be on the Contractors payroll.

56. FEDERAL LABOR STANDARDS PROVISIONS

All laborers and mechanics employed upon the Work covered by this Contract shall be paid unconditionally and not less than once each week and without subsequent deduction or rebate on any account (except such payroll deductions as are mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified) the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the City for the cashing of same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also, for the purpose of this clause, regular contributions made or costs incurred more than a weekly period under plans, funds or programs, but

covering the particular work-week, are deemed to be constructively made or incurred during such weekly period.

57. UNDERPAYMENTS OF WAGES OR SALARIES

In case of underpayment of wages by the Contractor or by any subcontractors to laborers or mechanics employed by the Contractor or Subcontractor upon the Work covered by the Contract, the City, in addition to such other rights as may be afforded it under this Contract, shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the City, may consider necessary to pay such laborers or mechanics the full amount of wages required of this Contract. The amount so withheld may be disbursed by the City for and on account of the Contractor or the Subcontractor (as may be appropriate), to the respective laborers and mechanics to whom same is due or on their behalf to plans, funds or programs for any type of fringe benefit prescribed in the applicable wage determination.

58. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

No person under the age of sixteen years (16 Yrs) and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the Work covered by this Contract.

59. EMPLOYMENT OF LABORERS OR MECHANICS NOT LISTED IN AFORESAID WAGE DETERMINATION DECISION

Unlisted classifications needed for work not included within the scope of the classifications listed in the wage determination of this Contract maybe added after award only as provided in the labor standards contract clauses (29CFR, 5.5(a)(1)(ii).

60. FRINGE BENEFITS NOT EXPRESSED AS HOURLY WAGE RATES

The City shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay cash equivalent of such benefit, an hourly cash equivalent thereof established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by a recommendation of the City, shall be referred to the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

61. POSTING WAGE DETERMINATION DECISIONS AND AUTHORIZED WAGE DEDUCTIONS

The applicable wage poster and the applicable wage determination decisions, with respect to the various classification of laborers and mechanic employed upon the Work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at the appropriate conspicuous points at the site of the Work.

62. COMPLAINTS, PROCEEDINGS OR TESTIMONY BY EMPLOYEES

No laborer or mechanic to whom wages, salary or other labor standards provisions of this Contract are applicable shall be discharged or in any manner discriminated against by the Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to their employer.

63. CLAIMS AND DISPUTES PERTAINING TO WAGE RATES

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the Work covered by this Contract shall be promptly reported by the Contractor in writing to the City for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

64. PAYROLLS AND BASIC PAYROLL RECORDS OF THE CONTRACTOR AND THE SUBCONTRACTOR

A. The Contractor and each Subcontractor shall prepare their payrolls on forms satisfactory to and in accordance with instructions to be furnished by the City. The Contractor shall submit weekly to the City one (1) certified copy of all payrolls of the Contractor and of the subcontractors, it is being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each Subcontractor covering all laborers and mechanics employed upon the Work covered by this Contract shall be maintained during the course of the Work and for a period of three years (3 Yrs) thereafter. Such payroll records shall contain name and address of each employee, the employee's correct classification, rate of pay (including rates of contributions or costs anticipated of types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

- B. In addition, whenever the Secretary of Labor has found, under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, that wages of any laborer or mechanic include the amount any costs reasonably anticipated in providing benefits under a plan, or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor or Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and will maintain records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each Subcontractor shall make their employment records, with respect to persons employed by them upon the Work covered by this Contract, available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the City and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractors during working hours on the job.
- C. At a minimum the Contractor and subcontractors shall certify their payroll and remit such certification with the progress payment request.

65. SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES

The transporting of materials and supplies to or from the site of the project or program to which the Contract pertains by the employees of the Contractor or any Subcontractor and manufacturing or furnishing of materials, articles, supplies or equipment on the site of the project of program to which this Contract pertains by persons employed by the Contractor or by any Subcontractor, shall, for the purpose of this Contract, and without limiting the generality of the foregoing provisions of this Contract, shall be deemed to be work which these Federal Labor Standards Provisions are applicable.

66. INELIGIBLE SUBCONTRACTORS

The Contractor shall not subcontract any part of the Work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the Subcontractor. The City shall not approve any Subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor, or the Secretary of Housing and Urban Development to receive an award of such subcontract.

Any Subcontractor shall also not be eligible if they previously or currently, in default of a contract on any other project, have failed to complete any project or was removed from a project for defective work.

67. PROVISIONS TO BE INCLUDED IN CERTAIN SUBCONTRACTS

The Contractor shall include or cause to be included in each subcontract covering any of the Work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the Subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may be in turn be made.

68. BREACH OF FEDERAL LABOR STANDARDS PROVISIONS

In addition to the causes for termination of this Contract as herein set forth, the City reserves the right to terminate this Contract if the Contractor or any Subcontractor, whose subcontract covers any of the Work covered by this Contract, shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

69. EQUAL OPPORTUNITY PROVISIONS (E.O. 11246)

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative actions to ensure that applicants for employment are employed and that employees treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notice to be provided Contracting Officer setting forth provisions of this nondiscrimination clause.
- C. The Contractor shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor shall incorporate foregoing requirements in all subcontracts.

70. CIVIL RIGHTS ACT OF 1964

Under Chapter 106 of the Civil Practice & Remedies Code of the Revised Civil Statutes of Texas, no person shall, on the ground of race, color, national origin, sex, age or handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity of the City.

71. CONFLICTING CONDITIONS IN THE CONTRACT DOCUMENTS

The Contract Documents are complementary and what is called for by one (1) shall be as binding as if called for by all. In case of conflict between any Contract Documents interpretation shall be as listed in Document 00115 – Instruction to Bidders, Paragraph XXIII.

72. INDEMNIFICATION

- A. The Contractor shall defend, indemnify and hold harmless the City and the City's Representative and their respective officers, agents and employees, from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses arising out of or resulting from the performance of the Work, or any act or omission of Contractor, or Contractor's officers, agents and employees.
- B. The obligation of the Contractor under this Paragraph shall not extend to the liability of the City's Representative, their agents or employees arising out of preparation or approval of maps, drawings, reports, surveys, Change Orders, designs or Technical Specifications, or the giving of or failure to give directions or instructions by the City's Representative, their agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

73. A.I.A AND EJCDC GENERAL CONDITIONS

- A. The General Conditions of the Contract for Construction, A.I.A. Document A201, latest edition, of the American Institute of Architects and the EJCDC Document C-200 Instruction to Bidders, latest edition, of the Representatives Joint Contract Documents Committee are hereby made part of these Contract Documents by reference. Such A.I.A. and EJCDC General Conditions are cumulative to these General Conditions, but where any provision of said A.I.A. and EJCDC General Conditions are inconsistent or in conflict with these General Conditions, these General Conditions and all other Contract Documents shall prevail.
- B. If the A.I.A. General Conditions are in conflict with the EJCDC General Conditions, and these Conditions do not address such conflict, then the EJCDC General Conditions shall prevail.

- C. All references to arbitration in said A.I.A. General Conditions, as well as Subdivisions 2.2.3 and 2.2.4, and all such references made in EJCDC General Conditions, are deleted and of no force and effect for the purposes of this Contract.

74. DELAYS

The Contractor shall receive no compensation for delays or hindrances to the Work, except when the direct or unavoidable extra cost to the Contractor is caused by failure of the City to provide information or material, if any, which is to be furnished by the City. When such extra compensation is claimed, a written statement thereof shall be presented by the Contractor to the City or the City's Representative and, if found correct, shall be referred to the City Council for final approval or disapproval; and action thereon by the City Council shall be final and binding. If delay is caused by specific orders given by the City or the City's Representative to stop work, or by the performance of extra work, or by the failure of the City to provide material or necessary instructions for carrying on the Work, then such a delay shall entitle the Contractor to an equivalent extension of time, the application of which shall, however, be subject to the approval or disapproval of the City Council; and no such extension of time shall release the Contractor or the Surety on their performance bond from all obligations hereunder which shall remain in full force until the discharge of the Contract.

75. MAINTENANCE OF WORK

If, after approval of Final Payment and prior to expiration of the one year (1 Yr) date of Substantial Completion or such longer period as may be prescribed by law or any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the City and in accordance with the City's written instructions, correct such defective work. If the Contractor does not promptly comply with such instructions, the City shall have defective work corrected and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor or the Contractor's Surety. The provisions of this paragraph shall not limit the obligation of the Contractor under Paragraph 15 (Guarantee of Work) of the General Conditions in any respect whatsoever, including the time period of such Guarantee of Work contained therein, as will arise under the laws of the State of Texas and said Paragraph 15 and without regard to the provisions of this Paragraph 75, nor shall this Paragraph 75 be construed to establish any period of limitations for any cause of action against the Contractor under the obligations of said Paragraph 15.

76. ANTITRUST

The Contractor hereby assigns to the City any and all claims for overcharges associated with this Contract which arise under the anti-trust laws of the United States, 15 U.S.C.A. Sec. 1, et seq. (1973).

77. DELAY, DISRUPTION OR OTHER CLAIMS

Any claim by the Contractor for delay, disruption or any other claim shall be based on a written notice delivered to the City and to the City's Representative promptly [but in no case later than ten working days (10 wD)] after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Within ten working days (10 wD) of delivering said notice, the Contractor shall deliver to the City and the City's Representative notice of the amount of the claim and specific and detailed support documentation and data on the impact claimed. Further, the Contractor shall furnish on a continuing basis all of the documents that in any way are purported to support the damages, costs, expenses and impact of the claim event. The Contractor's failure to fully comply with any of these requirements with respect to any claim shall constitute a complete and final waiver of said claim.

END OF SECTION

**SECTION 00600
SUPPLEMENTAL CONDITIONS**

1. GENERAL

The Provisions of this Section of the Technical Specifications shall govern in the event of any conflict between them and Document 00500 – General Conditions.

2. REPRESENTATIVE

The word “Representative” in these Technical Specifications shall be understood as referring to a Representative of the City, or such other Representative, or persons as may be authorized by the City to act in any particular position.

3. LOCATION OF THE PROJECT

This project is located in Manvel, Brazoria County, Texas. Map showing the general location of this project is included in the Drawings.

4. TIME ALLOTTED FOR COMPLETION

The time allotted for the completion of all items of work shall be consecutive working days, which time shall begin on the tenth (10th) day after issuance of the Notice To Proceed. The Notice To Proceed shall consist of a written order from the City or the City’s Representative for the Contractor to proceed with the Construction of the project.

5. PERMITS AND RIGHTS-OF-WAY

A. The City shall provide rights-of-way for the purpose of construction without cost to the Contractor by securing such permits in areas of public dedication or by obtaining easements across privately owned property. It shall be Contractors responsibility, prior to the initiation of construction on easements through private property, to inform the property owner of the Contractors intent to begin construction. The Contractor shall notify the property owners a minimum of forty-eight hours (48 Hrs) prior to the start of construction. The Contractor shall notify the agency having jurisdiction of the intention to initiate construction forty-eight hours (48 Hrs) prior to initiation of the Work.

B. The City shall obtain all permits for work in rights-of-way and shall waive all fees for permitting with the Building Division. Contractor and Subcontractors shall be responsible for payment of needed license for particular trades (i.e. Electrician, Plumber) and registration to do work in the City.

6. CONSTRUCTION IN PUBLIC STREETS AND PRIVATE DRIVES

- A. No public road shall be entirely closed overnight. It shall be the responsibility of the Contractor to build and maintain all-weather bypasses and detours, if necessary, and to properly light, barricade and mark all bypasses and detours that might be required on and across the streets involved in the Work included in this Contract. The residents along the affected road(s) shall be contacted a minimum of forty-eight hours (48 Hrs) prior to the time the construction shall commence at their driveways or entrances and informed as to the length of time the driveways shall be closed.
- B. The Contractor shall make every effort to complete construction and allow immediate access to adjacent property at all driveway entrances located along the streets. The Owners or Tenants of commercial properties where access and/or entrance drives which shall be affected by construction shall be notified a minimum of twenty-four hours (24 Hrs) prior to the time the construction shall be started at their driveways or entrances and informed as to the length of time driveways shall be closed.
- C. During inclement weather the Contractor shall construct temporary gravel or shell crossings and wooden walkways to allow ingress and egress across excavated areas at no expense to the City and as directed by the Project Manager or the City's Representative.
- D. The Contractor shall be responsible for all streets and entrance reconstruction and repairs and maintenance of same for a period of one year (1 Yr) from the date of such reconstruction or Substantial Completion, whichever is longer. In the event the repairs and maintenance are not made immediately to the satisfaction of the City, and it becomes necessary for the City to make such repairs, the Contractor shall reimburse the City for the cost of such repairs.
- E. The Contractor shall, at all times, keep a sufficient width of the roadway clear of dirt and other material to allow the free flow of traffic. The Contractor shall assume any and all responsibility for damage, personal or otherwise, that may be caused by the construction along public streets or private drive.
- F. During the prosecution of the Work, the Contractor shall obstruct public travel as little as possible and in no case shall there be less than twelve feet (12 Ft) in width of unobstructed roadway for traffic.

7. MAINTENANCE OF STORM SEWER, UTILITY CROSSINGS AND EXISTING ROADWAYS

If applicable, the Contractor shall maintain storm sewers, utilities, pipelines, and drainage facilities along the construction route at all times during construction at no additional expense to the City. Storm sewers and utilities crossing existing roadways shall be backfilled in accordance with these Technical Specifications and the Standard Details to an elevation six inches (6 In) below the elevation of the existing roadway. A temporary road patch of six inches (6 In) thick of compacted limestone base shall be constructed to or a little above the elevation of the existing roadway within the limits of the pavement removal at no additional cost to the City. The existing roadway shall be maintained throughout the construction. Pothole appearing in the base or the existing pavement shall be deemed a hazard to the general public and shall be filled and maintained as directed by the Project Manager.

8. PUBLIC UTILITIES AND OTHER PROPERTY TO BE CHANGED

In case it is necessary to change or move the property of any owner or public utility, such property shall not be moved or interfered with until ordered to do so by the Project Manager. The right is reserved to the owner of public utilities to enter upon the limits of the project for the purpose of making such changes or repairs of their property that may be made necessary by performance of this Contract.

9. TEMPORARY CONSTRUCTION

No material, which has been used by the Contractor for any temporary purpose whatever, is to be incorporated in the permanent structure without written permission of the Project Manager.

10. PROJECT MAINTENANCE

The Contractor shall maintain and keep in good repair all work contemplated under these Drawings, Exhibits and/or Technical Specifications which shall include the maintenance and repair of all existing streets, storm sewer crossings, utility crossings, temporary crossings for access to adjacent property, wooden walkways, barricades, lights, danger signals and all work which is necessary for the well-being of the general public. In the event the Contractor fails to properly maintain the Work, the City shall make such repairs as are necessary and the cost of said repairs shall be deducted from payment due to the Contractor.

11. BORINGS

Wherever certain test borings are made on this site, the locations of such test borings and the information revealed by them is indicated on the Drawings and profiles for the project. These borings shall not be construed as a warranty on the part of the City of the exact nature of the subsurface conditions that will be encountered during construction of the Work. The information thus furnished is intended only as a guide to the Contractor in making their own investigations preliminary to submitting a bid for the Work.

12. PROPERTY LINES AND MONUMENTS

The Contractor shall protect all property corner markers and when any such markers or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed, shall be reset by a Professional Land Surveyor licensed by the State of Texas, at the expense of the Contractor.

13. EXISTING STRUCTURES

The Drawings show the locations of all known surface and subsurface structures. However, the City assumes no responsibility for failure to show any or all of these structures on the Drawings, or to show them in their exact locations. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate substantial changes in the lines or grades, or requires the building of special work, provisions which are not made in the Drawings and the Proposal, in which case the provisions in these Technical Specifications for extra work shall apply.

14. USE OF EXPLOSIVES

Use of explosives shall not be allowed. If the Work requires the use of explosives, it shall only be upon written instructions by the City's Representative. Should explosives be used, the City shall not be liable for any damages done by the Contractor and the Contractor shall notify any public service corporation, company or individual not less than twenty-four hours (24 Hrs) in advance of the use of explosives. Storage places shall be marked "DANGER: EXPLOSIVES." Explosives shall be kept secure and stored as specified in state and federal regulations.

15. BARRICADES, LIGHTS AND WATCHMEN

- A. Where the Work is carried on, in or adjacent to any street, alley or public place, the Contractor shall at their own cost and expense furnish and erect such barricades, fences, battery type flasher-markers and danger signals, shall provide watchmen, and shall provide such other precautionary measures for the protection of persons or property and the Work as are necessary. Barricades shall be painted using color that shall be visible at night and reflective. From sunset to sunrise the Contractor shall furnish and maintain at least one (1) battery type flasher-marker at each barricade and sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchmen in sufficient numbers to protect the Work and the public.
- B. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence is found of such damage, the Project Manager shall order the damaged portion to be immediately removed and replaced by the Contractor at no additional cost to the City. The Contractor's responsibility for the maintenance and repair of barricades, signs and lights, and for providing watchmen shall not cease until the City has accepted the project.
- C. Materials and equipment stored in or near the path of traffic shall be protected with red flags during the day and with lights during the night.

16. FENCES, DRAINAGE CHANNELS AND CROP DAMAGE

- A. Boundary fences or other improvements removed to permit the installation of the Work shall be replaced in the same location and left in a condition as good or better than that in which they are found.
- B. Where surface drainage channels are disturbed or blocked during construction, final restoration to their original condition of grade and cross section shall be accomplished after the Work of construction is completed. Interim reshaping and cleanup shall occur immediately after trench backfilling.
- C. The Contractor shall not be held liable for unavoidable damage of crops provided such damage occurs within the construction easement provided by the City.

17. DISPOSAL OF WASTE AND SURPLUS EXCAVATION

- A. All trees, stumps, slashings, brush or other debris removed from the sites as a preliminary to the construction work shall be removed from the property and disposed of in a manner approved by the Project Manager.
- B. All excavated earth in excess of that required for backfilling shall be removed from the job site and disposed of in a satisfactory manner except in locations where, in the judgment of the Project Manager, it can be neatly spread over and along sites to form the finished contours.

18. WATER FOR CONSTRUCTION

- A. Water used for sprinkling, testing and flushing of waterlines or any other purpose incidental to this project, shall be furnished to the Contractor. The Contractor shall make necessary arrangements for securing and transporting said water and shall take said water in a manner and at such times that will not produce a harmful drain or decrease of pressure in the City's water system. Water shall not be used in a wasteful manner.
- B. Water shall be dispensed from a meter from the City' Department of Public Works. The Contractor shall not operate any valves on the existing water supply without a Public Works employee present. All water going into containers shall use a vacuum break.
- C. There shall be no jetting or flooding of trenches.

19. LIGHTS AND POWER

The Contractor shall provide, at the Contractor's expense, electrical power, temporary lighting and facilities required for the proper prosecution and inspection of the Work.

20. WAGE RATE

All employees of the Contractor on the Work to be performed under this Contract shall be paid the prevailing wage scale in this locality for work of a similar character in accordance with the prevailing local rate.

21. WARRANTY PERIOD

This is the period of time which encompasses the corrective actions by the Contractor for defective work, as stipulated in Paragraph 75 of Document 00500 – General Conditions, or as set forth in Paragraph 21 of Document 00600 – Supplemental Conditions. The Contractor shall indemnify the City against any repairs, which may become necessary to any part of the Work performed under the Contract arising from defective workmanship or materials used therein. Unless modified by special request from the City to the Contractor, in writing, the warranty period for the Contract in all its parts shall be one year (1 Yr) beginning on the date of Substantial Completion as acknowledged by the City– Notice of Final Completion. If the City, at anytime, requests in writing to the Contractor to use, take over or manage any such part of the Works, as set forth in Paragraph 29 of Document 00500 – General Conditions, which the City believes is ready for its intended use, and the Contractor agrees in writing to the City’s request, then the Warranty Period for that portion of the Work, and only that portion stipulated in the written request by the City shall be one year (1 Yr) from the date of agreement by the Contractor. If the time between Substantial Completion and Final Acceptance is longer than that stipulated in Paragraph 3.2 of Document 00400 – Standard Agreement for Contracting Services, the Warranty Period shall begin on the date of Final Acceptance.

22. COORDINATION WITH OTHERS

In the event other contractors are doing work in the same area simultaneously with this project, the Contractor shall coordinate proposed construction with that of other contractors.

23. CLEANUP

- A. Cleanup shall follow the execution of the Work. At the conclusion of the Work, all tools, temporary structures and materials belonging to the Contractor shall be promptly removed and all dirt, rubbish and other foreign substances shall be disposed of properly.
- B. The Contractor shall thoroughly clean all equipment and materials installed by the Contractor and shall deliver over such materials and equipment undamaged in a bright, clean polished and new appearing condition.
- C. During construction of the Work, the Contractor shall, at all times keep the site of the Work and adjacent premises as free of material, debris and rubbish, as is practicable and shall remove same from any portion of the site, if, in the opinion of the Project Manager, such material, debris or rubbish constitutes a nuisance or is objectionable.

- D. The Contractor shall remove from the site all of his surplus materials and temporary structures when no further need therefore develops.

24. EXISTING UTILITIES AND SERVICE LINES

The Contractor shall be responsible for the protection of all existing utilities or service lines crossed or exposed by the construction operations. Where existing utilities or service lines are cut, broken or damaged, the Contractor shall replace or repair the utilities or service lines with the same type of original material and construction, or better, at the Contractors own cost, with the exception of those items included in the bid schedule.

25. TESTING, INSPECTION AND CONTROL

- A. Testing and control of concrete and other materials used in the Work shall be done by an approved local commercial laboratory.
- B. The City provides and pays for the first (1st) only and subsequent tests are at the Contractor's expense, unless otherwise specified. Notify the Project Manager prior to manufacture or fabrication of items so that observation may be accomplished and furnish field samples of materials to the Project Manager for testing.

26. INCREASED OR DECREASED QUANTITIES OF THE WORK

The City reserves the right to alter the quantities of the Work to be performed or to extended or shorten the improvements at any time when found necessary, and the Contractor shall perform the Work as altered, increased or decreased, at the Contract unit prices. Such increased or decreased quantity shall be made in accordance with Document 00500 – General Conditions and Document 00400 – Standard Agreement for Contracting Services. No allowance shall be made for any charge in anticipated profits nor shall such changes be considered as waiving or invalidating any condition or provisions of the Contract and the Bond.

27. POLES, SIGNS, GUY WIRES, ETC.

- A. All utility poles and guy wires, private sign posts, signs and guy wires, and similar private obstructions which interfere with the construction of this project shall be removed and replaced, or moved to new permanent locations by the owners thereof, at the Contractor's expense. No separate compensation shall be paid for this work, but the costs thereof shall be included in such contract pay items as are provided.

- B. The removal and replacement of the City's street signpost and signs are the responsibility of the Contractor. The Contractor shall be responsible for all damage to street signposts and signs within the limits of the Contractor's operations that remain in place or are removed and replaced. In the event street signposts and/or signs are damaged or destroyed by the Contractor's operations, said signposts or signs shall be replaced by the Contractor at no cost to the City.
- 1) All signs on City Streets that are not Texas Department of Transportation (TxDOT) Highways shall be purchased directly from the Department of Public Works.

28. SALVAGED MATERIALS

All materials removed during the construction of the projects, and designation on the Drawings or by the Project Manager, as salvaged materials, shall be removed, cleaned and stored as directed by the Project Manager. Salvaged materials shall be the property of the City.

29. PROTECTION OF IMPROVEMENTS

The Contractor shall be entirely responsible for the protection of all improvements that are not designated by the Project Manager to be removed for proper construction of the project; this shall include sidewalks, buildings, walls, existing inlets and manholes, underground utilities, shrubs trees, signs, sod and pavement.

30. PROTECTION OF TREES

No trees shall be removed or cut except upon the specific approval of the City. Trees adjacent to the Work shall be protected from all damage by construction operations and as specified in Section 01560 – Tree and Plant Protection.

31. PROTECTION AND ADJUSTMENT OF EXISTING WATER VALVE BOXES

Water valve locations shall be furnished by the City prior to the grading operations. Protection of existing water valve boxes located within the limit of the Work shall subsequently be the responsibility of the Contractor. Failure to show water valve box locations on the Drawings does not relieve the Contractor of the responsibility to prevent damage to the valves and boxes. The Contractor shall adjust all water valve boxes, which require adjustment to new pavement grade. Water valve boxes shall be adjusted as per Technical Specification 02310 – Adjusting Manholes, Inlets and Valve Boxes to Grade.

32. ADJUSTMENT OF TOPS OF EXISTING SANITARY SEWER MANHOLES

Tops of existing sanitary sewer manholes shall be adjusted where necessary to match the grade of new pavement. Adjustment shall be made by breaking back the top portion of the manhole and rebuilding to conform to the new grade. Tops of manholes shall be adjusted as per Technical Specification 02310 – Adjusting Manholes, Inlets and Valve Boxes to Grade.

33. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The Contractor and Contractor's Sureties shall indemnify, defend, and save harmless the City and the City's Representative, and all their officers, agents and employees from all suits, actions and claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of any act or omission of the Contractor, their agents, officers, or employees, in the execution of said Contract; or on account of the failure of the Contractor to provide the necessary barricades, warning lights or signs; and shall be required to pay any judgment, with costs, which may be obtained against the City an/or the City's Representative growing out of such injury or damage.

34. LINES AND GRADES

A. The City's Representative shall furnish survey control to enable the Contractor to set construction stakes for the Work. Said controls shall be one (1) horizontal control and one (1) vertical control. The Contractor shall be responsible for all construction staking. Any field conditions that appear to be in conflict with the Drawings shall be submitted to the City's Representative in writing with adequate time allowed the City's Representative to resolve the conflict. No compensation for surveying shall be made without prior written approval from the City and the City's Representative.

B. **THE FURNISHING OF THE CONTROL DOES NOT RELIEVE THE CONTRACTOR OF THE RESPONSIBILITY OF INSURING THAT THE WORK IS CONSTRUCTED TO THE LINES AND GRADES SHOWN ON THE DRAWINGS.**

35. AFFIDAVIT OF PAYMENT

A. Each request for payment shall be accompanied by an – Affidavit of Payment, duly signed, and if a Corporation attested to, stating that all cost of labor, material, equipment, taxes, etc., pertinent to this project, have been paid and are current.

- B. The Final Payment, besides having the Document listed in Paragraph 35.A of Document 00600 – Supplemental Conditions, shall also have filed from each subcontractor, supplier and/or manufacturer a Document 00990 – Waiver and Release of Lien.

36. CERTIFICATE OF INSURANCE REQUIREMENTS

- A. Each and every Contractor and Subcontractor performing at the site of the Project shall not commence work until they have obtained all the Insurance required under this paragraph not shall the Contractor allow any Subcontractor to commence work on their subcontract until all similar insurance required of the Subcontractor has been so obtained. Each and every Contractor and Subcontractor shall take out and maintain during the life of the Contract adequate Worker's Compensation Insurance as shall protect the Contractor and any Subcontractor's performing any work covered by the Contract from any claims for damages for personal injury, including wrongful death, as well as from claims for property damages which may arise from operations under the Contract, or in any way connected therewith. The minimum amount of such insurance is shown in Part XVIII of Document 00115 – Instructions to Bidders.
- B. Proper certificates of insurance shall be filed with the City prior to execution of the Contract. Contractor's insurance as set forth in Paragraph 25 of Document 00500 – General Conditions, and as outlined above and in Document 00115 – Instructions to Bidders, shall remain in full force until the date on which the City formally accepts the project.

37. INTERRUPTION OF UTILITY SERVICES

Operate no valve or other control on existing systems. Exercise care in performing work so as not to interrupt service. At house connections, either lift trenching machine over lines or cut and reconnect with minimum interruption of service as approved by the Project Manager.

38. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the Contractor arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by the Contractor at no additional cost to the City.

39. SHOP DRAWINGS

The City requires three (3) copies of shop drawings, one (1) each for the Contractor, the City's Representative and the City, besides what the Contractor shall need for their manufacturers, suppliers and Subcontractors and other personnel that may require copies of the shop drawings. The Contractor shall submit all shop drawings a minimum of two weeks (2 Wks) prior to the anticipated construction of the item. The submittal data shall be accompanied by written certification (that the Contractor has reviewed and recommends the submitted data are consistent with the Drawings and Technical Specifications. Required shop drawing submittals include, but are not limited to, all mechanical equipment and material, electrical equipment and material, building materials, fabricated metal and piping, controls and coatings. Color chips shall be submitted with coating submittal for selection of color coating. Operation and Maintenance manuals for all items of equipment or materials shall be submitted prior to the project being fifty percent (50%) complete.

40. MAINTENANCE AND INSTRUCTION MANUALS

Furnish three (3) bound sets of Maintenance and Instruction Manuals. Bind manuals in volumes of not more than four inches (4 In) thick, in hardback nine inch by twelve-inch (9 In x 12 In) binders. Include like equipment in one (1) volume with heavy-duty dividers, separating equipment. Catalog and index all volumes. Operation and Maintenance Manuals or Bulletins shall include necessary data for reordering replacement parts, lubrications schedules and procedures for required maintenance. These items shall be included but not limited to: exhaust fans, air conditioning units, louvers, generator sets, pumps, motors, variable speed drives, mechanical drives, electrical switchgear and controls, electrical fixtures, valves, instrumentation, chlorinators, meters, gauges and miscellaneous mechanical and electrical components supplied under this Contract.

41. PROJECT SCHEDULE

Within fifteen days (15 D) after the execution of the Contract, submit in an acceptable form, a Construction Schedule, anticipated progress schedule of the Work to be performed. The project schedule shall indicate the number of crews, items to be constructed and the time schedule anticipated for each item.

42. WORKING DAY DEFINED

All City Projects are Working Day Contracts unless otherwise specified. The time of completion of the Contract shall be measured by Working Days. Upon request by the Contractor, extension of time may be issued by the Project Manager and the City, if, in their opinion, work is prohibited through no fault of the Contractor.

43. SANITARY AND SAFETY FACILITIES

The Contractor shall be responsible for all sanitary and safety facilities necessary for the Project, including rest rooms, drinking facilities, wash areas, hardhats, trench shoring, etc.

44. SUBCONTRACTOR VALUES

The Contractor shall not employ Subcontractors whose aggregate value of work exceeds fifty percent (50%) if the total amount of the Contract Price as stipulated I Document 00400 – Standard Agreement for Contracting Services.

45. PROJECT REPRESENTATIVE SERVICES

Project Representative Services shall be the responsibility of the Project Manager. The Project Representative's duties shall include preparation of daily reports, determination that the project is proceeding in general compliance with the Contract Documents, measurement of material quantities and reporting to the Project Manager any work that should be stopped when it appears that the completed project may not comply with the requirements of the Contract Documents. The Project Representative shall be the liaison between the Contractor and the City's Representative and the City. The Project Representative's responsibilities begin after the Contract is awarded and terminate after the Final Inspection.

46. ALTERNATE DESIGNS

- A. If alternate design features are proposed for convenience of the Contractor, Contractor shall submit design calculations and detail Drawings covering the proposed changes and related modifications of the Contract Drawings for review. Make the Drawings the same size as the Contract Drawings and of comparable quality. The Contractor shall make payment to the City for all charges resulting from modifications, including representative charges for checking such designs.
- B. If substitute items of equipment are allowed, and they vary materially from those shown on the Contract Drawings, Contractor shall prepare equipment data and detailed Drawings covering necessary modifications for the City's Representative for approval. Make the Drawings the same size as the Contract Drawings and of comparable quality. The Contractor shall make payment to the City for all charges resulting from the modifications, including representative charges for checking the modifications.

47. COST BREAKDOWN

Within fifteen days (15 D) after the execution of the Contract, Contractor shall submit, in acceptable form, schedule showing subdivision of the Contract into various items of permanent construction, stating quantities and prices, as basis for computing values to the City of permanent usable parts of the facility to be paid for on monthly estimates. No payment shall be made to the Contract until such schedule meeting the requirements of Section 01295 – Schedule of Values has been submitted and approved.

48. MATERIALS AND EQUIPMENT

Contractor shall incorporate into the Work only new materials and equipment of domestic manufacture unless otherwise designated. Store these materials and equipment in a manner to protect them from damages. Manner of protection subject to the specific approval of the Project Manager. Pipe, fittings, equipment and other serviceable materials found on site of work or dismantled by reason of construction, remain property of the City. Remove and deliver materials to the City at designated points. Pay, at prevailing market price, for usable materials that are damaged through negligence.

49. SPECIAL SPECIFICATIONS AND SPECIAL PROVISIONS

Basic Technical Specification Items, which follow prescribed general requirements. Special Specifications are those, which supplement the Technical Specifications and are specific to this project, whereas there are no Technical Specifications covering certain portions of the Work. When necessary, Special Provisions are inserted to describe additional requirements appreciable to this Contract. Special Provisions are to be used in conjunction with the Technical Specification and Special Specification Items. In event of conflict, the requirements set forth in the Special Provisions, as set forth will govern. In the event of conflict between the requirements shown on the Drawings and those contained in the Technical Specifications, then the governing item shall be as specified in Paragraph 37 of Document 00500 – General Conditions.

50. AS-BUILT DIMENSIONS

The Contractor shall make daily measurements of facilities. On completion of the project, the Contractor shall furnish the City with one (1) set of blue lines, marked with red pencil, to show as-built dimensions and location of all the Work constructed.

51. ARCHEOLOGICAL CONSTRUCTIONS

- A. No activity which may affect a State Archeological Landmark is authorized until the City has complied with the provisions of the Antiquities Code of Texas. The City has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.
- B. If archeological sites or historic structures are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the City and the Texas Historical Commission at (512) 463-6096. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the City and the appropriate State Agency. The City shall promptly coordinate with the Texas Historical Commission and any other appropriate agencies to obtain any necessary approvals or permits to enable the Work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the City.
- C. Contractor and Contractor's employees, officers and agents agree they shall have no claim to artifacts or items found or discovered during the Project, and shall assign any such claim by law to the City.

52. ENDANGERED SPECIES

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species. If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the applicable State Agency. The actions shall include reporting the encounter to the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the Work to continue, or implement other mitigative actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the City.

53. USE OF FACILITIES

As work progresses, completed components may be placed into service by the City upon agreement by the Contractor as stated in Paragraph 21 of the Supplemental Conditions. Such usage by the City shall not be held in any way as acceptance of said Work or any part thereof or as a waiver of the provisions of the Contract or the Technical Specifications.

54. OPERATION OF FACILITIES

The Contractor shall not operate, tap, or tamper with any existing facilities. Where construction involves operation of any existing facilities the City shall perform such operation. Any connection to existing equipment or systems to be schedule and approved in advance with performance to occur in the presence of the Project Manager.

55. SCOPE OF WORK

- A. Under this Contract, the Contractor shall furnish all materials, appliances, tools, equipment, transportation, services and all labor and superintendence necessary for construction of the Work as described in these Technical Specifications and as shown in the Drawings. The completed installation shall not lack any part which can be reasonably implied as necessary to its proper functioning nor any subsidiary item, which is customarily furnished, and the Contractor shall deliver the completed and operating installation to the City.
- B. The Work in general under this Contract includes, but is not limited to, that Work which is enumerated in the appropriate Document 00300 – Unit Price Bid Form.

END OF SECTION

**DOCUMENT 00800
ONE-YEAR MAINTENANCE BOND**

BOND NUMBER: _____

THAT WE, _____, as Principal, hereinafter called the Contractor, and the other subscriber hereto, _____ as the Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Manvel in the sum of _____ dollars and _____ cents (\$ _____), for the payment of which sum well and truly to be made to the City of Manvel and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Manvel for Construction of

**Rogers Road West
Water and Sewer Improvements**

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall comply with the provisions of CORRECTION OF WORK Paragraph of the General Conditions, and correct work not in accordance with the Contract Documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

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

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS: (SEAL)

(Full Name of Surety)

(Physical Address of Surety for Notice)

(Mailing Address of Surety for Notice)

(Telephone Number of Surety, with area code)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

This Bond has been reviewed as to form and content by the undersigned and has been found to meet established General Counsel criteria.

Attorney

Date

END OF DOCUMENT

DOCUMENT 00985
AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS

STATE OF TEXAS §
COUNT OF BRAZORIA §

The Affiant, _____ first being duly sworn, on oath, deposes and says that _____ is _____ of _____ that they have a Contract with the City of Manvel for

Rogers Road West
Water and Sewer Improvements

That, for the purpose of said contract, the following persons have been contracted with, and have furnished, or are furnishing and preparing materials for, and have done or are doing labor on said project. That there is due and to become due to them, respectively, the amounts set opposite their names for materials or labor as stated. That this statement is a full, true and complete statement of all such persons, the amounts paid and the amounts due or to become due match.

Exceptions are as listed in Table 1, hereto attached.

- 1. AMOUNT OF ORIGINAL CONTRACT \$
- 2. EXTRAS TO CONTRACT (ADD CHANGE ORDERS)..... \$
- 3. TOTAL CONTRACT AND EXTRAS (1+2)..... \$
- 4. CREDITS TO CONTRACT (DEDUCT CHANGE ORDERS)..... \$
- 5. ADJUSTED TOTAL CONTRACT (3-4)..... \$

- 6. TOTAL WORK COMPLETED TO DATE \$
- 7. LESS 10% RETAINED (6 * 10%) \$
- 8. NET AMOUNT EARNED (6-7) \$
- 9. NET PREVIOUSLY PAID \$
- 10. NET AMOUNT DUE THIS PAYMENT (8-10) \$
- 11. BALANCE TO COMPLETE CONTRACT (5-6)..... \$

It is understood that the NET PREVIOUSLY PAID (9) plus NET AMOUNT DUE THIS PAYMENT (10) SHALL NOT EXCEED NET AMOUNT EARNED (8).

I agree to furnish Waivers of Lien for all materials under this contract as demanded by the City.

TABLE 1 – EXCEPTIONS

COMPANY NAME	TYPE OF WORK	TOTAL ADJUSTED CONTRACT	TOTAL RETAINAGE	PREVIOUSLY PAID	AMOUNT THIS PAYMENT	BALANCE TO FINISH

I certify that the above is an accurate, full, true and complete statement.

Name:

Signature: _____

Title:

Subscribed and sworn to before me this _____ day of _____, 2012.

Notary Public In and For the State of Texas

My Commission Expires:

END OF DOCUMENT

DOCUMENT 00990

WAIVER OF LIEN

STATE OF TEXAS §
COUNT OF BRAZORIA §

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from _____ in the
sum of _____ (\$)
payable to _____

and when the check has been properly endorsed and has been paid by the bank upon
which it is drawn this documents shall become effective to release any mechanics lien,
stop notice or bond right the undersigned has on the following project:

**Rogers Road West
Water and Sewer Improvements**

located at: _____

This release covers the final payment to the undersigned for all labor, services,
equipment or material furnished on the job, except for disputed claims for additional
work in the amount of:

_____ (\$)

Before any recipient of this document relies on it, the part should verify evidence of payment to the undersigned.

Company Name: _____

By: _____

Signature: _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public In and For the State of Texas

My Commission Expires: _____

END OF SECTION