

Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility

Bid # 12-022



**Opening Date
Monday, March 19, 2012**

IMPORTANT NOTICE FOR VENDORS

EL PASO COUNTY CODE OF ETHICS TRAINING REQUIREMENT FOR VENDORS

Vendors. Any vendor involved in a single procurement exceeding \$50,000 must complete training on the El Paso County Code of Ethics. **This training must be completed prior to submitting a bid or proposal, responding to a request for qualifications or proposals, or otherwise contracting with the county.** The training must be completed by an officer, principal, or other person with the authority to bind the vendor. The certification of completed training on the Ethics Code issued by the County Human Resources Department is valid for one (1) calendar year from the date of completion. A list of those Vendors with a current certification of completion and the corresponding date of expiration shall be maintained on the El Paso County website under the Purchasing Department's Current List of Training Certified Bidders. This training requirement does not apply to emergency purchases.

Training

In compliance with Section 161 of the Texas Local Government Code, training on the El Paso County Code of Ethics will be accessible in an online format to Vendors and Lobbyists on an ongoing basis, subject only to limitations due to technical resources. No person or entity required to complete training will have to do so more than once per year.

The required training for Vendors may be accessed and completed at: <http://www.epcounty.com/ethicscom/training.htm>

Once you have taken the ethics training course print out the confirmation and attach a copy to your bid. Keep a copy for future references/bids.

To view the list of the Vendors, the representatives and the date it expires.

❖ **Go to <http://www.epcounty.com/ethicscom/training.htm>**

❖ **Select:**

Vendors Who Have Completed Ethics Training

If you have taken the training and your name has not been added to the list, Please contact Gabby at our Human Resource Department at (915)546-2218 ext. 4069.

INVITATION FOR BIDS {PRIVATE}

The County of El Paso will receive Bids for **Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility, Bid #12-022**, until **2:00** P.M., on **Monday, March 19, 2012**, at the County Purchasing Department, 800 East Overland, Rm 300 El Paso, Texas 79901 at which time and place all bids will be publicly opened and read aloud. Any questions or additional information required by interested vendors must be submitted in writing to the attention of the County Purchasing Agent before Tuesday, March 13, 2012; at 5:00 p.m. Questions can be faxed to (915)-546-8180.

A pre-bid conference will be held on Tuesday, March 13, 2012 at 9:00 a.m. in the Purchasing Conference Room located at 800 East Overland, Room 300, El Paso, Texas 79901.

Bids are invited upon the several items and quantities of work as follows:

BASE BID:

BASE BID 1- Shall include, but is not limited to, furnishing all labor, materials, transportation and services for the construction and installation of the following work:

Three (3) pre-packaged lift stations with two (2) submersible pumps each, piping, valves, electrical, instrumentation, odor control unit and all appurtenances, control room and site improvements. Approximately 15,150 lineal feet of 6-inch diameter force main approved pipe; approximately 560 lineal feet of 4-inch diameter force main approved pipe; approximately 65 lineal feet of 8-inch diameter gravity sanitary sewer approved pipe; approximately 1, 72-inch diameter pre-cast manhole; approximately 3, 48-inch diameter pre-cast manholes; bored casings; dewatering operations; trench safety system for pipeline; gravel all weather road; and videotaping of project site before and after construction.

Copies of the Contract Documents may be obtained for a non-refundable sum of **\$75.00** per each set of the documents at the office of the County Purchasing Agent, 800 E. Overland, Rm 300, El Paso, TX, 79901, telephone number (915) 546-2048. Payment for the Contract Documents may be by check or money order payable to the order of El Paso County.

A certified cashier's check, payable to the order of El Paso County or a satisfactory Bid Bond in the amount equal to five percent (5%) of the total contract price, executed with a surety company authorized to do business in the State of Texas and must be included in the bid package.

The Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin.

The County of El Paso reserves the right to reject any or all Bids or to waive any technicalities in the bidding.

Bids may be held by the County of El Paso for a period not to exceed ninety (90) days, or such longer time as may be required by the funding agencies, from the date of the bid opening for the purpose of reviewing the Bids and investigating the qualifications of Bidders, prior to awarding of the Contract.

INSTRUCTIONS TO BIDDERS

1. BID FORMS

These Contract Documents include a complete set of bidding and contract forms, which are for the convenience of bidders.

2. INTERPRETATIONS OF ADDENDA

No oral interpretation will be made to any Bidder as to the meaning of the Contract Documents or any part thereof. Every request for such an interpretation shall be made in writing to the County of El Paso Purchasing department. **Any inquiry received prior to Tuesday, March 13, 2012 at 5:00 p.m. will be given consideration.** Every interpretation made to a Bidder will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the County Purchasing department at least five days before Bids are opened. In addition, all addenda will be faxed to each person holding Contract Documents, but it shall be the Bidder's responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract and all Bidders shall be bound by such Addenda, whether or not received by the Bidders.

3. INSPECTION OF SITE

Each Bidder should visit the site of the proposed work and fully acquaint him/herself with the existing conditions there relating to construction and labor, and should fully inform him/herself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The Bidder should thoroughly examine and familiarize himself with the Drawings, Technical Specifications, and all other Contract Documents. The Contractor by the execution of the Contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the conditions there existing and the Local Public Agency will be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.

4. ALTERNATIVE BIDS

No alternative bids will be considered unless alternative bids are specifically requested by the technical specifications.

5. BIDS

- a. All Bids must be submitted on forms supplied by the County of El Paso and shall be subject to all requirements of the Contract Documents, including the Drawings, and these INSTRUCTIONS TO BIDDERS. All Bids must be regular in every respect and no interlineations; excisions or special conditions shall be made or included in the Bid Form by the Bidder.
- b. Bid Documents including the Bid, the Bid Guarantee, the Non-Collusion Affidavit and the Statement of Bidder's Qualifications (if requested) shall be enclosed in envelopes

(outer and inner), both of which shall be sealed and clearly labeled with the words "Bid Documents", bid number, project name, name of Bidder, and date and time of bid opening in order to guard against premature opening of the Bid.

- c. The Local Public Agency may consider as irregular any Bid on which there is an alteration of or departure from the Bid Form hereto attached and at its option may reject the same.
- d. If the Contract is awarded, the Local Public Agency will award it to a responsible Bidder on the basis of the lowest bid and the selected Alternative Bid items, if any. The Contract will require the completion of the work according to the Contract Documents.

6. BID GUARANTEE

- a. The Bid must be accompanied by a Bid Guarantee, which shall not be less than 5 percent (5%), of the amount of the Bid. At the option of the Bidder, the guarantee may be a certified cashier's check or a bid bond in the form attached. A guarantee or a surety company listed in the latest issue of U.S. Treasury Circular 570 shall secure the Bid bond. No Bid will be considered unless it is accompanied by the required guarantee. Certified cashier's check must be made payable to the order of El Paso County. Cash deposits will not be accepted.

The Bid Guarantee shall insure the execution of the Agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents.

- b. Revised Bids submitted before the opening of bids, whether forwarded by mail, if representing an increase in excess of two percent (2%) of the original Bid, must have the Bid Guarantee adjusted accordingly; otherwise the Bid will not be considered.
- c. Certified cashier's checks or the amount thereof, Bid bonds of unsuccessful Bidders will be returned as soon as practical after the opening of the Bids.

7. COLLUSIVE AGREEMENTS

- a. Each Bidder submitting a Bid to a Local Public Agency for any portion of the work contemplated by the documents on which bidding is based shall execute and attach thereto, an affidavit substantially in the form herein provided, to the effect that he has not entered into a collusive agreement with any other person, firm, or corporation in regard to any Bid submitted.
- b. Before executing any subcontract the successful Bidder shall submit the name of any proposed subcontractor for prior approval in a notarized affidavit.

8. CONTRACT PRICE QUOTES

A lump sum quote must be submitted. However, for changing quantities of work items from those indicated by the contract drawings, a breakdown of the lump sum quote into unit prices shall also be provided. These unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Any changes shall be processed in accordance with the GENERAL CONDITIONS. The net monetary values of such additive and subtractive changes, if any, shall not increase or decrease the original contract price by more than twenty-five (25%), except for work not covered in the drawings and technical specifications as provided.

9. CORRECTIONS

Erasures or other changes in the Bids must be explained or noted over the signature of the Bidder.

10. TIME FOR RECEIVING BIDS

a. Bids received prior to the advertised hour of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no Bid received thereafter will be considered under any circumstances.

11. OPENING OF BIDS

At the time and place fixed for the opening of Bids, the County will cause to be opened and publicly read aloud every Bid received within the time set for receiving Bids, irrespective of any technicalities therein. Bidders and other persons properly interested may be present, in person or by representative.

12. WITHDRAWAL OF BIDS

Bids may be withdrawn on written request dispatched by the Bidder in time for delivery in the normal course of business to the time fixed for opening. The bid guarantee of any Bidder withdrawing his Bid in accordance with the foregoing conditions will be returned promptly.

13. AWARD OF CONTRACT: REJECTION OF BIDS

a. The contract will be awarded to the responsible Bidder submitting the lowest Bid complying with the conditions of the Invitation for Bids. The Bidder to whom the award is made will be notified at the earliest possible date. The County, however, reserves the right to reject any and all Bids and to waive any technicality in Bids received whenever such rejection or waiver is in its interest.

b. The County reserves the right to consider as unqualified to do the work of general construction any Bidder who does not habitually perform with his own forces the

major portions of the work involved in construction of the improvements embraced in this Contract.

14. **EXECUTION OF AGREEMENT: PERFORMANCE AND PAYMENT BONDS**

- a. Subsequent to the award within thirty (30) days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the County an Agreement in the form included in the Contract Documents in such number of copies as the County may require.
- b. Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Bidder shall, within ten (10) days, furnish two (2) surety bonds, each in a penal sum of 100% of the amount of the Contract. A ***Performance Bond*** shall serve as security for the faithful performance of the Contract. A ***Payment Bond*** shall serve as surety for the payment of all persons, firms, or corporations to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including utility and transportation services, employed or used by him in performing the work. Such bonds shall be in the same form as those included in the Contract documents and shall bear the same date as, or a date subsequent to that of the Agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bonds. These bonds shall be signed by a surety company listed in the latest issue of the U.S. Treasury Circular 570 and such surety must be authorized to do business in Texas in accordance with the provisions of Article 5160, V. A.T. S. The penal sums shall be within the maximum specified for such company in said Circular 570.
- c. The failure of the successful Bidder to execute such Agreement and to supply the required bond or bonds within thirty (30) days after the prescribed forms are presented for signature, or within such extended period as the Local Public Agency may grant, based upon reasons determined sufficient by the Local Public Agency, shall constitute a default, and the Local Public Agency may either award the Contract to the next lowest responsible Bidder or re-advertise for Bids, and may charge against the Bidder the difference between the amount of the Bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the Bid Bond. If a more favorable Bid is received by re-advertising the defaulting Bidder shall have no claim against the Local Public Agency for a refund.

15. **EQUAL EMPLOYMENT OPPORTUNITY**

Attention of Bidders is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.

CONTRACT AGREEMENT

WITNESSETH, that the Contractor and Local Public Agency for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete all work required for the construction of the Improvements embraced in the Project, namely, as described in the BASE BID, and required supplemental work for the Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility, all in strict accordance with the Contract Documents including all addenda thereto, numbered, dated _____, and _____ dated _____, all as prepared by _____ acting and in these Contract Documents Preparation, referred to as the "Engineer".

ARTICLE 2. The Contract Price The Local Public Agency will pay the Contractor for the performance of the Contract in current funds, for the total quantities of work performed at the Contract price stipulated in the Bid for the several respective items of work completed subject to additions and deductions as provided in Section 109 hereof.

ARTICLE 3. CONTRACT. The executed contract documents shall consist of the following:

- | | |
|----------------------------|---|
| a. This Agreement | f. General Conditions |
| b. Addenda | g. Technical Specifications |
| c. Invitation for Bids | h. Drawings (as listed in the Schedule of Drawings) |
| d. Instructions to Bidders | i. Prevailing wage rates |
| e. Signed copy of Bid | |

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are fully a part of the Contract as if hereto attached or herein repeated forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in 4 original copies on the day and year first above written.

_____ By
_____ Title

_____ By
_____ Title

BID FORM (LUMP SUM CONTRACT)

Place County of El Paso Purchasing Department

Date _____

Project No. 12-022

Proposal of _____ (hereinafter called Bidder), a corporation organized under the laws of the State of _____/a partnership/an individual doing business as _____ (strike out inapplicable references).

To the County of El Paso (hereinafter called Owner).

Gentlemen:

The Bidder, in compliance with your invitation for bids for the construction of the Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility that consists of the following:

The project consists of but is not limited to the following:

BASE BID 1- Shall include, but is not limited to, furnishing all labor, materials, transportation and services for the construction and installation of the following work:

Three (3) pre-packaged lift stations with two (2) submersible pumps each, piping, valves, electrical, instrumentation, odor control unit and all appurtenances, control room and site improvements. Approximately 15,150 lineal feet of 6-inch diameter force main approved pipe; approximately 560 lineal feet of 4-inch diameter force main approved pipe; approximately 65 lineal feet of 8-inch diameter gravity sanitary sewer approved pipe; approximately 1, 72-inch diameter pre-cast manhole; approximately 3, 48-inch diameter pre-cast manholes; bored casings; dewatering operations; trench safety system for pipeline; gravel all weather road; and videotaping of project site before and after construction.

The Contract will establish a milestone date of May 15, 2012, to complete all under items from station 63+78 (sheet C1.7) to station 12+00 (sheet C2.4) and to include the construction of the relocated irrigation ditch. If this date is not achieved, the Contractor will be subject to crop loss fees associated with the farmland.

Having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies: and to construct the project in accordance with the Contract Documents within the time set forth herein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed: of the Owner and to fully complete the project within 100 consecutive calendar days thereafter as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of \$ 1,500.00 for each consecutive calendar day thereafter as hereinafter provided in the GENERAL CONDITIONS.

Bidder acknowledges receipt of the following addenda:

Date

Addendum Number

BASE PROPOSAL: Bidder agrees to perform all of the paving and concrete curb work described in Base Bid A as necessary and work described in the specifications and shown on the plans for the sum of

Base Bid 1

(\$ _____) _____

(Amount shall be shown in both words and figures. In case of discrepancy, the amount shown in words will govern).

Please do not include tax, as the County is tax exempt. The County will sign tax exemption certificates covering these items. Please submit one (1) original copy and two (2) duplicate copies of you bid response.

Company

Mailing Address

Federal Tax Identification No.

City, State, Zip Code

Ethics Representative (refer to page 2)

Ethics Training Date or Expiration Date

CIQ Document Number

Conflict of Interest Questionnaire (CIQ)
Filed Date

Representative Name & Title

Telephone Number include area code

Signature

Fax Number include area code

Date

Email Address

UNIT PRICES

For changing quantities of work items from those indicated by the contract drawings upon written instructions from the architect/engineer, the following unit prices shall prevail:

<u>ITEM DESCRIPTION</u>	<u>UNIT</u>	<u>UNIT COST</u>
<u>BASE BID 1</u>		
1. Insurance, Bonds, and Move-in Related Expenses Not to Exceed 5% of Total Bid Item No. 2 through Item No. 20	1 EA	\$ _____.
2. Furnish and Install 6-Inch Diameter Force Main Approved Pipe, Complete in Place	15,050 LF	\$ _____.
3. Furnish and Install 4-Inch Diameter Force Main Approved Pipe, Complete in Place	560 LF	\$ _____.
4. Furnish and Install 8-Inch Diameter Gravity Sewer Approved Pipe, Complete in Place	55 LF	\$ _____.
5. Furnish and Install 12-Inch Diameter Gravity Sewer Approved Pipe, Complete in Place	20 LF	\$ _____.
6. Furnish and Install 8-Inch Diameter Steel Casing by Open Cut Methods, Complete in Place	275 LF	\$ _____.
7. Furnish and Install 12-Inch Diameter Steel Casing by Boring Methods, Complete in Place	870 LF	\$ _____.
8. Furnish and Install 12-Inch Diameter Steel Casing by Open Cut Methods, Complete in Place	220 LF	\$ _____.
9. Furnish and Install 72-Inch Diameter Manhole (6' Standard), Complete in Place	1 EA	\$ _____.
10. Furnish and Install Additional Vertical Depth for 72-Inch Diameter Manhole, Complete in Place	14 VF	\$ _____.
11. Furnish and Install 48-Inch Diameter Manhole (6' Standard), Complete in Place	3 EA	\$ _____.

Furnish and Install Additional Vertical Depth for 48-Inch Diameter Manhole, Complete in Place	3 VF	\$ _____.
12. Provide and Maintain Groundwater Dewatering Operation for Pipelines Installation, Complete in Place	1,500 LF	\$ _____.
13. Furnish and Install Lift Station Facilities #1, Including Pumps, Piping, Electrical Controls, Shoring/Sheeting, Odor Control, and all Related Improvements and Appurtenances as Shown in Plan Sheets C1.1-C1.3, S1.1-S1.2, E1.1-E1.3, Complete in Place	1 LS	\$ _____.
14. Furnish and Install Lift Station Facilities #2, Including Pumps, Piping, Electrical Controls, Shoring/Sheeting, And all Related Improvements and Appurtenances as Shown in Plan Sheets C2.1-C2.3, S2.1-S2.2, E2.1-E2.3, Complete in Place	1 LS	\$ _____.
15. Furnish and Install Lift Station Facilities #3, Including Pump, Piping, Electrical Controls, Shoring/Sheeting, Odor Control and all Related Improvements and Appurtenances Shown on Plan Sheets C3.1-C3.3, S3.1-S3.2, E3.1-E3.3, Complete in Place	1 LS	\$ _____.
16. Provide and Maintain Groundwater Dewatering Operation for Lift Station Facilities, Complete in Place	1 LS	\$ _____.
17. Provide and Maintain Trench Safety System, Complete in Place	15,685 LF	\$ _____.
18. Pre/Post Construction Video Taping of Pipeline Route and Lift Station Sites, Complete in Place	1 LS	\$ _____.
19. Pre/Post Construction Video Taping of Pipeline Route and Lift Station Sites, Complete in Place	1 LS	\$ _____.

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the GENERAL CONDITIONS.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any technicalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of Owner's written acceptance of this bid, Bidder will execute the formal contract attached within 10 days and deliver a Surety Bond as required by the GENERAL CONDITIONS.

The bid security attached in the sum of _____ (_____) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted:

By _____

_____ TITLE

_____ ADDRESS

GENERAL CONDITIONS

The Plans, General Specifications, Addenda and Technical specifications 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.

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GENERAL CONDITIONS

101. DEFINITIONS

Whenever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- a. The term "Contract" means the contract executed by the Local Public Agency and the Contractor, of which these GENERAL CONDITIONS form a part.
- b. The term "Local Public Agency" means the County of El Paso, which is authorized to undertake this contract.
- c. The term "Contractor" means the person, firm or corporation entering into the contract with the Local Public Agency to construct and install the improvements embraced in this contract.
- d. The term "Project Area" means the area within which is the specified contract limits of the improvements contemplated to be constructed in whole or in part under this contract.
- e. The term "Engineer" means County Road Engineer. Engineer in charge serving the Local Public Agency with architectural or engineering services, his/her successor, designated representative, or any other person or persons, employed by said Local Agency for the purpose of directing or having in charge the work embraced in this contract, the said Engineer acting directly or having general charge of the work or through any assistant having immediate charge of a portion thereof limited by the particular duties instructed to him/her.
- f. The term "Local Government" means the County of El Paso, Texas, within which the project area is situated.
- g. The term "Contract Documents" means and shall include the following: Executed contract, Addenda (if any), Invitation for bids, Instructions to bidders, and Signed Copy of bid, Technical Specifications, and Drawings, (as listed in the Schedule of Drawings).
- h. The term "Drawings" means the drawings listed in the Schedule of Drawings.
- i. The term "Technical Specifications" means the part of the contract documents which describes, outlines and stipulates: the quality of the materials to be furnished; the quality of workmanship required; and the

methods to be used in carrying out the construction work to be performed under this contract.

- j. The term "Addendum" or "addenda" means any changes, revisions or clarifications of the Contract Documents, which have been duly issued by the Local Public Agency to prospective bidders prior to the time of receiving bids.

102. SUPERINTENDENCE BY CONTRACTOR

- a. Except where the contractor is an individual and gives his personal superintendence to the work, the contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The contractor shall also provide an adequate staff for the proper coordination and expediting of his work.
- b. The Contractor shall lay out his own work and he/she shall be responsible for all work executed by him under the contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his/her failure to do so.

103. SUBCONTRACTORS

- a. The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he/she has received written approval of such subcontractor from the Local Public Agency.
- b. No proposed subcontractor shall be disapproved by the Local Public Agency except for cause.
- c. The contractor shall be as fully responsible to the Local Public Agency for the acts and omissions of his/her subcontractors, and of persons either directly or indirectly employed by them as he/she is for the acts and omissions of persons directly employed by him/her.
- d. The contractor shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the contract.
- e. Nothing contained in the contract shall create any contractual relations between any subcontractor and the Local Public Agency.

104. OTHER CONTRACTS

The Local Public Agency may award, or may have awarded other contracts for additional work and the contractor shall cooperate fully with such other contractors, by scheduling his/her own work with that to be performed under other contracts as may be directed by the Local Public Agency. The contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor as scheduled.

105. FITTING AND COORDINATION OF WORK

The contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material men engaged upon this contract. He/she shall be prepared to guarantee to each of his/her subcontractors the locations and measurements, which they may require for the fitting of their work to surrounding, work.

106. MUTUAL RESPONSIBILITY OF CONTRACTORS

If through acts or neglect on the part of the contractor, any other contractor or any subcontractor shall suffer loss or damage on the work the contractor shall settle with such other contractor or subcontractor by agreement or arbitration, if such other contractor or subcontractor will settle. If such other contractor or subcontractor shall assert any claim against the Local Public Agency on account of any damage alleged to have been so sustained, the Local Public Agency will notify this contractor, who shall defend at his/her own expense any suit based upon such claim, and if any judgment or claims against the Local Public Agency and the Engineer shall be allowed, the contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

107. PROGRESS SCHEDULE

- a. The contractor shall submit for approval immediately after execution of the agreement, a carefully prepared Progress Schedule, showing the propose dates of starting and completing each of the various sections of the work the anticipated monthly payments to become due the contractor, and the accumulated percent of progress each month. The contractor shall keep a current/updated schedule, which shall be submitted as part of the partial payment submittals.
- b. COST BREAKDOWN- The contractor shall submit to the Local Public Agency a breakdown of his/her estimated cost of all Site Preparation work, so arranged and itemized as to meet the approval of the Local Public Agency.

This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the contractor for the work performed under the contract. After approval by the Local Public Agency the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the contractor.

108. PAYMENTS TO CONTRACTOR

Partial Payments

- a. The contractor shall prepare his/her requisition for partial payment as of the last day of the month and submit it with the required number of copies to the Engineer for his/her approval. The amount of the payment due the contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1.) ten percent (10%) of the total amount, to be retained until final payment and (2.) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and in the unit process contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.
- b. Monthly or partial payments made by the Local Public Agency to the contractor are monies advanced for the purpose of assisting the contractor to expedite the work of construction. The contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Local Public Agency. Such payments shall not constitute a waiver of the right of the Local Public agency to require the fulfillment of all terms of the contract and the delivery of all improvements embraced in this contract complete and satisfactory to the Local Public Agency in all details.
- c. If a Lump sum contract is deemed advisable revise:
 - (1) The third sentence in paragraph (1) under "Partial Payments" to read as follows:

The total value of work completed to date shall be based upon the estimated quantities of work completed to date on each item and the unit prices established in the COST BREAKDOWN and adjusted in accordance with the value of work completed to date on approved change orders.

Final Payment

- a. After final inspection and acceptance by the Local Public Agency of all work under the contract, the contractor shall prepare his/her requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the contractor under this contract shall be the amount computed as described above less all-previous payment. Final payment to the contractor shall be made subject to his/her furnishing the Local Public agency with a release in satisfactory form of all claims against the Local Public Agency arising under and by virtue of his/her contract, other than such claims, if any, as may be specifically excepted by the contractor from the operation of the release as provided under Section 113 hereof.
- b. The amount of the final payment due the contractor shall be the lump sum shown in the Agreement or this sum as adjusted by approved change orders.
- c. The Local Public Agency, before paying the final estimate, may require the contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the contractor, if the Local Public Agency deems such action advisable make payment in part or in full to the contractor without requiring the furnishing of such releases or receipts and any payments of made shall in no way impair the obligations of any surety or sureties furnished under this contract.
- d. Withholding of any amount due the Local Public Agency under Section 135 entitled "Liquidated Damages," shall be deducted from the final payment due the contractor.

Withholding Payments

The Local Public Agency may withhold from any payment otherwise due the contractor so much as may be necessary to protect the Local Public Agency and if it so elects may also withhold any amounts due from the contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be constructed solely for the benefit of the Local Public Agency and will not require the Local Public Agency to determine or adjust any claims or disputes between the contractor and his/her protection unless the Local Public Agency elects to do so. The failure or refusal of the Local Public Agency to withhold any money form the contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

109. CHANGES IN THE WORK

- a. The Local Public Agency may make changes in the scope of work required to be performed by the contractor under the contract or making the contract, and without relieving or releasing the contractor from any of these obligations under the contract or any guarantee given by his pursuant to the contract provisions, and without affecting the validity of the guarantee bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original contract unless it is expressly provided otherwise.
- b. Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the contractor shall make no change in the materials used or in the specified manner of construction and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the contract, unless in pursuance of a written order from the Local Public Agency authorizing the Contract price, will be valid unless so ordered.
- c. If applicable unit prices are contained in the Agreement (established as a result of either a unit price bid or a Supplemental Schedule of Unit Prices) the Local Public Agency may order the contractor to proceed with desired unit prices specified in the contract; provided that in case of a unit price contract the net value of all changes does not increase or decrease the original total amount shown in the agreement by more than twenty-five percent (25%) in accordance with the Section entitled Contract Price Quotes under INSTRUCTIONS TO BIDDERS.
- d. If applicable unit prices are not contained in the Agreement or if the total net change increases or decreases the total Contract Price more that twenty-five percent (25%), the Local Public Agency shall, before ordering the contractor to proceed with desired changes, request an itemized proposal from him/her covering the work involved in the change after which the procedure shall be as follows:
 - (1) If the proposal is acceptable the Local Public Agency will prepare the change order in accordance therewith for acceptance by the contractor; and
 - (2) If the proposal is not acceptable and prompt agreement between the two parties cannot be reached, the Local Public Agency may order the contractor to proceed with the work on a cost-plus-limited basis. A cost-plus-limited basis is defined as the net cost of the contractor's labor, materials and insurance plus fifteen percent (15%) of said net cost to cover overhead and profit, the total cost not to exceed a specified limit.
- e. Each change order shall include in its final form:
 - (1) A detailed description of the change in the work.

- (2) The contractor's proposal (if any) or a confirmed copy thereof.
 - (3) A definite statement as to the resulting changes in the contract price and/or time.
 - (4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.
- f. The procedures as outlined in this section for a unit price contract also apply in the case of a lump sum contract.

110. CLAIMS FOR EXTRA COST

- a. If the contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, he/she shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his/her protest thereto in writing to the Local Public Agency, stating clearly and in detail the basis of his/her objections. No such claim will be considered unless so made.
- b. Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonable estimated from the drawings and maps issued.
- c. Any discrepancies, which may be discovered between actual conditions and those, represented by the drawings and maps shall at once be reported to the Local Public Agency and work shall not proceed except at the Contractor's risk, until written instructions have been received by him/her from the Local Public Agency.
- d. If, on the basis of the available evidence, the Local Public Agency determines that an adjustment of the contract price and /or time is justifiable, the procedure shall be as provided in Section 109 thereof.

111. TERMINATION, DELAYS AND LIQUIDATED DAMAGES

- a. **RIGHT OF THE LOCAL PUBLIC AGENCY TO TERMINATE CONTRACT.** In the event that any of the provisions of this contract are violated by the contractor, or by any of his/her subcontractors, the Local Public Agency may serve written notice upon the contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the contractor, such violation or delay

shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Local Public Agency shall immediately serve notice thereof upon the surety and contractor and the surety shall have the right to take over and perform the contract; provided, however, that if the Surety does not commence performance thereof within ten (10) day from the date of the mailing to such Surety of notice to termination, the Local Public Agency may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the contractor and the contractor and his/her Surety shall be liable to the Local Public Agency for any excess cost occasioned the Local Public Agency thereby, and in such event the Local Public Agency may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

- b. **Liquidated Damages for Delays.** If the work not completed within the time stipulated in Section 134 hereof, including any extensions of time for excusable delays as herein provided, the contractor shall pay to the Local Public Agency as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasion by the delay) for each work day of delay, until the work is completed, the amount as set forth in Section 135 hereof and the contractor and his/her sureties shall be liable to the Local Public Agency for the amount thereof.
- c. **Excusable Delays.** The right of the contractor to proceed shall not be terminated nor shall the contractor be charged with liquidated damages for any delays in the completing of the work due to:
- (1) To any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;
 - (2) To any acts of the Local Public Agency;
 - (3) To causes not reasonable foreseeable by the parties to this contract at the time of the execution of the contract which are beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of another contractor

in the performance of some other contract with the Local Public Agency, fires, flood, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions; and
 - (4) To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs 1, 2, and 3 of this paragraph "c".

Provided however, that the contractor promptly notifies the Local Public Agency within ten (10) days in writing of the cause of the delay. Upon receipt of such notification the Local Public Agency shall ascertain the facts and the cause the extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Local Public Agency shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

112. ASSIGNMENT OR RENOVATION

The contractor shall not assign or transfer, whether by an assignment or renovation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this contract without the written consent of the Local Public Agency; provided, however, that assignments to banks, trust companies, or other financial institutions may be made without the consent of the Local Public Agency. No assignment or renovation of this contract shall be valid unless the assignment of any of the contractor's rights or benefits under the contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

113. DISPUTES

- a. All disputes arising under this contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) days of commencement of the dispute be presented by the contractor to the Local Public Agency for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim, but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime the contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have the waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the Local Public Agency of notice thereof.
- b. The contractor shall submit in detail his/her claim and his/her proof thereof. Each decision by the governing body of the Local Public Agency will be in writing and will be mailed to the contractor by registered or certified mail, return receipt requested, directed to his/her last know address.
- c. If the contractor does not agree with any decision of the Local Public Agency, he/she shall in no case allow the dispute to delay the work but shall

notify the Local Public Agency promptly that he/she is proceeding with the work under protest and he/she may then accept the matter in question from the final release.

114. TECHNICAL SPECIFICATIONS AND DRAWINGS

Anything mentioned in the Technical Specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the Technical Specifications shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Local Public Agency, without whose decision, said discrepancy shall not be adjusted by the contractor, save only at his/her own risk and expense.

115. SHOP DRAWINGS

- a. All required shop drawing, machinery details, layout drawings, etc. shall be submitted to the Engineer in 6 copies (unless otherwise specified) for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The contractor may proceed, only at his/her own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the contractor, for extension of the contract time shall be granted by reason of his/her failure in this respect.
- b. Any drawings submitted without the contractor's stamp of approval will not be considered and will be returned to him/her for proper resubmission. If any drawings show variations from the requirements of the contract because of standard shop practice or other reason, the contractor shall make specific mention of such variation in his/her letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time otherwise the contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though the drawings have been approved.
- c. If a shop drawing is in accord with the contract or involves only a minor adjustment in the interest of the Local Public Agency not involving a change in contract price or time, the Engineer may approve the drawing. The approval shall be general, shall not relieve the contractor from his/her responsibility for adherence to the contract or for any error in the drawing, and shall contain in substance the following:

"The modification shown on the attached drawing is approved in the interest of the Local Public Agency to affect an improvement for the Project and is

ordered with the understanding that it does not involve any change in the Contract Price or time; that it is subject generally to all Contract stipulations and covenants; and that it is without prejudice to any and all rights of the Local Public Agency under the Contract and Surety bond or bonds”.

116. REQUESTS FOR SUPPLEMENTARY INFORMATION

It shall be the responsibility of the Contractor to make timely requests of the Local Public Agency for any additional information not already in his/her possession which should be furnished by the Local Public Agency under the terms of this contract, and which he/she will require in the planning and execution of the work. Such requests may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and latest date by which each will be required by the contractor. The first list shall be submitted within two weeks after contract award and shall be as complete as possible at that time. The contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the contractor. The contractor shall be fully responsible for any delay in his/her work or to others arising from his/her failure to comply fully with the provisions of this Section.

117. MATERIALS AND WORKMANSHIP

- a. Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the Technical Specifications as “equal to” any particular standard, the Engineer shall decide the question of equality.
- b. The contractor shall furnish to the Local Public Agency for approval the manufacturers detailed specifications for all machinery, mechanical and other special equipment, which he/she contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval as required full information concerning all other materials or articles which he/she proposes to incorporate in the work. (See Section 118 thereof)
- c. Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- d. Materials specified by reference to the number or symbol of a specific standard, such as an ASTM Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and

any amendment or supplement thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade, or modified in such reference. The standards referred to, except as modified in the Technical Specifications shall have full force and effect as though printed therein.

- e. **The Local Public Agency may require the contractor to dismiss from the work such employee or employees as the Local Public Agency or the Engineer may deem incompetent, or careless, or insubordinate.**

118. SAMPLES, CERTIFICATES AND TESTS

- a. The contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's bond.

No such material or equipment shall be manufactured or delivered to the site, except at the contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

- b. Each sample submitted by the contractor shall carry a label giving the name of the contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with samples and/or certified statements.
- c. Approval of any materials shall be general only and shall not constitute a waiver of the Local Public Agency's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he/she deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories, which fail to meet check test, have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the contractor as is equitable.

- d. Except as otherwise specifically stated in the contract, the costs of sampling and testing will be divided as follows:
- (1) The contractor shall assume all costs of compaction testing to meet Contract requirements and/or as designated by the engineer. Compaction tests shall be performed at an interval of 150 feet along the length of the street;
 - (2) The contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
 - (3) The contractor shall assume all costs of re-testing material which fail to meet contract requirements;
 - (4) The contractor shall assume all costs of testing materials offered in substitution for those found deficient;
 - (5) The Local Public Agency will pay all other expenses.

119. PERMITS AND CODES

- a. The contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances and codes including all written waivers.

Before installing any work the contractor shall examine the Drawings and Technical Specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Local Public Agency. Where the requirements of the Drawings and Technical Specifications fail to comply with such applicable ordinances or codes, the Local Public Agency will adjust the contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.

Should the contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waiver (notwithstanding the fact that such installation is in compliance with the Drawings and Technical Specifications), the contractor shall remove such work without cost to the Local Public Agency, or a Change Order will be issued to cover only the excess cost the contractor would have been entitled to receive if the change had been made before the contractor commenced work on the items involved.

- b. The contractor shall, at his/her own expense, secure and pay to the appropriate department of the Local Government the fees or charges for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.
- c. The contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and operation due to or connected with the Improvements embraced in this Contract.

120. CARE OF WORK

- a. The contractor shall be responsible for all damages to person or property that occur as a result of his/her fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Local Public Agency.
- b. The contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and a holiday, from the time the work is commenced until the completion and acceptance.
- c. In an emergency affecting the safety of life, limb or property, including adjoining property, the contractor, without special instructions or authorization from the Local Public Agency, is authorized to act at his/her discretion to prevent such threatened loss or injury, and he/she shall so act. He/she shall likewise act if instructed to do so by the Local Public Agency. Any compensation claimed by the contractor on account of such emergency work will be determined by the Local Public Agency as provided in Section 109 hereof.
- d. The contractor shall avoid damage as a result of his/her operations to existing sidewalks, streets, curbs, pavements, utilities (except those, which are to be replaced or removed), adjoining property, etc., and he/she shall at his/her own expense completely repair any damage thereto caused by his/her operations.
- e. The contractor shall shore up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements embraced in this Contract. The contractor

shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The contractor shall indemnify and save harmless the Local Public Agency and the Engineer from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Local Public Agency may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

121. ACCIDENT PREVENTION

- a. No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- b. The contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site which occur as a result of his/her prosecution of the work. The safety provisions of applicable laws and building and constructions codes shall be observed and the contractor shall take or cause to be taken such additional safety and health necessary.

Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

- c. The contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The contractor shall promptly furnish the Local Public Agency with reports concerning these matters.
- d. The contractor shall indemnify and save harmless the Local Public Agency and the engineer from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.

122. SANITARY FACILITIES

The contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and

Local Government. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

123. USE OF PREMISES

- a. The contractor shall confine his/her equipment, storage of materials, and construction operations to the Contract Limits as shown on the Drawings and as prescribed by ordinances or permits, or as many be desired by the Local Public Agency, and shall not unreasonably encumber the site or public rights of way with his/her materials and construction equipment.
- b. The contractor shall comply with all reasonable instructions of the Local Public Agency and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

124. REMOVAL OF DEBRIS, CLEANING, ETC.

The contractor shall, periodically or as directed during the progress of the work, Remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear.

Upon completion of the work, he/she shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition. Trash burning on the site of the work will be subject to prior approval of the Local Public Agency and existing State and local regulations.

125. INSPECTION

- a. All materials and workmanship shall be subject to inspection, examination, or test by the Local Public Agency and the Engineer at any times during manufacture or construction and at any and all places where such manufacture or construction is carried on. The Local Public Agency shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge therefore. If the contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Local Public Agency may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any monies which may be due the contractor, without prejudice to any other rights or remedies of the Local Public Agency.

- b. The contractor shall furnish promptly all materials reasonable necessary for any test, which may be required. (See Section 118 hereof). All tests by the Local Public Agency will be performed in such a manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the Technical Specifications.
- c. The contractor shall notify the Local Public Agency sufficiently in advance of backfilling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Local Public Agency, the contractor shall uncover for inspection and recover such facilities all at his/her own expense, when so requested by the Local Public Agency.
- d. Should it be considered necessary or advisable by the Local Public Agency at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the contractor shall on request promptly furnish all necessary facilities, labor, and material.

If such work is found to be defective in any important or essential respect, due to fault of the contractor or his/her subcontractors the contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent of such costs to cover superintendence, general expenses and profit, shall be allowed the contractor and he/she shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

- e. Inspection of materials and appurtenances to be incorporated in the improvements embraced in this contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the Technical Specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- f. Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Local Public Agency or its agents shall relieve the contractor or his/her sureties of full responsibility for materials furnished or work performed not in strict accordance with Contract.

126. REVIEW BY LOCAL PUBLIC AGENCY

- a. When the Improvements embraced in this Contract are substantially completed, the contractor shall notify the Local Public Agency in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The notice will be given at least ten (10) days prior to the date stated for final inspection, and bear the signed concurrence of the representative of the Local Public Agency having charge of inspection.

If the Local Public Agency determines that the status of the Improvements is as represented, it will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable. The inspection party will also include the representatives of each department of the Local Government having in charge improvements of like character when such Improvements are later to be accepted by the Local Government.

128 DEDUCTION FOR UNCORRECTED WORK

If the Local Public Agency deems it not expedient to require the contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the contractor and the Local Public Agency and subject to settlement, in case of dispute, as herein provided.

129 INSURANCE

The contractor shall not commence work under this contract until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the Local Public Agency, nor shall the contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been obtained and approved.

- a. **Compensation Insurance:** The contractor shall procure and shall maintain during the life of his/her contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of his/her employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the contractor shall require the subcontractor similarly to provide Workmen's compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the contractor shall provide and shall cause each subcontractor to provide adequate employer's

liability insurance for the protection of such of his/her employees as are not otherwise protected.

- b. **Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:** The contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance, and Vehicle Liability Insurance of the type and in the amounts specified in Section 137, General Conditions.
- c. **Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:** The contractor shall require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in Section 137 General Conditions specified in subparagraph (b) hereof.
- d. **Scope of Insurance and Special Hazards:** The insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the contractor and his/her subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Special Conditions.
- e. **Proof of Carriage of Insurance:** The contractor shall furnish the Local Public Agency with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of polices.

Such certificates shall also contain substantially the following statement:
"The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Local Public Agency."

130. PATENTS

The contractor shall hold and save the Local Public Agency, its officers, and Employees, and the designated Engineer harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or use in the performance of the Contract, specifically stipulated in the Technical Specifications.

131. WARRANTY OF TITLE

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him/her to the Local Public Agency free from any claims, liens, or changes. Neither the contractor or any person, firm, or corporation furnishing any material or labor for any work covered by this contract shall have right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the contractor for their protection or any rights under any law permitting such persons to look to funds due the contractor in the hand of the Local Public Agency. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

132. GENERAL GUARANTEE

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the Improvement embraced in this Contract by the Local Public Agency or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the work.

The Local Public Agency will give notice of defective materials and work with reasonable promptness.

133. PROJECT SITE

The project area consists of the area within the property limits bounded in general by the Limits of Tornillo Guadalupe Road to the northwest, the Island Drain to the southwest, the Tornillo Drain to the northeast and Henderson Road to the southeast.

134. TIME FOR COMPLETION

The work, which the contractor is required to perform under the Contract, shall be

commenced at the time stipulated by the Local Public Agency in the Notice to Proceed to the contractor and shall be fully completed within one hundred days (100) consecutive calendar days thereafter and final acceptance and training within one hundred and thirty days (130) from time of award.

135. LIQUIDATED DAMAGES

As actual damages for any delay in completion of the work which the contractor is required to perform under this contract are impossible of determination, the contractor and his Sureties shall be liable for and shall pay to the Local Public Agency the sum of one thousand five hundred Dollars (\$1,500.00) as fixed, agreed and liquid damages for each calendar day of delay from the above stipulated for substantial and/or final completion, or as modified in accordance with Section 109 hereof, until such work is satisfactorily completed and accepted.

(The minimum amount of the liquidated damages per calendar day should be sufficient to reimburse the Local Public Agency for all salaries for inspectors, and overhead expense due to the contractor having failed to complete the Improvements embraced in this Contract within the time stipulated for completion.)

136. SPECIAL HAZARDS

The contractor's and his subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the special hazards.

137. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY, AND PROPERTY DAMAGE INSURANCE.

As required under Section 129 of the General Conditions the contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$325,000.00 for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$200,000.00 on account of one accident, and contractor's Property Damage Insurance in an amount not less than \$325,000.00.

The contractor shall either (1) require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of this subcontractors in his/her own policy.

138. RESPONSIBILITIES OF CONTRACTOR

Except as otherwise specifically stated in the Contract Documents and Technical Specifications, the contractor shall provide and pay for all materials, labor, tools, equipment, water, light, heat, power, transportation, superintendence, temporary

construction of every nature, charges, levies, fees or other expenses and all other services and facilities of every nature whatsoever necessary for the performance of the Contract and to deliver all Improvements embraced in this Contract complete in every respect within the specified time.

139. COMMUNICATIONS

- a. All notices, demands, requests, instructions, approvals, proposals and claims must be writing.
- b. Any notice to or demand upon the contractor shall be sufficiently stated on the signature page of the Agreement (or at such other office as the contractor may from time to time designate in writing to the Local Public Agency), or if deposited in the United States mail in a sealed, postage prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
- c. All papers required to be delivered to the Local Public Agency shall, unless otherwise specified in writing to the Contractor, be delivered to the County of El Paso, Road & Bridge Department and any notice to or demand upon the Local Public Agency shall be sufficiently given if so delivered, or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to said Local Public Agency at such address, or to such other representatives of the Local Public Agency or to such other address as the Local Public Agency may subsequently specify n writing to the contractor for such purpose.
- c. Any such notice shall be deemed to have been given as of the time of actual delivery or (in the case of mailing) when the same should have been received in due course of post, or (in the case of telegrams) at the time of actual receipt, as the case may be.
- d. Any such notice shall be deemed to have been given as of the time of actual delivery or (in the case of mailing) when the same should have been received in due course of post, or (in the case of telegrams) at the time of actual receipt, as the case may be.
- e. This section does not apply to decisions given pursuant to Section 113 (b) of this contract.

140. JOB OFFICES

- a. The contractor shall furnish and maintain, during construction of the Improvements embraced in these Contract adequate facilities on the Project Area or adjacent thereto for the use of the Local Public Agency and its Engineers, as follows: (NONE).

- b. The contractor and his/her subcontractors may maintain such office and storage facilities on the Site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the Site. The Local Public Agency shall be consulted with regard to locations.
- c. Upon completion of the Improvements, or as directed by the Local Public Agency, the contractor shall remove all such temporary structures and facilities from the Site, same to become his/her property, and leave the Site of the work in the condition required by the Contract.
- d. Consideration should be given to the deletion of Paragraph "a" if the time set for completion of the Improvements is less than sixty (60) days. It may also be deleted if a job office has been otherwise provided or usable space is available in existing buildings.
- e. If a job office is required, specify in detail the facilities and services required, such as adequate office space, light, heat, hot and cold water, toilet facilities, janitor service, local telephone, closets, plan racks, etc.

141. PARTIAL USE OF SITE IMPROVEMENTS

The Local Public Agency, at its election, may give notice to the contractor and place in use those sections of the Improvements which have been completed, inspected and can be accepted as complying with the Technical Specifications and if in its opinion, each such section is reasonably safe, fit and convenient for the use and accommodation for which it was intended, provided:

- a. The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the contractor.
- b. The contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- c. The use of such sections shall in no way relieve the contractor of his/her liability due to having used defective materials or to poor workmanship.
- d. The period of guarantee stipulated in Section 32 hereof shall not begin to run until the date of the final acceptance of all work which the contractor is required to construct under this Contract.

142. WORK BY OTHERS

(It may be that local ordinances or regulations require connections, or disconnection's, from utilities or sewers to be made by designated departments or companies. These facts should be obtained and inserted in this Section. The costs

if any, to the contractor should be stated in Paragraph "b". Delete such items not applicable.)

The following work will be done by others:

- a. At no expense to the Contractor:
 - (1) On site:
 - (a) Ongoing installation of water lines, water valves, water meters, fire hydrants and road construction by the separate contractors under a separate contracts.
 - (b) Ongoing installation of overhead electric lines by electric company.
- b. At the expense of the Contractor:
 - (1) Coordination for site access to allow all contractors mobility

143. CONTRACT DOCUMENTS AND DRAWINGS

The Local Public Agency will furnish the contractor without charge five (5) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the contractor will be furnished at cost plus expenses from the engineer.

144. COUNTY PREVAILING WAGE RATES

The contractor shall pay enclosed prevailing wages to all workers involved in this project. The contractor shall submit a certified copy of payroll for his/her employees and all employees of subcontractors with each payment request. The County has the right to interview any worker working in this project to see if contractor is complying with the prevailing wage requirements.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, as PRINCIPAL, AND _____, as SURETY are held and firmly bound unto hereinafter called the "Local Public Agency", in the penal sum of _____ Dollars, (\$ _____), lawful money of the United States, for the payment for which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid, dated _____, 20__, for Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility.

NOW, THEREFORE, if the Principal shall not withdraw said Bid within the period specified therein after the opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period by specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with the Local Public Agency in accordance with the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract or in the event of the withdrawal of said Bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Local Public Agency the difference between the amount specified in said Bid and the amount for which the Local Public Agency may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this _____ day of, 201__, the name and corporate seal of each corporate party being hereto affixed and these present signed by its undersigned representative, pursuant to authority of its governing body.

(Forms of Bid Bonds prepared to meet the requirements of Local or State Laws or the needs of the Local Public Agency should be substituted for this form where necessary.)

Attest: _____

By: _____

Attest: _____

By: _____

Countersigned By: _____

Attorney-in-Fact, State of _____

Power-of-Attorney for person signing for the surety company must be attached to bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the, _____, Secretary of the Corporation named as Principal in the within bond; that, who signed the said bond on behalf of the Principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to for and in behalf of said corporation by authority of this governing body.

_____(Corporate Seal)

_____Title

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____ (Name of Contractor or Company)

_____ (Address)

A _____ hereinafter called Principal, and (Corporation/Partnership)

_____ (Name of Surety Company)

_____ (Address)

Hereinafter called Surety, are held and firmly bound unto **the County of El Paso, Office of Director of Purchasing Agent, 800 E. Overland, Room 300, El Paso, TX 79901** hereinafter called OWNER, in the penal sum of _____ (\$_____) (amount shown in both words and figures) in lawful money of the United States, for the payment of which sum will and truly to be made we bind successors, assigns, and ourselves jointly and severally, firmly in these present.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the _____ day of, 201____, a copy of which is hereto attached and made a part hereof for the construction of: **Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility**

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties in all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guarantee period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which if may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, other-wise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed there under or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in ____counter-parts, each one of which shall be deemed an original, this _____day of _____, 20__.

ATTEST:

(Principal Secretary)

(Witness as to Principal)

ATTEST:

(Witness as to Surety)

(Address)

(Principal)

By: _____
(Seal)

(Address)

(Surety)

(Attorney in Fact)

By: _____
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor or Company)

(Address)

A _____, hereinafter called Principal, and
(Corporation/Partnership)

(Name or Surety Company)

(Address)

Hereinafter called Surety, are held and firmly bound unto **the County of El Paso, 800 E. Overland, El Paso, TX 79901,** hereinafter called OWNER, in the penal sum of \$ _____, (\$ _____) (amount shown in both words and figures) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____ 20__, a copy of which is hereto attached and made a part hereof for the construction of:

Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUB-CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK whether by SUB-CONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in ____ counter-parts, each one of which shall be deemed as original, this the _____ day of _____, 20__.

ATTEST:

(Principal Secretary)

(Witness as to Principal)

ATTEST:

(Witness as to Surety)

(Address)

(Principal)

By: _____
(Seal)

(Address)

(Address)

(Surety)

(Attorney in Fact)

By: _____
(Address)

NOTE:

Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT:

Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

NON-COLLUSION AFFIDAVIT OF CONTRACTOR

State of Texas

County of El Paso

_____, being first duly sworn, deposes and says that:

- (1) He/she is _____ of _____ hereinafter referred to as the "Contractor";
- (2) He is fully informed respecting the preparation and contents submitted _____, the Contractor for certain work in connection with the County of El Paso Contract pertaining to the Project in El Paso County, Texas;
- (3) This bid is genuine and is not a collusive or sham bid.
- (4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection with such Contract or to refrain from submitting a bid in connection with such Contract, or has in any manner, with any other Bidder, firm or person to fix the price or prices in said Contractor's Bid, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of El Paso or any person interested in the proposed Contract: and
- (5) The prices quoted in the Contractor's bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affidavit.

(Signature)

(Title)

Subscribed and sworn to before me this ___ day of _____, 20__.

By: _____
(Notary Public)

My Commission Expires _____, 20__

NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR

State of Texas (

County of El Paso (

_____, being first duly sworn, deposes and says that:

- (1) He/she is _____ of _____ hereinafter referred to as the "Subcontractor";
- (6) He is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to _____, the Contractor for certain work in connection with the County of El Paso Contract pertaining to the Project in El Paso County, Texas;
- (7) Such Subcontractor's Proposal is genuine and is not a collusive or sham proposal.
- (8) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, with any other Bidder, firm or person to fix the price or prices in said Subcontractor's Proposal, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of El Paso or any person interested in the proposed Contract: and
- (9) The prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affidavit.

(Signature)

(Title)

Subscribed and sworn to before me this ___ day of _____, 201_.

By: _____
(Notary Public)

My Commission Expires _____, 200__

PREVAILING WAGE RATE	
NAME	ENTITY
Anthony R. Talamo	City of El Paso, Engineering
William J. Wachtel	El Paso ISD
Adrian Streson	YISD
Martha Carrasco	Canutillo ISD
John Ruiz	Bldg Trades
Javier Casas	IBEW local 583
Angel Rivera	IBEW local 583
Vince Alvarado	SMILO 49
Nick P. Corona	EPISD-FM & C
Rene Chavez	SISD
Joe Gomez	AGC
John Goodrich	CF Jordan
Matthew McElroy	City of El Paso
Troy Glover	Thomason Hospital
John P. Lane	JP Co.
Herb De La Rosa	Plumbing
J.P. Plumbing & Heating	APHC
Eileen Karlsruher	SSCA
Oscar Venegas AGC	AGC
Ed Anderson	AGC
Tom Johnson	AGC of Texas
Ernie Carrizal	County of El Paso R&B
Mike Dooley	CF Jordan
Eric Galvan	Dailey Construction
Rogelio Gandara	Dailey Construction
Jim Booher	YISD
Jason Salazar	Sunset West Inc.
Anthony Salazar	Sunset West Inc.
Mark Vechione	SISD
Carlos Ornelas	EDCO Corp
Kristen Ogden	AGC of Texas
Cynthia Osborn	City of El Paso
Bertha Ontiveros	City of El Paso
Robert Rivera	County of El Paso R&B

ORDER OF THE COMMISSIONERS COURT
OF EL PASO COUNTY REGARDING
APPRENTICESHIP PROGRAM REQUIREMENTS

Whereas, the County of El Paso supports the adoption of an apprenticeship program for all county building construction projects and desires the inclusion of language mandating participation in apprenticeship programs certified by the U.S. Department of Labor (DOL) in all County building construction contracts; and

Whereas, the purpose of the apprenticeship program is to require that only journeymen and apprentices registered in an apprentice program certified by DOL perform work on County building construction projects in order to ensure both quality construction work as well as provide training opportunities; and

Whereas, a DOL certified apprenticeship program requirement for local building construction projects is consistent with the state prevailing wage rate law pursuant to Chapter 2258, Texas Government Code.

NOW THEREFORE BE IT RESOLVED, that the County of El Paso adopts the EL Paso County Apprenticeship Program requiring the following of all building contractors and their subcontractors on County Building Construction Projects:

1. must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations;
2. must hire registered apprentices enrolled in a DOL certified apprenticeship program;
3. may not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;
4. must pay wage rates and benefits package for apprentices as determined by apprenticeship program/DOL;
5. must comply with DOL requirements for the ration of apprentices to journeymen;
6. must hire apprentices in all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.

BE IT FUTHER RESOLVED that the County Purchasing Agent is hereby directed to include notice of the County apprenticeship requirements in all specifications for bids on building construction projects.

APPRENTICESHIP PROGRAM PROCEDURES

1. All bids or proposals must comply with the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program requirements adopting May 17, 1999.
2. A copy of the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program requirements adopted May 17, 1999 is attached hereto as Attachment I.
3. In preparing bids, the bidder should use only those job classifications listed on the attached prevailing wage rate schedules, and should base its bid on wage rates no less than those set forth on the schedules. In the event the bidder determines that it will utilize classes of workers for which no wage rate has been determined the bidder shall inform the Purchasing Agent prior to the deadline for submission of bids, who shall consult with the County Public Works Director to determine whether the bid may be based on any of the job classifications for which a rate has been set, or whether the County will need to determine a new prevailing wage rate for the classification at issue. In the event the County makes a prevailing wage rate determination for such classification, all bidders will be given notice and an opportunity to revise their bids based on the new prevailing wage rate determination. With respect to apprentices, trainees or helpers, the bidder may utilize only registered apprentices enrolled in a DOL certified apprenticeship program and shall pay wages as determined by the apprenticeship program based on the individual apprentice's experience and skill level.
4. Pursuant to Tex. Gov't Code Ann. §2258.001-2258.058 (Vernon 1999 Pamphlet), the Commissioners Court for El Paso County, Texas has duly adopted prevailing wage rates for Highway/Heavy Construction on March 4, 1996, and for Building Construction Trades on March 14, 1996 and September 16, 1996. Said prevailing wage rates are attached hereto and incorporated herein by reference.
5. Pursuant to Tex. Gov't Code Ann. §2258.023 (Vernon 1999 Pamphlet), each contractor who is awarded a public works contract by the County of El Paso, or a subcontractor of the contractor, shall pay each worker employed on a public work not less than the general prevailing wage rate for each craft or type of worker as determined by the Commissioners Court of El Paso County.
6. Pursuant to Tex. Gov't Code Ann. §2258.023 (Vernon 1999 Pamphlet), a contractor or subcontractor who violates §2258.023 shall pay the County of El Paso the sum of \$60.00 for each worker employed for each calendar day or part of the day that the worker is paid less than the wages stipulated in the contract, and the contract between the County and the contractor shall set forth this penalty provision.
7. In preparing bids, the bidder should use only those job classifications listed on the attached prevailing wage rate schedules, and should base its bid on wage rates no less than those set forth on the schedules. In the event the bidder determines that it will utilize classes of workers for which no wage rate has been determined the bidder shall inform the Purchasing Agent prior to the deadline for submission of bids, who shall consult with the County Director of Public Works to determine whether the bid may be based on any of the job classifications for which a rate has been set, or the classification at issue. In the event the County makes a prevailing wage rate determination for such classifications, all bidders will be given notice and an opportunity to revise their bids based on the new prevailing wage rate determination.

COUNTY OF EL PASO, TEXAS
Building Construction Trades
Wage Rates 2008



CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Automatic Fire Sprinkler Fitter, Certified	25.30	13.30	38.60	308.80
Brick Masons and Block Masons	17.84	-	17.84	142.72
Carpenters – Acoustical Ceiling	12.00	0.50	12.50	100.00
Carpenter – Rough	14.71	-	14.71	117.68
Carpenter – All Other Work, Millwright	17.78	-	17.78	142.24
Caulker / Sealers	10.00	-	10.00	80.00
Door & Hardware and Locksmith	12.00	1.35	13.35	106.80
Drywall and Ceiling Tile and Lather	12.00	0.50	12.50	100.0
Drywall Finishers & Tapers	12.00	0.50	12.50	100.0
Electrician	19.09	6.45	25.54	204.32
Electronic Technician	18.43	1.01	19.44	155.52
Elevator Installers and Repairers	31.35	15.10	46.45	371.6
Floor Layers–Carpet & Resilient	11.50	-	11.50	92.00
Floor Layers – Specialty	11.50	-	11.50	92.00
Floor Layers – Wood	11.50	-	11.50	92.00
Fork Lift Operator	9.37	-	9.37	74.96
Glaziers	10.00	-	10.00	80.00
Hazardous Materials Removal	10.00	-	10.00	80.00
HVAC & Refrigeration Mechanics	22.00	-	22.00	176.00
Insulation Workers – Mechanical	10.00	-	10.00	80.00
Irrigator, Certified	14.92	-	14.92	119.36
Laborer, Common	8.00	0.50	8.50	68.00
Laborer, Skilled	9.00	0.50	9.50	76.00
Manlift Operator	12.13	-	12.13	97.04

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Masons, Cement Finishers	11.91	-	11.91	95.28
Mason, Rock and Stone	9.00	-	9.00	72.00
Painters	10.00	0.50	10.50	84.00
Paper Hanger	10.00	0.50	10.50	84.00
Pipelayers	15.00	-	15.00	120.00
Pipe Fitters and Steamfitters	20.50	7.98	28.48	227.84
Plaster and Stucco Applicator	13.00	0.50	13.50	108.00
Plumbers, Certified Medical Gas Installer	20.50	7.95	28.45	227.6
Reinforcing Iron and Rebar	11.50	-	11.50	92.00
Roofers	10.50	-	10.50	84.00
Sheet Metal Workers	15.00	12.16	27.16	217.28
Structural Iron & Steel Workers, Metal Building Erectors	10.59	-	10.59	84.72
Tile and Marble Setters	12.00	-	12.00	96.00
Truck Drivers, Heavy & Tractor-Trailer	14.69	-	14.69	117.52
Truck Drivers, Light < 26,000	9.00	-	9.00	72.00

All persons required to be licensed or certified must meet those qualifications to be paid the associated rate.

COUNTY OF EL PASO, TEXAS
Paving and Street Construction, Dirt Work,
Heavy Construction, Pipeline Work, Highway
Wage Rates 2008



CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Asphalt Distributor Operator	12.50	-	12.50	100.00
Asphalt Paving Machine Operator	11.41	-	11.41	91.28
Asphalt Raker	10.00	-	10.00	80.00
Backhoe Operator	11.50	-	11.50	92.00
Bulldozer Operator	10.22	-	10.22	81.76
Concrete Finisher (Paving and Structures)	10.50	-	10.50	84.00
Concrete Paving Finishing Machine	14.00	-	14.00	112.00
Crane Operator	12.07	-	12.07	96.56
Electrician	19.76	6.19	25.95	207.60
Excavator Operator	16.10	-	16.10	128.80
Form Builder/Setter	12.21	0.95	13.16	105.28
Form Setter (Paving and Curb)	12.00	-	12.00	96.00
Front End Loader	11.00	-	11.00	88.00
Laborer (Common)	8.25	-	8.25	66.00
Laborer (Skilled)	9.72	-	9.72	77.76
Mechanic	14.00	-	14.00	112.00
Motor Grader Operator, Fine Grade	16.00	-	16.00	128.00

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Pipe Layer	9.83	-	9.83	78.64
Reinforcing Steel Setter (Paving)	11.75	-	11.75	94.00
Rock Mason	9.00	-	9.00	72.00
Servicer	12.00	-	12.00	96.00
Traveling Mixer Operator	10.00	-	10.00	80.00
Truck Driver under 26,000 pounds	9.50	-	9.50	76.00
Truck Driver over 26,000 pounds	12.00	-	12.00	96.00
Tunneling Machine Operator, Heavy	13.61	-	13.61	108.88
Utility Operator Grade 1	15.00	-	15.00	120.00
Utility Operator Grade 2	10.00	-	10.00	80.00
Welder, Certified	12.06	-	12.08	96.84

All persons required to be licensed or certified must meet those qualifications to be paid the associated rate.

EL PASO COUNTY: Building Definitions – 2008

1	Automatic Fire Sprinkler Fitter, Certified	Assembles, installs and repairs pipes, fittings, and fixtures for sprinkler systems for fire prevention. Locates <i>and</i> marks position of pipe and pipe connections and passage holes for pipes in ceilings. Cuts openings to accommodate fixtures. Assembles and tests lines <i>and</i> fittings. Performs other related duties.
2	Brickmasons and Blockmasons	Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct or repair walls, partitions, arches, sewers, and other structures. Exclude "Stonemasons". Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Grounds-keeping Workers".
3	Carpenters – Acoustical Ceiling Installation	Construct, erect, install, or repair the structure for acoustical ceiling tile.
4	Carpenter – Rough	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames. May also install cabinets, and siding. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways.
5	Carpenter – All Other Work	Construct, erect, install or repair cabinets and other fixtures or structures requiring a high level of workmanship. Includes Cabinetmakers and Bench Carpenters – Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut or shape lumber or to fabricate parts for wood products. Perform related duties such as trim work, and structural framing.
6	Caulker / Sealers	Applies water proofing agents or caulk to a variety of structures and materials
7	Door & Hardware Specialist	Installs doors, hardware and accessories.
8	Drywall and Ceiling Tile Installers	Apply plasterboard or other wallboard to ceilings or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of sound-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes metal stud framing. Exclude "Carpet Installers", "Carpenters", and "Tile and Marble Setters".
9	Drywall Finishers & Tapers	Seal joints between plasterboard or other wallboard to prepare wall surface for painting or papering.
10	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems.
11	Electronic Technician	Set-up, rearrange, or remove switching and dialing equipment used in central offices. Service or repair telephones and other communication equipment on customers' property. May install equipment in new locations or install wiring and telephone jacks in buildings under construction. Install, program, maintain, and repair security and fire alarm wiring and equipment. Ensure that work is in accordance with relevant codes. Exclude "Electricians" who do a broad range of electrical wiring.
12	Elevator Installers and Repairers	Assemble, install, repair, or maintain electric or hydraulic freight or passenger elevators, escalators, or dumbwaiters.

Created on 5/11/2008

2008 Building Definitions

13	Fence Erectors - Include with skilled labor	Erect and repair metal and wooden fences and fence gates around highways, industrial establishments, residences, or farms, using hand and power tools. Excludes rock & stone fences.
14	Floor Layers – Carpet and Resilient	Apply blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative coverings to floors. Lay and install carpet from rolls, tiles or blocks on floors. Install padding and trim flooring materials. Installs variety of soft floor materials including vinyl and PCP. Exclude wood floors and specialty floors.
15	Floor Layers - Specialty	Prepares surface, installs and finishes specialty floor material such as that found in a gymnasium.
16	Floor Layers - Wood	Install, scrape and sand wooden floors to smooth surfaces using floor scraper and floor sanding machine, and apply coats of finish.
17	Fork Lift Operator	Person certified to operate a fork lift. (Industrial Forklift Operator is in Group 2 in the Heavy Schedule).
18	Glaziers	Install glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops.
19	Hazardous Materials Removal Workers	Identify, remove, pack, transport, or dispose of hazardous materials, including asbestos, lead-based paint, waste oil, fuel, transmission fluid, radioactive materials, contaminated soil, etc. Specialized training and certification in hazardous materials handling or a confined entry permit are generally required. May operate earth-moving equipment or trucks. Includes mold.
20	Heating, Air Conditioning and Refrigeration Mechanics	Repair and service heating, central air conditioning, or refrigeration systems, including oil burners, hot-air furnaces, and heating stoves. (Installation is performed by sheet metal worker). Includes HVAC mechanic.
21	Insulation Workers - Floor, Ceiling, and Wall - Include with trade	Line and cover structures with insulating materials. May work with batt, roll, or blown insulation materials.
22	Insulation Workers – Mechanical	Apply insulating materials to pipes or ductwork, or other mechanical systems in order to help control temperature.
23	Irrigator, Certified	Certified to install watering systems in various sizes and grades of lawn in order to maintain sufficient pressure and to insure even dispersal of water.
24	Laborer, Common	A general term used on construction work covering many unskilled occupations. Performs unskilled manual duties in all phases of construction. May use tools and other necessary equipment. Does not ordinarily perform work permitting exercise of independent judgment.
25	Laborer, Skilled	Performs manual duties in all phases of construction. May use simple tools and other necessary equipment. May assist other workers by performing a variety of duties such as furnishing materials tools and supplies and holding materials or tools during installation. May work on different phases or areas of a project or with different crafts. Is often transferred from job to job. May direct the work of the common laborer. Has the ability to work without close supervision. Degree of independent judgment required varies with the task performed. Includes tenders and hod carriers.
26	Landscaping and Grounds-keeping Workers – include with Common Labor	Landscape or maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler installation, and installation of mortarless segmental concrete masonry wall units.

27	Lather	Installs light iron and metal furring such as rods, channels, and other bars or systems to which metal lath, rock lath, or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails, and other metals plastering accessories which are covered and/or serve as ground or guard.
28	Locksmith	Self explanatory.
29	Manlift Operator	Self-explanatory
30	Masons, Cement and Concrete Finishers	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints. Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Grounds keeping Workers".
31	Mason, Rock	Constructs partitions, fences, walks, etc., using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls. cutting or placing of rock in mortar or other similar material.
32	Mason, Stone	Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using stone, marble, granite, slate and artificial stone. Cutting, grouting, and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair stone retaining wall, cutting or placing of stone in mortar or other similar material.
33	Mechanic	Maintains and repairs construction tools and equipment.
34	Medical Gas Installer, Certified	Assemble, install, alter, and repair pipelines or pipe systems that carry medical gases or liquids. Specialized training and certification required.
35	Metal Building Erector	Assembles prefabricated metal buildings according to blueprint specification, using hand tools, power tools, and hoisting equipment. Erects frame of building, using hoist. Bolts steel frame members together. Attaches wire and insulating materials to framework. Bolts sheet metal panels to framework. Reads blueprint to determine location of items, such as doors, windows, ventilators, and skylights and installs items, using cutting torch, wrenches, and power drill. Trims excess sheet metal, using cutting torch, power saw, and tin snips.
36	Millwright	Self-explanatory.
37	Painters - Building	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. May remove old paint to prepare surface prior to painting. May mix colors or oils to obtain desired color or consistency. Exclude "Paperhangers."
38	Paper Hanger	Measures, cuts, and hangs wallpaper.
39	Pipelayers	Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints.
40	Pipe Fitters and Steamfitters	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes pressurized lines and flow lines for gas, air, and oil found in industrial settings. Includes persons, not certified, who install fire sprinklers.

41	Plaster and Stucco Applicator	Apply interior or exterior plaster, cement, stucco, or similar materials. May also set ornamental plaster. Applies interior and exterior plastering of stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Installs metal corner beads when stuck by using plastic materials.
42	Plumbers	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems.
43	Reinforcing Iron and Rebar Workers	Position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters.
44	Roofers	Cover roofs of structures with shingles, slate, asphalt, aluminum, wood, and related materials. May spray roofs, sidings, and was with material to bind, seal, insulate, or soundproof sections of structures. Includes metal and membrane roofs.
45	Sheet Metal Workers	Fabricate, assemble, install, and repair sheet metal products and equipment, such as ducts, control boxes, drainpipes, and furnace casings. Work may involve any of the following: setting up and operating fabricating machines to cut, bend, and straighten sheet metal; shaping metal over anvils, blocks, or forms using hammer; operating soldering and welding equipment to join sheet metal parts; inspecting, assembling, and smoothing seams and joints of burred surfaces. Include sheet metal duct installers who install prefabricated sheet metal ducts used for heating, air conditioning, or other purposes.
46	Structural Iron and Steel Workers	Raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. Exclude "Reinforcing Iron and Rebar Workers".'
47	Tile and Marble Setters	Apply hard tile and marble to walls, floors, ceilings, and roof decks. Includes Terrazzo.
48	Truck Drivers, Heavy and Tractor-Trailer (Greater than 26,000 GVW)	Drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license.
49	53-3033.00 - Truck Drivers, Light or (Under 26,000 GVW)	Drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "Couriers and Messengers".

- **Welder** - Receives rate prescribed for craft performing operation to which welding is incidental.

EI PASO COUNTY: HEAVY / HIGHWAY DEFINITIONS -2008

1	Asphalt Distributor Operator	Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise services and make adjustments to equipment as needed. Performs other related duties.
2	Asphalt Paving Machine Operator	Operates paving machine that spreads and levels asphaltic concrete on highway subgrade. Controls movement of machine, raises and lowers screed, regulates width of screed. May oil, grease, service and make adjustments to equipment as needed. Performs other related duties.
3	Asphalt Raker	Distributes asphaltic materials evenly over road surface by raking and brushing material to correct thickness; may control screed to regulate width and depth of materials; directs Laborers (skilled and unskilled) when to add or take away material to fill low spots or to reduce high spots. Performs other related duties.
4	Backhoe Operator	Operates a rubber tired machine mounted with a bucket and excavator used for ditching moving material or earth and other task. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
5	Bulldozer Operator	Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease or otherwise service and make minor repairs to equipment as needed. Performs other related duties.
6	Concrete Finisher (Paving and Structures)	Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures to the final grade and contour with the use of straight edges and steel trowels. Operates bridge deck finishing machine. Forms and finishes edges and joints. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.
7	Concrete Paving Finishing Machine	Operates self propelled machine(s) which may or may not travel on paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.
8	Concrete\Guniting Pump Operator - include with Skilled Labor	Operates a pumping machine that pumps fresh concrete, guniting or grout. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
9	Crane Operator	A worker who operates a lattice boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
10	Electrician	Plans and directs the layout of metal electrical conduit, installs wiring systems, switch-panels, buss bars, works on overhead distribution systems and underground distribution systems. Performs other related duties.

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11	Excavator Operator	Operates a crawler or rubber tired machine mounted with an excavator bucket. Used for excavating ditches, structures and mass excavations, laying pipe and precast concrete structures, loading trucks and placing rock riprap. May also be equipped with various hydraulic attachments. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
12	Fence Erector – include with Skilled Labor	Builds any type of fence except rock. Includes, but is not limited to, chain link, t-bar and barbwire.
13	Flagger – include with Skilled Labor	Physically directs traffic in or around a construction site, May use signs or devices to direct traffic. May help assemble, position, and clean devices or equipment. Certification required.
14	Form Builder/Setter	Works from plans to build, assemble, fit together, align, plumb, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is being placed. Directs others in stripping forms after concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties. Includes guardrail installation.
	Form Setter (Paving and Curb)	Fits together, aligns and sets to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter and curb. Performs other related duties. Includes batterboard setter.
16	Front End Loader	Operates a rubber-tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
17	Instrument Person – include with Skilled Labor	Sets up, adjusts and operates surveying instruments, including GPS and total station. Works from plans to establish lines points and grades for construction purposes, keeps notes and records of data. Computes cross sections of work performed for cost or payment purposes. Directs Rod or Chain person (skilled labor) and is responsible for accuracy of this field engineering work. Performs other related duties.
18	Laborer (Common)	A general term used on construction work covering many unskilled classifications requiring work of a physical nature. Performs a variety of work ranging from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing settle, cures newly poured concrete, helps lower pipe in ditch for pipelayers, works with dirt crew keeping construction layout stakes out of the way of dirt-moving equipment. May fine grade excavation and ditches, shovels hot asphalt material. May use power tools and other necessary equipment in demolition work. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers. Installs and maintains erosion control. Performs other related duties.

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19	Laborer (Skilled)	Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operates and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from an apprentice assigned to a specific craft. Includes but is not limited to pipelayer, tools, utility, air tool operator, asphalt heaterman, concrete paving form grader, concrete paving float, concrete paving spreader, and rod or chain for surveyor, fuelman, oiler or swamper (on trenching machine or shovel-type equipment), stabber. Performs other related duties.
20	Mechanic	Assembles, sets up, adjusts and maintains and repairs all types of construction equipment and trucks. He may perform the duties of a welder in repair of equipment. Performs other related duties.
21	Motor Grader Operator, Fine Grade	Operates motor grader. Performs many of the same duties of Motor Grader, Rough, but in addition performs finish grade work to bluetops or other close specification control. This work is subject to strict inspection and must conform closely to specifications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
22	Painter – include with Skilled Labor	Paints and stains structural steel and concrete surfaces of bridges, retaining walls, or other structures. Directs cleaning and abrasive blasting of surfaces prior to painting or staining. Performs other related duties.
23	Pavement Marking Machine Operator–include with Skilled Labor	Operates machine used in laying paint stripes or markers on all types of paving. Loads machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
24	Pipe Layer	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
25	Reinforcing Steel Setter (Paving)	Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker apprentice or common or utility laborers. May install miscellaneous materials integral to concrete structures or paving. May work with power tools. Performs other duties.
26	Reinforcing Steel Setter (Structure)	Erects and places fabricated structural steel members, such as girders, plates, diaphragms, lateral bracing, and unites them permanently to form a completed structural steel unit. Fastens steel members together by welding or bolting. May include dismantling and erecting large units of equipment. Performs other related duties.
27	Rock Mason	Constructs partitions, fences, walks, etc., using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls. cutting or placing of rock in mortar or other similar material.

28	Servicer	Drives a truck which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service for preventive maintenance records. May have laborer assisting him. May require a Commercial Driver's License if driving truck on public highways. Performs other related duties.
29	Slipform Machine Operator	Operates a self-propelled machine which may either lay curb and gutter, median safety barrier or bridge rail. Manipulates hand or foot levers to control movements of the machine. Raises or lowers screed, regulates width of screed. May oil, grease or otherwise service and make necessary adjustment to equipment as needed. Performs other related duties.
30	Traveling Mixer Operator	Operates a machine that pulverizes material of the roadbed and may mechanically mix it with asphalt, cement or other stabilizing materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
31	Truck Driver under 26,000 pounds	Includes A-Frame, Gin pole, Tandem Float (4 & 5 axle), rubber-tired tractor, fork lift, winch truck, track truck equipment, stringing truck, single axle float (3 axle), flat bed truck (3 axle) dump truck (3 axle), skid truck (3 axle), hot pass (2 axle), Flat bed truck (2 axle), pickup, bus jeep, station wagon, swamp buggy or similar type equipment., stringer bead & hot pass (2 axle, flat bed truck (2 axle), dump truck (2 axle), skid truck 2 axle), and water truck (2 axle).
32	Truck Driver over 26,000 pounds	Includes truck mechanics, lowboy, rollagon or similar type equipment.
33	Tunneling Machine Operator, Heavy	Operates a machine which creates a tunnel through dirt or rock for the purpose of installing subterranean facilities such as utilities, including sanitary sewer and water mains, storm sewers, pedestrian tunnels, vehicular tunnels and subways.
34	Utility Operator Grade 1	Clam, ditching machine, side booms (except those in Group 2), operator on dredges, cleaning machine, coating machine, back filler, blending machine, wate-kote machine, equipment welder, track tractor, derrick, dragline, shovel, motor grader rough grade, Crawler tractor, foundation drill operator, crawler and truck mounted, and pile driver.
35	Utility Operator Grade 2	Pipe, gin truck or winch truck with poles when used for hoisting, side boom (cradling rock drill), tow tractor, farm tractor road boring machine, fork lift (industrial type), pot fireman (power agitated), straightening machine, boring machine, bombardier (track or tow rig), mobile lubrication & service engineer, hydrostatic testing operator, rollagon or similar type equipment, scraper, stalking machine, plant mix pavement, roller operator, plant mix pavement, pneumatic motor operator. Concrete paving curing, float, texturing machine, subgrade trimmer, small slipform machine, milling machine, self propelled hammer, trenching machine, directional drill, chip spreader, trenching, screening plant joint sealer and concrete saw.
36	Welder, Certified	Certified by the American Welding Society to perform structural steel welding. Operates welding equipment. Welds structural steel girders and diaphragms. May weld permanent metal deck forms. Performs other related duties. Includes pipe work that must be performed by a certified welder.
37	Work Zone Barricade Servicer – include with Common Labor	Fabricates erects and maintains temporary traffic control devices, including arrow boards, signs, barricades, channelizing devices, barrels and all message boards. May operate a truck during traffic control operations.

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BUILDING CONSTRUCTION TRADES

Classification	EPCHD 11/13/01	El Paso County Prevailing Wage Rate 8/11/04	El Paso County PWR Per Hr. 5/12/08	Davis Bacon 2008
Asbestos/Abatement	10.00	10.00	10.00	
Air Conditioning Mechanic	11.50	13.50	22.00	
Bricklayer	17.84	17.84	17.84	
Acoustical Ceiling Installer	17.84	17.87	12.50	10.45
Carpenter - Rough			14.71	10.79
Carpenter- All other, Millwright				
Carpenter	17.87	17.87		
Caulker (Sealant)			10.00	10.00
Cement Mason/ Concrete Finisher	10.50	10.50	11.91	11.91
Drywall Installer		19.49	12.50	
Drywall Finishers & Tapers		10.50	12.50	8.78
Electrician	19.44	21.27	25.54	24.04
Electronic Technician	19.44	9.00	19.44	
Elevator Constructor	20.24	33.34	46.45	
Floor Layer - Resilient & Carpet	11.00	11.00	11.50	12.87
Forklift Operator			9.37	
Glazier	11.50	10.82	10.00	
Insulators			10.00	10.00
Ironworker- Reinforcing/Structural	10.25	10.25	10.59	8.83/10.59
Irrigator, Certified	18.15	14.50	8.50	
Laborer, Skilled	11.02	15.18	9.50	
Laborer, Common	8.88	8.88	8.50	7.95
Manlift			12.13	
Millwright	22.01	17.87	17.48	
Operating Engineer- Crane	17.85	17.85		
Operating Engineer- Heavy Equip	16.03	16.03		
Operating Engineer- Med. Equip	15.58	15.58		
Operating Engineer- Light Equip	7.50	8.50		
Painter	8.50	8.00	10.50	9.17
Paper Hanger			10.50	
Plasterer	14.44	11.00	13.50	10.86
Plumber				
Pipefitters (heavy 2008= 43.94)				
Plumber & Pipefitter (no HVAC work)	18.15	14.50		
Reinforcing Steel Setter		15.37	11.50	8.83
Roofer	9.75	9.00	10.50	
Rock Mason	8.00		9.00	
Sheet Metal Worker-all other work (not HVAC)	9.00	14.00	27.16	11.23
Sprinkler Fitter	12.85	13.00	38.60	38.60
Tile Setter & Terrazo Worker	17.84	9.50	12.00	12.02
Tile & Marble Finisher	11.91			8.01
Truck Driver – Light	8.00	9.00	9.00	9.00
Truck Driver – Heavy (over 2,600 #)	9.50	8.00	14.69	
Caulker (Sealant)	9.50	9.50	10.00	
Concrete Saw Cutter	9.50			
Mechanic	9.25		14.00	

5/12/2008

I:Cases/HO-Opinions/2000/Compare 2008 w Hosp & County 2004 rates

Heavy Construction

Classification	EPCHD 11/13/01	El Paso County Prevailing Wage Rate 8/11/04	El Paso County PWR Per Hr. 5/12/08	Davis Bacon 2008
Asphalt Distributor Operator		12.00	12.50	8.53
Asphalt Paving Machine Operator		8.91	11.41	11.41
Asphalt Raker		9.00	10.00	8.74
Backhoe Operator			11.50	11.57
Bull dozer Operator			10.22	10.22
Carpenter		8.75		9.78
Concrete Finisher - Paving		8.00	10.50	9.30
Concrete Finisher - Structure		9.40	10.50	9.60
Crane Operator			12.07	11.12
Electrician		17.52	25.95	17.01
Excavator Operator			16.10	
Form Builder/Setter			13.16	9.22
Form Setter- Paving and Curb		8.90	12.00	9.22
Front End Loader			11.00	9.38
Heavy Equipment Operator		9.00		
Ironworker- Structural		10.50		
Laborer - Common		7.00	8.25	8.00
Laborer - Skilled		7.39	9.72	9.58
Light Equipment Operator		7.68		
Mechanic		12.75	14.00	12.02
Medium Equipment Operator		10.06		
Motor Grader Operator			16.00	15.00
Pipe Layer		8.50	9.83	9.83
Reinforcing Steel Setter		10.00	11.75	9.68
Servicer		10.00	12.00	9.88
Traveling Mixer Operator			10.00	
Truck Driver – Heavy over 26, 000		8.00	12.00	9.56
Truck Driver- Light			9.50	9.56
Tunnel Machine Operator- Heavy			13.61	1361
Utility Operator Grade 1			15.00	29.00
Utility Operator Grade 2			10.00	22.34
Welder, Certified			12.06	11.56

***Note: Wage rates include benefits.**

FIXED PRICE CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR

This FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR (the "Contract") is made and entered into by and between El Paso County, Texas, a political subdivision of the State of Texas (the "Owner") and _____, a Texas corporation (the "Contractor"). This Contract is executed under seal, and shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as _____(the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree:

1. DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes the plans and specifications for the Project identified thereon as such, plus the following (if any): _____; all of which are hereby incorporated herein by reference and made a part hereof. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Paragraph 1 do not, and shall not, form any part of this Contract.

2. REPRESENTATIONS OF THE CONTRACTOR

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Owner:

(A) The Contractor is fully qualified to acts as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project;

(B) The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;

(C) The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

3. INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

(A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents;

(B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;

(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Contractor;

(D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "included", or "including", as used in this Contract, shall be deemed to be followed by the

phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make-up this Contract, shop drawings, and other submittals and shall give written notice to the Owner and the Architect of any conflict, ambiguity, error or omission which the contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construct, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large-scale plans and small-scale plans, the large-scale plan shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

4. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The documents which make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner's prior written authorization.

5. CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (A)** Construction of the Project;
- (B)** The furnishing of any required surety bonds and insurance;
- (C)** The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, fuel, or additional light, required for construction and all necessary building permits and other permits required for the construction of the Project;
- (D)** The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

6. TIME FOR CONTRACTOR'S PERFORMANCE

(A) The Contractor shall commence the performance of this Contract within ___ days of the execution of this Agreement and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before _____ from the date of commencement;

(B) The contractor shall pay the Owner the sum of _____(\$____.00) per day for each and every calendar day of unexecuted delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be unexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(C) The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion;

(D) All limitations of time set forth herein are material and are of the essence of this Contract.

7. FIXED PRICE AND CONTRACT PAYMENTS

(A) The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed price of _____Dollars (\$_____.00). The price set forth in this Subparagraph 7(A) shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract;

(B) Within ten (10) calendar days of the effective date hereof, the Contractor shall prepare and present to the Owner and the Architect the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Architect or the Owner requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Architect and the Owner.

(C) The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph 7. On or before the _____ day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the _____ day of the month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Architect or Project Manager, the Owner, or both. Therein, the Contractor may request payment for ninety percent (95%) of that part of the Contract Price allocable to the Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount the previously payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached

the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The Architect shall approve in writing the amount which, in the opinion of the Architect, is properly owing to the Contractor. The Owner shall make payment to the contractor within fifteen (15) days following the Architect's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Subparagraph 7(f) hereinbelow. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all subcontractors, material men, suppliers or others having lien rights, wherein said subcontractors, material men, suppliers or others having lien rights, shall acknowledge receipt of all sums due pursuant to all prior Payment requests and waivers and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner;

(D) When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, material men, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, material man, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future;

(E) Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;

(F) The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (1) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- (2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- (3) The Contractor's rate of progress being such that, in the Owner's opinion, substantial or final completion, or both, may be unexcusably delayed;
- (4) The Contractor's failure to use Contract funds, previously paid the Contract by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (5) Claims made, or likely to be made, against the Owner or its property;
- (6) Loss caused by the Contractor;
- (7) The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as

contemplated in this Subparagraph 7(F), the Contractor shall promptly comply with such demand;

(G) If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days' written notice of its intent to cease work to the Owner. Any payment not made within thirty (30) days after the date shall bear interest at the rate of one percent (1%) per month;

(H) When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Architect or Project Manager in writing and shall furnish to the Architect or Project Manager a listing of those matters yet to be finished. The Architect or Project Manager will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Architect or Project Manager will so notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Architect or Project Manager, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, and less the reasonable costs as determined by the Owner for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims;

(I) When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will perform a final inspection of the Project. If the Architect confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner hereunder, the Architect will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment;

(J) If the Contractor fails to achieve final completion within _____ days of the date of Substantial Completion, the Contractor shall pay the Owner the sum of _____ Dollars (\$____.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be unexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(K) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Architect:

- (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
- (2) If required by the Owner, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (3) If applicable, consent(s) of surety to final payment;

(4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

(L) The Owner shall, subject to its rights set forth in Subparagraph 7(F) above, make final payment of all sums due the Contractor within fifteen (15) days of the Architect's execution of a final Approval for Payment.

8. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

(A) If appropriate, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey;

(B) The Owner shall obtain all required authorizations, approvals, easements, and the like excluding the building permit and other permits or fees required of the Contractor by this Contract, or permits and fees customarily the responsibility of the Contractor.

(C) The Owner will provide the Contractor one copy of the complete Contract. The Contractor will be charged, and shall pay the Owner, a reasonable fee per additional copy of the Contract which it may require.

9. CEASE AND DESIST ORDER

In the event the Contractor fails or refused to perform the work as required herein, the Owner may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the cost of performing such work by the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

10. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

(A) The Contractor is again reminded of its continuing duties set forth in Subparagraph 3(G) which are by reference hereby incorporated in this Subparagraph 10(A). The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Architect and Owner, the Contractor shall be responsible for such work and pay the cost of correcting same;

(B) All work shall strictly conform to the requirements of this Contract;

(C) The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;

(D) The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;

(E) The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work;

(F) The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Contractor to this Project are as follows:

Name Function

Name	Function

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 10(F) as though such individual had been listed above;

(G) The Contractor, within fifteen (15) days of commencing the work, shall provide to the Owner and the Architect, and comply with, the Contractor's schedule for completing work. Such schedule shall be in a form acceptable to the Owner. The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Architect. Strict compliance with the requirements of this Subparagraph 10(G) shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract;

(H) The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Architect at all regular business hours. Upon final completion of the work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner;

(I) Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless such shall have been approved in writing by the Architect. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Architect or the Owner shall not be evidence that work installed pursuant thereto conforms with the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the Owner or the Architect;

(J) The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment;

(K) At all times relevant to this Contract, the Contract shall permit the Owner and the Architect to enter upon the Project site and to review or inspect the work without formality or other procedure.

11. INDEMNITY

The Contractor shall indemnify and hold the Owner harmless from any and all claims liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorney's fees and expenses, in connection with the Contractor's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the work itself), including loss of use resulting there from, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

12. THE PROJECT ARCHITECT

The architect for this Project is CEA Group (the "Architect"). In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement architect and the role of the replacement architect shall be the same as the role of the Architect. Unless otherwise directed by the Owner in writing, the Architect will perform those duties and discharge those responsibilities allocated to the Architect in this Contract. The duties, obligations and responsibilities of the Architect shall include, but are not limited to, the following:

(A) Unless otherwise directed by the Owner in writing, the Architect shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract;

(B) Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect;

(C) When requested by the Contractor in writing the Architect shall render interpretations necessary for the proper execution or progress of the work;

(D) The Architect shall draft proposed Change Orders;

(E) The Architect shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor;

(F) The Architect shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of this Contract. If the Architect deems it appropriate, the Architect shall be authorized to call for extra inspection or testing of the work for compliance with requirements of this Contract;

(G) The Architect shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Architect, are properly owing to the Contractor as provided in this Contract;

(H) The Architect shall, upon written request from the Contractor, perform those inspections required in Paragraph 7 hereinabove;

(I) The Architect shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this contract consistent with the intent of this Contract;

(J) THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ARCHITECT. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE ARCHITECT. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED

BY, ANY DUTIES OF THE ARCHITECT TO THE OWNER.

13. CLAIMS BY THE CONTRACTOR

Claims by the contractor against the Owner are subject to the following terms and conditions:

(A) All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Architect. Such claim shall be received by the Owner and the Architect no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

(B) The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor;

(C) In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 13(C) shall constitute a waiver by the contractor of any rights arising out of or relating to such concealed and unknown condition;

(D) In the event the contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall strictly comply with the requirements of Subparagraph 13(A) above and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;

(E) In connection with any claim by the Contractor against the Owner for compensation in excess of the contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction;

(F) In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner behalf, or by Owner-authorized Change Orders, unusually bad weather not capable of being reasonably anticipated, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Architect. A task is critical within the meaning of this Subparagraph 13(F) if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 13(A) above. If the Contractor fails to make such claim as required in this Subparagraph 13(F), any claim for an extension of time shall be waived.

14. SUBCONTRACTORS

Upon execution of this Contract, the Contractor shall identify to the Owner and the Architect, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth hereinbelow.

15. CHANGE ORDERS

One or more changes to the work within the general scope of this Contract, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

(A) Change Order shall mean a written order to the Contractor executed by the Owner and the Architect after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;

(B) Any change in the Contract Price resulting from a Change Order shall be determined as follows:

(1) By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price being set forth in the Change Order, (b) such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the Contractor's execution of the Change Order; or

(2) If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual cost incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct job-site overhead and profit but shall not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Architect requires.

(C) The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractors' agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matter relating to or arising out of or resulting from the work included within or affected by the executed Change Order;

(D) The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Architect, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

16. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

(A) In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Architect, such work shall be uncovered and displayed for the Owner's or Architect's inspection upon request, and shall be reworked at no cost in time or money to the Owner;

(B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 16(A) above, it shall, if directed by the Owner or the Architect, be uncovered and displayed for the Owner or Architect's inspection. If the uncovered work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor;

(C) The Contractor shall, at no cost in time or money to the Owner, correct work rejected by the Owner or by the Architect as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof;

(D) In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following final completion

upon written direction from the Owner;

(E) The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

17. TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the contractor may terminate performance under this Contract by written notice to the Owner and the Architect. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 19(A) hereunder.

18. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

(A) The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to _____ calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;

(B) In the event the Owner directs a suspension of performance under this Paragraph 18, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such costs paid to subcontractors;
- (2) preserving and protecting work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance thereon;
- (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

19. TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with the following terms and conditions:

(A) The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the contractor to assign the contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

- (1) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due

because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;

- (2) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- (3) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
 - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct job-site overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contractor would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 19(A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 19(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

(B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph 19(B) and it is subsequently determined by Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 19(A) and the provisions of Subparagraph 19(A) shall apply.

20. INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements of Exhibit "A" attached hereto and incorporated herein by reference.

21. SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably acceptable to the Owner.

22. PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recording, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice

23. PREVAILING WAGE RATES AND APPRENTICESHIP PROGRAM

(A) The Contractor is aware that and hereby agrees that not less than the prevailing wage rates adopted by the El Paso County Commissioners Court for Highway/Heavy Construction on March 4, 1996 and for Building Construction Trades on March 14, 1996, and September 16, 1996, shall be paid to all workers on the Project. A copy of the prevailing wage rates is attached hereto as Exhibit __ and by this reference is incorporated herein as part of this contract.

(B) Contractor agrees to comply with Tex. Gov't Code Sections 2258.001 through 2258.058 and acknowledges that it understands that it will pay to the Owner the sum of \$60.00 per day or part of a day, per worker, that a worker is paid less than said prevailing wage rates set forth in this contract.

(C) The Contractor agrees to keep records showing the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work and the actual per diem wages paid to each worker. The Contractor further agrees that such records shall be open at all reasonable hours to inspection by the County through its officers and agents.

(D) The Contractor shall post the prevailing wage rate schedules made part of this contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the County Director of Public Works regarding Prevailing Wage Rates and the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.

(E) Upon a determination by the County that there is good cause to believe that a contractor has violated Chapter 2258 of the Texas Local Government Code, the County shall withhold any amount due under the contract, up to and including the entire contract price, which the Commissioners Court or its agent, in the exercise of reasonable discretion, determines is sufficient to 1) cover the costs to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the prevailing wage rate and 2) cover the costs of penalties under Section 2258.023 and 3) to ensure compliance with Chapter 2258 for the duration of the project.

(F) Payroll Records, At the time the Contractor submits its applications for progress payments to the project architect, the Contractor shall provide a certified payroll for all employees during the period of that pay request.

(G) No worker shall be discharged by the Contractor or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint or instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the prevailing wage rate laws, the apprenticeship program or the provisions of this contract .

(H) The Contractor and subcontractors shall allow expeditious jobsite entry by the County Director of Public Works and his/her agents and representatives displaying and presenting proper identification credentials to the jobsite superintendent or his/her representative. While on the jobsite the County Director of Public Works and his/her agents and representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. The Contractor and subcontractors shall allow project employees to be interviewed at random for a reasonable duration by the County Director of Public Works and his/her agents and representatives to facilitate compliance determinations regarding the prevailing wage rate payment provisions and apprenticeship program provisions of this contract.

(I) In the event a particular work element of the project calls for a certain employee classification and skill that is not listed in the prevailing wage rate schedules in the contract, the Contractor shall notify the Director of Public Works who shall investigate the matter and make a recommendation to the Commissioners Court to make a special wage rate determination as required.

(J) In accordance with the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program Requirements adopted on May 17, 1999, the Contractor and all subcontractors must comply with the following:

1. must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations;
2. must hire registered apprentices enrolled in a DOL certified apprenticeship program;
3. may not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;
4. must pay wage rates and benefits package for apprentices as determined by the apprenticeship program/DOL;
5. must comply with DOL requirements for the ratio of apprentices to journeymen;
6. must hire apprentices in all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.

(K) The Contractor shall post the prevailing wage rate schedules made part of this contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the County Director of Public Works regarding Prevailing Wage Rates and the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.

(L) The Contractor shall provide the names of all apprentices on the project, verification of their status as registered apprentices, and documentation as to their proper wage rates and journeyman to apprentice ratios as determined by the apprenticeship program.

(M) The County reserves the right to terminate this Contract for cause if the Contractor and/or subcontractors shall breach any of these provisions regarding the payment of prevailing wages or the apprenticeship program.

(N) The Contractor shall cause these and any other appropriate prevailing wage rate and apprenticeship program provisions to be inserted in all subcontracts relative to the work to bind the subcontractors to the same prevailing wage rate and apprenticeship program provisions as are applicable to the Contractor.

24. APPLICABLE LAW

The law is hereby agreed to be the law of the State of Texas and venue shall lie in El Paso County, Texas .

25. SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such

COUNTY OF EL PASO, TEXAS

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; FEDERAL DEBT STATUS, AND NONDISCRIMINATION STATUS AND IMPLEMENTING REGULATIONS*

Instructions for the certifications:

General Requirements

The County of El Paso, Texas is required to obtain from all applicants of federal funds or pass-through certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Institutional applicants are required to certify that they will comply with the nondiscrimination statutes and implementing regulations.

Applicants should refer to the regulations cited below to determine the certifications to which they are required to attest. Signature of the form provides for compliance with certification requirements under 21 CFR part 1405, "New Restrictions on Lobbying," 21 CFR part 1414, Government wide Debarment and Suspension (Non procurement), Certification Regarding Federal Debt Status (OMB Circular A-129), and Certification Regarding the Nondiscrimination Statutes and Implementing Regulations. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the County of El Paso determines to award the covered cooperative agreement

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented in 21 CFR part 1405, for persons entering into a cooperative agreement over \$100,000, as defined at 21 CFR Part 1405, the applicant certifies that;

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement,

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award document for all sub-awards at all tiers (including sub-grants, contracts under

grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension and implemented at 21 CFR Part 1404, for prospective participants in primary covered transactions

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or and a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to the application.

3. DRUG-FREE WORKPLACE

As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F.

A. The applicant certifies that it will or will continue to provide a drug free workplace by:

(a). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The applicant's policy of maintaining a drug free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;

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

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee must

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions. Employers of convicted employees must provide notice including position title, to: The County of El Paso, Texas, 500 East San Antonio Street, Suite 406, El Paso, Texas 79901. Notice shall include the identification number of each affected grant

(f) Taking one of the following actions within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

4. CERTIFICATION REGARDING FEDERAL DEBT STATUS (OMB Circular A-129)

The Applicant certifies to the best of its knowledge and belief, that it is not delinquent in the repayment of any federal debt.

5. CERTIFICATION REGARDING THE NONDISCRIMINATION STATUTES AND IMPLEMENTING REGULATIONS

The applicant certifies that it will comply with the following nondiscrimination statues and their implementing regulations: (a) title VI of the Civil right Act of 1964 (42 U.S.C. 2000D et seq.) which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity for which the applicant received

federal financial assistance; (b) Section 504 of the rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance; (c) title IX of the Education Amendments of 1972m as amended (20 U.S.C. 1981 et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and (d) the Age Discrimination Act of 1975, and amended (42 U.S.C. 6101 ec seq.) which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

* All four (4) pages of this document must be included in all responses.

COUNTY OF EL PASO PURCHASING DEPARTMENT

MDR Building, 800 E. Overland,
ROOM 300, EL PASO, TEXAS 79901
(915) 546-2048, FAX: (915) 546-8180

PITI VASQUEZ, PURCHASING AGENT
JOSE LOPEZ, JR. ASST. PURCHASING AGENT
ELVIA CONTRERAS, FORMAL BID BUYER

BIDDING CONDITIONS

This is the only approved instruction for use on your invitation to bid. Items below apply to and become a part of the terms and conditions of the bid.

1. BY SUBMITTING A BID, EACH BIDDER AGREES TO WAIVE ANY AND ALL CLAIMS IT HAS OR MAY HAVE AGAINST THE COUNTY OF EL PASO, AND ITS OFFICERS, AGENTS AND EMPLOYEES, ARISING OUT OF OR IN CONNECTION WITH: THE DOCUMENTS, PROCEDURES, ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY BID; THE WAIVER BY EL PASO COUNTY OF ANY REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS; THE ACCEPTANCE OR REJECTION OF ANY BIDS; AND THE AWARD OF THE CONTRACT.
2. Bids must be in the Purchasing Department BEFORE the hour and date specified. Faxed bids will not be accepted.
3. Late bids properly identified will be returned to bidder unopened. Late bids will not be considered under any circumstances.
4. All bids are for new equipment or merchandise unless otherwise specified.
5. Quotes F.O.B. destination. If otherwise, show exact cost to deliver.
6. Bid unit price on quantity specified-extend and show total. In case of error in extension, unit prices shall govern. Bids subject to unlimited price increases will not be considered.
7. Bids must give full firm name and address of bidder. Failure to manually sign bid will disqualify it. Person signing should show title or authority to bind his firm in a contract.
8. No substitutions or cancellations permitted without written approval of County Purchasing Agent.
9. The County reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to the lowest responsible bidder. The County of El Paso reserves the right to award by item or by total bid. Prices should be itemized.
10. Bids \$100,000.00 and over, the bidder shall furnish a certified cashiers check made payable to the County of El Paso or a good and sufficient bid bond in the amount of 5% of the total contract prices and execute with a surety company authorized to do business in the State of Texas. The bid bond must be included with the bid at the time of the opening.
11. This is a quotation inquiry only and implies no obligation of the part of the County of El Paso.
12. The County of El Paso reserves the right to reject any proposal due to failure of performance on deliveries. The County Purchasing Agent will justify this.
13. Brand names are for descriptive purposes only, not restrictive.

14. The County of El Paso is an Equal Opportunity Employer.
15. Any proposal sent via express mail or overnight delivery service must have the proposal number and title clearly marked on the outside of the express mail or overnight delivery service envelope or package. Failure to clearly identify your proposal may be cause for disqualification.
16. PURSUANT TO TEXAS GOVERNMENT CODE SECTION 2253.021, A PRIME CONTRACTOR WHO IS AWARDED A PUBLIC WORKS CONSTRUCTION CONTRACT SHALL, PRIOR TO BEGINNING THE WORK, EXECUTE TO THE COUNTY:
 - a. A PERFORMANCE BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$100,000; AND
 - b. A PAYMENT BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$25,000.
17. PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 262.032(b), ANY SUCCESSFUL BIDDER WHO IS AWARDED ANY CONTRACT IN EXCESS OF \$50,000 MAY BE REQUIRED TO EXECUTE A PERFORMANCE BOND TO THE COUNTY. SAID BOND SHALL BE IN THE FULL AMOUNT OF THE CONTRACT AND MUST BE FURNISHED WITHIN 30 DAYS AFTER THE DATE A PURCHASE ORDER IS ISSUED OR THE CONTRACT IS SIGNED AND PRIOR TO COMMENCEMENT OF THE ACTUAL WORK. ANY PERFORMANCE BOND REQUIRED PURSUANT TO THIS SECTION SHALL BE NOTED IN THE ATTACHED DETAILED BID SPECIFICATIONS OR SCOPE OF WORK. THIS SECTION DOES NOT APPLY TO A PERFORMANCE BOND REQUIRED BY CHAPTER 2253, TEXAS GOVERNMENT CODE.
18. "Beginning January 1, 2006, in order to implement HB 914 (adding new Local Government Code Chapter 176), ALL VENDORS MUST SUBMIT A CONFLICT OF INTEREST QUESTIONNAIRE (Form CIQ) disclosing its affiliations and business relationships with the County's Officers (County Judge and Commissioners Court) as well as the County employees and contractors who make recommendations for the expenditure of County funds. The names of the County Officers and of the County employees and contractors making recommendations to the County Officers on this contract are listed in the Specifications.

THE CONFLICT OF INTEREST QUESTIONNAIRE MUST BE FILED WITH THE COUNTY CLERK AND A COPY OR PROOF OF FILING MUST BE ATTACHED TO THE BIDDER'S RESPONSE SUBMITTED TO THE PURCHASING DEPARTMENT.

Bidders should be aware that this bidding condition is not intended to cover or to advise you about all situations in which Local Government Code Chapter 176 would require you to file a Form CIQ. You should consult your private attorney with regard to the application of this law and your compliance requirements. Failure to comply is punishable as a Class C misdemeanor.

NOTICE:

ALL COMMUNICATIONS BY A VENDOR TO THE COUNTY, ITS OFFICIALS, AND DEPARTMENT HEADS REGARDING THIS PROCUREMENT SHALL BE DONE THROUGH THE EL PASO COUNTY PURCHASING DEPARTMENT. THE EL PASO COUNTY CODE OF ETHICS PROHIBITS ALL PRIVATE COMMUNICATION BETWEEN VENDORS AND CERTAIN COUNTY OFFICIALS AND EMPLOYEES AS DESCRIBED BELOW:

No vendor, its representative, agent, or employee shall engage in private communication with a member of the El Paso County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that the bid, RFP, or RFQ is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into. Members of the commissioners court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or a negotiation with a vendor which has been specifically authorized by the governing body.

Health Insurance Benefits Provided By Bidder

Consideration of Health Insurance Benefits*

1. Do you or your subcontractor(s) currently offer health insurance benefits to your employees?

If so, please describe those health insurance benefits that you or your subcontractor(s) currently provide/offer to your employees.

2. What percentage, if any, of your of your subcontractor's employees are currently enrolled in the health insurance benefits program?

El Paso County may consider provision of health insurance benefits as part of the overall "best value" determination. Failure to provide health insurance benefits will not disqualify you from participating in this bid selection process.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

*

* This page must be included in all responses.



COUNTY OF EL PASO
County Purchasing Department
800 East Overland, RM 300
El Paso TX 79901
(915) 546-8180 Fax

RE: Bid #12-022, Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility

Dear Vendor:

As of January 1, 2006, the Texas Local Government Code Chapter 176 requires all vendors and potential vendors who contract or seek to contract for the sale or purchase of property, goods, or services with any local government entity to complete and submit a Conflicts of Interest Questionnaire. A copy of the requirements regarding vendors is attached. Also attached is a copy of the Questionnaire which needs to be filed and was prepared and approved for statewide use by the Texas Ethics Commission.

In filing out the Questionnaire, the following are the County Officers that will award the bid and the employees which will make a recommendation to the Commissioners Court:

County Officers: County Judge Veronica Escobar
Commissioner Anna Perez
Commissioner Sergio Lewis
Commissioner Willie Gandara Jr.
Commissioner Dan Haggerty

County Employees: Piti Vasquez, Purchasing Agent
Jose Lopez, Jr., Assistant Purchasing Agent
Peter Gutierrez, Buyer II
Elvia Contreras, Formal Bid Buyer
Lucy Balderama, Inventory Bid Technician
Ernesto Carrizal III, P.E., Public Works Director
Daniel Ibarra, EIT
Fernando Hernandez, P.E.

Please note that the state law requires that the Questionnaire be filed with the **COUNTY CLERK** no later than **the 7th business day after submitting an application, response to a bid** or any other writing related to a potential agreement with the County. Failure to file the questionnaire within the time provided by the statute is a Class C misdemeanor.

Include a copy of the completed and signed CIQ form with your bid whether a relationship exists or not.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

OFFICE USE ONLY

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

Date Received

Bid # 12-022

1 Name of person who has a business relationship with local governmental entity.

2

Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3

Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

Signature of person doing business with the governmental entity

Date

Adopted 06/29/2007

COUNTY OF EL PASO PURCHASING DEPARTMENT

PITI VASQUEZ, PURCHASING AGENT
JOSE LOPEZ, JR. ASST. PURCHASING AGENT
ELVIA CONTRERAS, FORMAL BID BUYER

MDR BUILDING, 800 E. OVERLAND
ROOM 300, EL PASO TEXAS 79901
(915)546-2048, FAX (915)546-81

Instructions: Conflict of Interest Form (CIQ)

- **Please complete CIQ Form whether or not a conflict exists.**
- **Box #1 All Vendors** Must Print Clearly their names and company name.
- **Box #2** If the vendor has already filed a CIQ for the current year and is updating (filing a new one) due to changes on bid, please check box. If this is the first time within the current year that the vendor is submitting a CIQ, then do not check this box.
- **Box #3** If you are filing a disclosure of conflict of interest, meaning that you do have a relationship with someone listed on the page prior to the CIQ form on your BID, RFP, RFQ, or RFI, then you must print the name of the person whom you have a business relationship with.
- If you answer **yes** to any of the following: **Item A, B, C** you have a conflict and must disclose on this form.
- **Item D** List the type of relationship and what department in the local government the person you have listed in **Box #3**.
- **Box #4** Please have the person that is named on **Box# 1**, sign and date in this box. We request a contact number in case there are any questions or form is missing information. This is a courtesy to you.
- It is the vendor's responsibility to submit the CIQ document number provided by the County Clerk's to the Purchasing Department.
- Please note that the state law requires that the Questionnaire be filed with the COUNTY CLERK no later than the 7th business day after submitting an application, response to an RFP, RFQ, RFI or bid or any other writing related to a potential agreement with the County. Failure to file the questionnaire within the time provided by the statute is a Class C misdemeanor.
- File a completed Conflict of Interest Questionnaire (Form CIQ) with the El Paso County Clerk in person or by mail to 500 E. San Antonio, Suite 105, El Paso, TX 79901 or by fax to 915-543-3816 the attention of the County Clerk's office.
- If filing by fax use your fax confirmation (date/time) for your records. To obtain a copy/CIQ document number go to our website at www.epcounty.com, click on public records, click on to Official Public Records - Deeds of Trust, Liens and other public documents (County Clerk), type in the name of your company, on Style: scroll to CIQ-Conflict INT. QUESTIONNAIRE, and click on Search. It will be available on the web-site approximately 5 to 10 business days. Please fax a copy of your fax confirmation to The Purchasing Department at (915) 546-8180. If you have not yet placed it in your Bid, RFP, RFQ, RFI.
- If you have any questions, please call Elvia Contreras or Lucy Balderama at 915-546-2048

Tex. Local Gov't Code § 176.006 (2005)

§ 176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire

(a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire with the appropriate records administrator not later than the seventh business day after the date that the person:

(1) begins contract discussions or negotiations with the local governmental entity; or

(2) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the local governmental entity.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a person's affiliations or business relationships that might cause a conflict of interest with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each affiliation or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each affiliation or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income from the person filing the questionnaire;

(3) identify each affiliation or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity;

(4) describe each affiliation or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more;

(5) describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to the expenditure of money;

(6) describe each affiliation or business relationship with a person who:

(A) is a local government officer; and

(B) appoints or employs a local government officer of the local governmental entity that is the subject of the questionnaire; and

(7) describe any other affiliation or business relationship that might cause a conflict of interest.

90 (d) A person described by Subsection (a)

shall file an updated completed questionnaire with the appropriate records administrator not later than:

(1) September 1 of each year in which an activity described by Subsection (a) is pending; and

(2) the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before September 1, of that year.

(f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

(g) It is a defense to prosecution under Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice of the violation.

Tex. Local Gov't Code § 176.001 (2005)

§ 176.001. Definitions

In this chapter:

(1) "Commission" means the Texas Ethics Commission.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

(3) "Local governmental entity" means a county, municipality, school district, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity; or

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity.

COUNTY OF EL PASO, TEXAS

Solicitation Check List

**Tornillo-Guadalupe Port of Entry Project Zone Sewer Facility
Bid #12-022**

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

_____ Responses should be delivered to the County Purchasing Department by 2:00 p.m., Monday, March 19, 2012. Did you visit our website (www.epcounty.com) for any addendums?

_____ Did you sign the Bidding Schedule?

_____ Did you sign the “Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Status And Implementing Regulations” document?

_____ Did you sign the “Consideration of Insurance Benefits” form?

_____ Did you file a copy of the completed Conflict of Interest Questionnaire (Form CIQ) with the El Paso County Clerk (in person or by mail to 500 E. San Antonio, Suite 105, El Paso, TX 79901 or by fax to 915-543-3816 attention County Clerk’s office? **CIQ forms** - you must write the name of your company underneath the signature with your phone number and bid number. Please include the completed and signed form with your response whether a relationship exists or not.

_____ If your bid totals more than \$100,000, did you include a bid bond?

_____ Did you complete the mandatory ethics training course and include a confirmation print as indicated in page 2?

_____ Did you provide one original and two (2) copies of your response?