



County of El Paso Purchasing Department
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El Paso, Texas 79901
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ADDENDUM 2

To: All Interested Bidders

From: Lucy Balderama, Inventory Bid Technician

Date: July 11, 2012

Subject: BID # 12-046, Construction for the Tornillo Guadalupe International Bridge Toll Plaza

Item #1 – The Fixed Price Contract Form has been modified to identify night-time hours, weekends and holidays when work on the project is prohibited without prior advanced written approval. The revised Fixed Price Contract Form is attached and made a part of the contract documents for this project.

Item # 2 – The General Conditions, Item #133, has been modified to identify night-time hours, weekends and holidays when work on the project is prohibited without prior advance approval. The revised General Conditions are attached and made a part of the contract documents for this project.

NOTE: BIDDERS ARE REQUIRED TO INDICATE THEIR ACKNOWLEDGEMENT OF THIS ADDENDUM IN THE APPROPRIATE LOCATION ON THE BID PROPOSAL FORM.

END OF ADDENDUM NO. 2

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 construction of the Tornillo-Guadalupe International Bridge Toll Plaza (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): 1) a copy of County Bid # _____ entitled "_____" and all Bid Addendums, attached hereto as **Exhibit 1**; 2) Contractor's Bid Response, attached hereto as **Exhibit 2**; 3) Contractor's Payment Bond, attached hereto as **Exhibit 3**; 4) a copy of Contractor's Performance Bond, attached hereto as **Exhibit 4**; and 5) a copy of the Insurance requirements, attached hereto as **Exhibit 5**; 6) a copy of the Insurance Certificates, attached hereto as **Exhibit 6**; 7) a copy of the currently effective Prevailing Wage Rates for Building and Definitions for Building Labor Classifications attached hereto as **Exhibit 7**; 8) a copy of the currently effective Prevailing Wage Rates for Heavy / Highway and Definitions for Heavy / Highway Labor Classifications, attached hereto as **Exhibit 8**; 9) a copy of the currently effective Apprenticeship Order and the List of Required Apprenticeship Programs, attached hereto as **Exhibit 9**; 10) a copy of all engineering specifications and drawings, separately bound in a separate volume or volumes; and 11) _____, attached hereto as **Exhibit 10**, all of which Exhibits and separately bound volume(s) are hereby incorporated herein by reference and made a part hereof for all purposes. 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. OWNER'S REPRESENTATIVE

The Owner's representative is the Director of Public Works, Ernesto Carrizal. His office and mailing address is 800 E. Overland, Room 407, El Paso, Texas. The phone number is 915.546.2015; facsimile is 915.546.8194.

4. PROJECT ENGINEER

The Project Engineer assigned to this Project is _____ (company) whose offices are located at: _____ acting through its designated Representative/Consultant _____ (name) (the "Engineer"). In the event the Owner should find it necessary or convenient to replace the Engineer, the Owner shall retain a replacement Engineer and the role of the replacement Engineer shall be the same as the role of the Engineer. Unless otherwise directed by the Owner in writing, the Engineer will perform those duties and discharge those responsibilities allocated to the Engineer in this Contract. The duties, obligations and responsibilities of the Engineer shall include, but are not limited to, the following:

(A) Unless otherwise directed by the Owner in writing, the Engineer 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 Engineer;

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

(D) The Engineer shall draft proposed Change Orders;

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

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

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

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

(I) The Engineer 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 ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE ENGINEER. 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 ENGINEER TO THE OWNER.

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, non-specified 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 Engineer 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 Engineer 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 Engineer 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 10 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 255 consecutive calendar days from the date of Notice to Proceed;

(B) The Contractor will be allowed to perform work on the project Monday through Friday, from 7:00 A.M. to 6:00 P.M., excluding El Paso County official holidays, for work requiring an inspector to be present. Work requiring an inspector to be present, may be allowed on Saturdays, Sundays, or El Paso County official holidays only with a seven day advanced prior written approval of the El Paso County Public Works Director. Official El Paso County holidays are published on the El Paso County website, after approval by El Paso County Commissioner's Court.

The Contractor shall reimburse the Local Public Agency for any additional costs incurred as a result of providing inspection, materials testing, or other personnel when the Contractor performs nighttime, weekend or holiday work. Additional inspection costs will be at the actual overtime/holiday rates experienced by the Local Public Agency.

(C) The contractor shall pay the Owner the sum of one thousand dollars and no cents (\$1,000.00) 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;

(D) The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Engineer, 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;

(E) 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 Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer shall approve in writing the amount which, in the opinion of the Engineer, is properly owing to the Contractor. The Owner shall make payment to the contractor within fifteen (15) days following the Engineer's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Engineer 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 Engineer'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 9(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, materialmen, suppliers or others having lien rights, wherein said subcontractors, materialmen, 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, materialmen, 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, materialman, 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, materialman, 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 9(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 undisputed sum not paid when due shall bear interest calculated on an annual basis pursuant to Chapter 2251 of the Texas Government Code as follows. The interest rate shall be the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on Saturday or Sunday. Interest begins to accrue on the thirty-first (31) day after the undisputed amount is due. Interest on an overdue payment stops accruing on the date the County mails or electronically transmits the payment.

(H) When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Engineer in writing and shall furnish to the Engineer a listing of those matters yet to be finished. The Engineer 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 Engineer will so notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Engineer, 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 Engineer thereof in writing. Thereupon, the Engineer will perform a final inspection of the Project. If the Engineer 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 Engineer 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 Engineer 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 30 consecutive calendar days of the date of Substantial Completion, the Contractor shall pay the Owner the sum of one thousand Dollars (\$1,000.00) 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 Engineer:

- (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 9(F) above, make final payment of all sums due the Contractor within fifteen (15) days of the Engineer'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 therefor. 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 Engineer 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
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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 Engineer, 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 Engineer. 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 Engineer 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 Engineer. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Engineer or the Owner shall not be evidence that work installed pursuant thereto conforms with the requirements of this Contract. The Owner and the Engineer 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 Engineer;

(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 Engineer to enter upon the Project site and to review or inspect the work without formality or other procedure.

(L) Prior to commencement of work on the Project, every employee who will work on the International Bridge, Toll Station facility, including related roads and highways and including work located on General Service Administration property, is and shall be required to receive training related to the identification of and rules protecting the Texas Horned Lizard and the relocation of Texas Horned Lizard Individuals, which may have fallen into excavations, equipment, and the cleared paths of construction by earth moving equipment. Employees must watch a video related to Texas Horned Lizards and sign a sheet indicating he/she has received the training. Upon locating a Texas Horned Lizard individual, the employee shall immediately notify his/her supervisor or the supervisor on the worksite, and the supervisor shall be required to contact the on-call Registered Biologist and ask for assistance in relocating the Horned Lizard individual. Failure to comply with this provision shall be cause for the Owner or the Owner's designee stopping work on the project until 1) the Texas Horned Lizard has been relocated and/or 2) a determination has made of which employees are in need of training. Any work-stoppage occasioned by violation of this paragraph shall count against the Contractor and shall not extend the time for performance of the contract.

The contact information for the On-call Registered Biologist will be provided.

Michael Gaglio

Biologist/Managing Member

High Desert Native Plants LLC

5404 Fleetwood Rd., El Paso, TX 79932

c: 915-490-8601

mike@hd-env.com

www.HighDesertEnvironmental.com

or

Zara Environmental, LLC
[www.Zara Environmental.com](http://www.ZaraEnvironmental.com)
Main Line: 512.291.4555
Fax: 866.908.9137
1707 W. FM 1626
Manchaca, Texas 78652
Krista McDermid
krista@zaraenvironmental.com
Biologist/Project Manager
Direct Line: 512.757.7676

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 therefrom, 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.

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 Engineer. Such claim shall be received by the Owner and the Engineer 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 Engineer 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 therefor, 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 therefor 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 Engineer. 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 Engineer, 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 Engineer 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 Engineer 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 Engineer, 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 Engineer, such work shall be uncovered and displayed for the Owner's or Engineer'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 Engineer, be uncovered and displayed for the Owner or Engineer'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 Engineer 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 Engineer. 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 Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Engineer. 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 "5"** 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 Engineer 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 and for Building Construction Trades in effect on the date of this Contract shall be paid to all workers on the Project. A copy of the Prevailing Wage Rates for Building and a copy of the Definitions for Building Labor Classifications are attached hereto as **Exhibit 6** and Prevailing Wage Rates for Heavy / Highway and a copy of the Definitions for Heavy / Highway Labor Classifications are attached as **Exhibits 7**, and **Exhibits 6 and 7** are incorporated herein by reference and are a part of this contract for all purposes.

(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 specified in Tex. Gov't Code Section 2258.023, as amended, (presently \$60.00 per day or part of a day, per worker), in the event 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) Contractor agrees to comply with the County's Apprenticeship Program requirement for each apprenticable trade specified by the County, according to the requirements of the County's adopted apprenticeship program as more specifically described in **Exhibit 8**, which Exhibit is incorporated herein by reference thereto and made a part of this contract for all purposes.

(E) The Contractor shall post the prevailing wage rate schedules and prevailing wage rate definitions 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 Owner's Representative, the 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.

(F) 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, including the County's requirement to maintain specified Apprenticeship Programs, 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 Engineer, 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 Owner, and its designees, agents and representatives displaying and presenting proper identification credentials to the jobsite superintendent or his/her representative. While on the jobsite the Owner and its designees, engineers, 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 Owner and its designees, 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 Owner's Representative, 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 in 2008, a copy of which is attached hereto as part of **Exhibit 8**, 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 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.

(L) 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.

(M) 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.

(N) The Contractor shall verify that all persons working on this Project, whether Contractor's employees or subcontractor's employees have valid work permits issued by the United States government. Contractor shall maintain copies of work documentation in his office, available for inspection during normal working hours for all employees working on this site.

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 other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

In witness whereof, this agreement is entered into on this the ____ day of _____, 2012.

ATTEST:

OWNER – THE COUNTY OF EL PASO

County Clerk

By _____
Veronica Escobar, County Judge

APPROVED AS TO FORM:

CONTRACTOR – _____

Owner's Representative

By _____
(Name) Title

Assistant County Attorney

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.

101. Definitions
102. Superintendence
103. Subcontracts
104. Other Contracts
105. Fitting and Coordination of the Work
106. Mutual Responsibility of Contractors
107. Progress Schedule
108. Payments to Contractor
109. Changes in the Work
110. Claims for Extra Cost
111. Termination, Delays, and Liquidated Damages
112. Assignment or Renovation
113. Disputes
114. Technical Specifications and Drawings
115. Shop Drawings
116. Request for Supplementary Information
117. Materials and Workmanship
118. Samples, Certificates, and Tests
119. Permits and Codes
120. Care of Work
121. Accident Prevention
122. Sanitary Facilities
123. Use of Premises
124. Removal of Debris, Cleaning, Etc
125. Inspection
126. Review by Local Public Agency
127. Deduction for Uncorrected Work
128. Insurance
129. Patents
130. Warranty of Title
131. General Guarantee
132. Project Site
133. Time of Completion
134. Liquidated Damages
135. Special Hazards
136. Contractor and Subcontractor's Public Liability,
Vehicle Liability and Property Damage Insurance
137. Responsibilities of Contractor
138. Communications
139. Job Offices
140. Partial Use of Site Improvements
141. Work by Others
142. Contract Documents and Drawings
143. County Prevailing Wage

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 proposed 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.
- 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 on 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 o 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 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 contractor 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, lib 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 form 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 3 copies 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 (not withstanding 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 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 maybe 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.

127. 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.

128. INSURANCE

Contractor agrees that, at its own cost and expense, it shall procure and continue in force throughout the term of this Agreement, for the benefit of the County of El Paso, its officers, agents, and employees, the following listed insurance in the designated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. All policies shall name the County of El Paso, its officers, agents, and employees as additional insureds. Contractor shall furnish to the El Paso County Risk Manager a certificate from

the insurance carrier showing such insurance to be in full force and effect during the term of this Agreement. Said certification shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to the El Paso County Risk Manager thirty (30) days in advance of the effective date thereof.

1. Worker's compensation Including Occupational Disease, and Employer's Liability Insurance: Procure, and maintain during the life of the contract, Statutory Worker's Compensation Insurance and Occupation Disease Disability Insurance in strict accordance with requirements of the most current and applicable State Workmen's Compensation Insurance Laws for all employees engaged in Work under the contract, and in case any Work is sublet, require each subcontractor to provide Worker's Compensation and Occupational Disease Disability Insurance for the latter's employees engaged in such Work. In case any class of employees engaged in hazardous Work under his Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate Employer's Liability Insurance for the protection of his employees not otherwise protected.

2. Commercial and comprehensive General Liability, including Products Liability and Completed Operations: (Note "Indemnity" clause hereinafter.) Procure, and maintain during the life of the Contract, full comprehensive General Liability and Property Damage Insurance coverage. This coverage shall provide protection from claims for damages for personal injury and bodily injury including in part sickness, disease, and from claims for damages to property (including "Broad Form"), which may arise directly or indirectly out of, or in connection with, the performance of the Work under the Contract by the Contractor or by any of his subcontractors or by anyone directly or indirectly employed by either of them or under the control of either of them, and the minimum amount of such insurance shall be as follows:

(a) Bodily Damage and Public Liability Insurance is an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for damages arising out personal injury and bodily injury including in part: sickness, disease or death of one person and subject to the same limit for each person and in an amount not less than Two Million Dollars (\$2,000,000.00) in any one occurrence; and Property Damage Insurance (Broad Form) in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars for damages arising out of injury to or destruction of property of others in any one occurrence with an aggregate limit in the same amount.

(b) The Property Damage portion of this coverage shall include such hazardous operations as explosion, collapse and underground exposure coverage. In addition, completed Operations Insurance coverage shall be maintained after completion and acceptance of the project for the full guarantee and maintenance period.

(c) Automobile Liability and Property Damage Insurance: Procure, and maintain during the life of the Contract, Comprehensive Automobile Liability and Property Damage Insurance coverage on all vehicles used in connection with the Contract, whether owned, non-owned, or hired. The liability limits shall be not less than Five Hundred Thousand Dollars (\$500,000.00) for injury or death of each person and in an amount not less than One Million Dollars (\$1,000,000.00) in any one occurrence; and Property Damage limits of not less than Five Hundred Thousand Dollars (\$500,000.00) in any on occurrence.

(d) Owner's Protective Liability Policy: Provide the Owner with an Owner's Protective Liability Policy naming the Worker as the named insured, with the Engineer, and each of their officers, agents, and employees as additionally insured under that policy, said policy to protect said parties from claims which may arise from operations under the Contract. This coverage shall be the same company which provides the Contractor's liability insurance coverage, and in the same minimum amounts.

(e) Contractual Liability Coverage: Each and every policy for liability insurance carried by each Contractor and Subcontractor will include a "Broad Form Contractual Liability Coverage" endorsement sufficiently broad to insure the provision titled "indemnity" hereinafter set forth.

(f) Indemnity: To the extent permissible by law, the Contractor shall protect, defend, indemnify and save harmless the Owner, its officers, agents, and employees from and against suits, actions, claims, losses, liability or damage of any character and from and against costs and expenses, including in part, attorney fees, incidental to the defense of such suits, actions, claims losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including in part the loss of use resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor or his employees, agents, subcontractors, or suppliers, or anyone else under the Contractor's direction and control, (regardless if caused in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any Work or services called for by the Contract, or from conditions created by the performance or non-performance of said Work or services.

(g) Builder's Risk "All-Risk" Insurance: In addition to such Fire and Extended Insurance coverage which the Contractor elects to carry for his own protection, he shall procure and shall maintain for the life of the Contract, Builder's Risk "All-Risk" Completed Value insurance coverage, including, but not limited to, Fire and standard Extended Insurance coverage, Vandalism and Malicious Mischief, upon the full insurable value of all portions of the Work which is the subject of the Contract and subject to a loss for which such Builder's Risk "All- Risk" insurance coverage gives protection and shall include completed Work and Work in progress. Value of this policy shall be fixed to the total bid price on the Bid Form. This coverage shall be with an insurance company or companies acceptable to the Owner.

(h) Boiler and/or Machinery Insurance: Boiler and/or Machinery Insurance, where appropriate and necessary, shall be procured and maintained by the Contractor until the Work has been completed and accepted by the Owner.

129. 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.

130. 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 place 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.

131. 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.

132. PROJECT SITE

The project area is from the Tornillo-Guadalupe United States Land Port of Entry project to the Tornillo-Guadalupe New International Bridge Major Arterial Roadway (Phase 1) project.

133. 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 two hundred fifty five (255) consecutive calendar days thereafter.

(B) The Contractor will be allowed to perform work on the project Monday through Friday, from 7:00 A.M. to 6:00 P.M., excluding El Paso County official holidays, for work requiring an inspector to be present. Work requiring an inspector to be present, may be allowed on Saturdays,

Sundays, or El Paso County official holidays only with a seven day advanced prior written approval of the El Paso County Public Works Director. Official El Paso County holidays are published on the El Paso County website, after approval by El Paso County Commissioner's Court.

The Contractor shall reimburse the Local Public Agency for any additional costs incurred as a result of providing inspection, materials testing, or other personnel when the Contractor performs nighttime, weekend or holiday work. Additional inspection costs will be at the actual overtime/holiday rates experienced by the Local Public Agency.

134. 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 Dollars (\$1,000.00) as fixed, agreed and liquid damages for each calendar day of delay from the above stipulated for substantial completion, and One Thousand Dollars (\$1,000.00) as fixed, agreed and liquid damages for each calendar day of delay from the above stipulated for 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.)

135. SPECIAL HAZARDS

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

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

As required under Section 128 of the General Conditions, the Contractor's Public Liability Insurance shall be in an amount not less than \$500,000.00 for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$2,000,000.00 in any one occurrence, and Contractor's Property Damage Insurance in an amount not less than \$500,000.00.

The Contractor's Vehicle Liability Insurance shall be in an amount not less than \$500,000.00 for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000.00 in any one occurrence, and Contractor's Property Damage Insurance in an amount not less than \$500,000.00 in any one occurrence.

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.

137. 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.

138. 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.

139. 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.

140. PARTIAL USE OF SITE IMPROVEMNETS

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.

141. 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) In the event of ongoing utility improvements not part of this project.

b. At the expense of the Contractor:

(1) Adjustments to utilities not covered in Owner/Utility franchise agreements.

142. 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.

143. 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.