

**SEALED BID SPECIFICATIONS
AND CONTRACT DOCUMENTS**



Titus County, TX

Courts Building Remediation

May 24, 2021

INVITATION TO BID
BUILDING REMEDIATION

Notice is hereby given that Titus County, TX will receive sealed bids at 100 West 1st Street, Suite 200, Mount Pleasant, TX 75455 until **10:00 am, on Friday, June 18, 2021**, at which time bids will be publicly opened and read. Bids received after the time set for opening of bids, will not be considered and will be returned unopened.

Contract bid documents, specifications and plans may be viewed at www.civcastusa.com.

Bidders are notified that a cashier's check, a certified check or a surety bid bond for five percent (5%) of the bid shall accompany the sealed proposal of each bidder. All paperwork in the bids submitted shall be complete. Any incomplete paperwork may be considered an unresponsive bid. Bidders agree to commence Work within ten (10) calendar days after issuance of a Notice to Proceed. The prospective bidders are asked to provide their required duration for completion of the project.

The successful contractor will be selected based on total cost, project duration and references statements. Titus County, TX reserves the right to reject any or all bids and to waive minor irregularities.

A pre-bid conference will not be held. However, prospective bidders are encouraged to visit the project site.

INFORMATION FOR BIDDERS

Titus County, TX will receive sealed bids at the Titus County Courthouse, located at 100 West 1st Street, Suite 200, Mount Pleasant, TX 75455 until **10:00 am, on Friday, June 18, 2021** at which time bids will be publicly opened and read. Bids received after the time set for opening of bids, will not be considered and will be returned unopened.

Contract bid documents, specifications and plans may be viewed at www.civcastusa.com. For all questions relating to the plans and specifications, contact Judge Brian Lee by email at titusjudge@gmail.com.

Each sealed envelope containing a bid must be plainly marked on the outside as **TITUS COUNTY TX – BUILDING REMEDIATION BID** and the envelope should bear on the outside the bidder's name, address and license number, if applicable. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to **TITUS COUNTY, TX, ATTN.: Judge Brian Lee; 100 West 1st Street, Suite 200, Mount Pleasant, TX 75455.**

All bids must be made on the required bid form. All blank spaces for bid prices must be filled in, in ink or typewritten, and the bid form must be fully completed and executed when submitted. Only one copy of the bid form is required.

The Owner may waive any informalities or minor defects or reject any and all bids. The successful bidder will be determined based on:

1. Cost of base contract
2. Cost of alternates
3. Contractors stated completion duration
4. Testimonials from Letters of Reference from Owners of three (3) previous contracts

No bidder may withdraw a bid within 30 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the bidders.

Bidders must satisfy themselves on the accuracy of the estimated quantities in the Bid Schedule by examination of the site and a review of the drawings and specifications, including addenda. **The site will be open for bidders' review on June 7 from 8 am until 5 pm. Questions regarding this site visit may be submitted to wclark@priefert.com.** Therefore, after bids have been submitted, no bidder shall assert that there was a misunderstanding concerning the quantities of Work or of the nature of the Work to be done.

The Contract Documents contain the provisions required for the construction of the Project. Information obtained from an officer, agent or employee of the Owner or any other person shall not affect the risks or obligations assumed by the contractor or relieve the contractor from fulfilling any of the conditions of this contract.

Each bid must be accompanied by a bid bond payable to the Owner for five percent of the total amount of the bid. As soon as the bid prices have been compared, the Owner will return the bonds of all except the three lowest responsible bidders. When the agreement is executed, the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the payment bond and performance bond and/or statutory bond have been executed and approved, after which it will be returned. A certified check may be used in lieu of the bid bond.

A performance bond and a payment/statutory bond, each in the amount of 100 percent of the Contract Price and each with a corporate surety, licensed to do business in the State of Texas, having a bond rating of A (excellent) and approved by the Owner, will be required for the faithful performance of the contract. **The prospective bidders shall provide a letter from its Surety, stating its "intent to bond" the project for its principal, along with a statement of the bidder's bonding capacity.**

Attorneys-in-fact who sign bid bonds, payment bonds and performance bonds must file with each bond a certified copy of their Power of Attorney bearing the effective date.

The party to whom the contract is awarded will be required to execute the agreement and deliver required bonds and insurance certificates within ten (10) calendar days from the date when Notice of Contract Award is delivered to the bidder. The Notice of Contract Award shall be accompanied by the necessary agreement and bond forms. In case of failure of the bidder to execute the agreement, the Owner may consider the bidder in default, in which case the bid bond accompanying the proposal shall become the property of the Owner. The Owner shall sign the agreement and return to such party an executed duplicate of the agreement.

The Owner may make such investigations as deemed necessary to determine the ability of the bidder to perform the Work and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by or investigation of such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the agreement and to complete the Work contemplated therein.

A conditional or qualified bid will not be accepted.

Award will be made to the lowest responsible bidder. When alternates are used, the lowest responsible bidder will be determined by totaling the base bid and selected alternate bids.

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the contract throughout.

Each bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any bidder to do any of the foregoing shall in no way relieve any bidder from any obligation with respect to its bid.

When alternate bids are taken, they will be listed in numerical order with the highest priority being number one, second priority being number two, etc.

The low bidder shall supply the names and addresses of major material suppliers and Subcontractors when required to do so by the Owner.

Note that this project is exempt from sales tax. The successful bidder will be provided documentation to prove tax exempt status for purchasing materials related to the project.

Permit and inspection costs, if any, will be paid by the County.

BID PROPOSAL

Proposal of _____
(Hereinafter called "Bidder"), organized and existing under the laws of the State of _____,
doing business as _____ * to **TITUS COUNTY, TEXAS**,
(Hereinafter called "Owner"). In compliance with the Advertisement for Bids, Bidder hereby proposes to
perform all Work for the construction of Building Remediation in strict accordance with the Contract
Documents within the time set forth therein and at the prices stated below.

By submission of this bid, each Bidder certifies, and in the case of a joint bid each party certifies as to its own
organization, that this bid has been arrived at independently, without consultation, communication or
agreement as to any matter relating to this bid, with any other Bidder.

Bidder hereby agrees to commence Work under this contract within ten (10) days of the date to be specified
in the **Notice to Proceed** and to complete the Project within _____ (bidder to insert duration here)
consecutive calendar days thereafter.

Bidder further agrees to pay as liquidated damages, and not as a penalty, the sum of \$ **250.00** for each
consecutive calendar day thereafter as provided in Section 14 of the General Conditions.

No Bidder may withdraw a bid within 30 days after the actual opening thereof. Each bid must be accompanied
by:

- Bid Bond payable to Owner for 5% of the amount bid
- Business Relationship Affidavit
- Non-Collusion Affidavit
- Claim or Invoice Affidavit
- Surety letter stating intent to bid and bonding capacity for single project and total projects
- Letters of Reference from Owners of three (3) previous projects

Bidder acknowledges receipt of the following **addenda**: _____
_____.

*Insert "a corporation", "a partnership" or "an individual", as applicable.

SCOPE OF WORK & PAY ITEM DESCRIPTIONS

This is a lump sum contract that is broken out by major items of work. Bidders shall completely fill out the entire bid schedule. All labor, equipment, materials and incidentals related to the bid items shall be included in the unit costs whether or not specifically listed in the pay items.

GENERAL SCOPE OF WORK:

The project includes repairs and renovation work resulting from water damage from busted pipes. In general, the repairs consist of replacing flooring and drywall, and retexturing and repainting walls. Additional renovation work includes replacement of the HVAC system and interior lighting, applying spray-foam insulation to the roof and within the wall cavities, constructing new cabinets, installing new acoustical tile ceiling, installing new lighting, installing new hose bibs, replacing glass storefront entry doors and replacing exterior door thresholds. Additional exterior work includes clearing caulked weep holes in the masonry façade, caulking and repainting exterior wood siding and the repair of roof leaks at the entry vestibule.

PAY ITEMS:

1. General Conditions:

The General Conditions line item shall include costs of bonding, insurance and site safety equipment. All other preparatory work that would be considered optional by the contractor, such as portable toilets, construction and trash removal and job trailers shall be included in this line item.

2. Mobilization/De-mobilization:

This item includes all costs associated with mobilizing and de-mobilizing equipment, material and manpower to the project site. 75% of this line item will be paid at the time of the first regularly scheduled payment application if mobilization has occurred. The remaining 25% of this item will be paid after all equipment has been removed from the jobsite and the jobsite is cleared of all construction materials and related debris.

3. Spray Foam Insulation:

This item shall include all costs associated with installing 5" minimum thickness of closed cell spray foam insulation to the roof and 3.5" minimum thickness of closed cell spray foam within all exterior wall cavities as shown in plans.

4. Exterior Weep Hole Clearing:

This item shall include all costs associated with the clearing of caulked weepholes at the building's south exterior wall.

5. Gutter and Downspout Replacement:

Replace gutters and downspouts with commercial grade material. Spacing between downspouts shall not exceed twenty-five (25) feet. Downspout outlets (elbows) are to extend beyond planting beds to sidewalks. Two downspouts on the west façade are to be connected to existing under-sidewalk piping. Where no sidewalks exist concrete splash blocks shall be provided. Glazing shall have light smoke tint.

6. Exterior Door Replacement:

This item shall include all costs associated with replacing two (2) 3070 doors at the Room 101 Lobby. These doors shall be insulated aluminum storefront doors with closures, panic hardware, weather seals, door-pulls and kickdown door stops. Doors and all hardware shall have dark bronze finish.

The contractor shall replace six (6) existing doors (105B, 108B, 111A, 116B, 118B, 119B) with new

hollow metal doors, with automatic closure, panic exit device, lockset, outdoor lever latch, kick plate and adjustable/levelling threshold for each new door. Paint door and frame with exterior grade paint.

7. Hose Bib Install:

This item shall include all costs associated with installing two (2) new freeze proof hose bibs as specified and located in plans.

8. Flooring Replacement:

This item shall include all costs associated with removal of existing and installation of new flooring as specified in plans. For all areas except Rooms 100 and 101, provide new 12"x12" ceramic tile throughout. Samples to be provided by contractor and selected by Owner. Allow \$2.00 / sf for tile only. Grout and labor to be included in base bid. Owner to receive credit towards line item if tile cost is less than the \$2.00 allowance.

ALTERNATE #2: Remove existing ceramic tile in Rooms 100 and 101 and install tile in these areas as described in Item 8.

ALTERNATE #3: Remove existing ceramic tile in Rooms 100 and 101 and install ceramic wood grain flooring (tiles approximately 6"x24"). Samples to be provided by contractor and selected by Owner. Allow \$2.75 / sf for tile only. Grout and labor to be included in base bid. Owner to receive credit towards line item if tile cost is less than the \$2.75 allowance.

9. Drywall Replacement:

This item shall include all costs associated with the installation of a two (2) foot high section of drywall at locations indicated in the Room Schedule.

10. Interior Wall Finish:

This item shall include all costs associated with texturing and painting of interior wall surfaces as specified in plans. The lower two (2) feet of wall height will be bare drywall, installed by the Contractor under Item 9. Sanding the upper six (6) feet of wall height will be required, prior to retexturing and repainting.

11. HVAC Replacement:

This item shall include all costs associated with removing existing HVAC system components as directed in the mechanical demolition plans and install / reroute new ducting and thermostats of new rezoned system as shown in plans. Also included is the installation of a new fan coil inside and outside unit and all associated ductwork.

12. Cabinet Construction and Install:

This item shall include all costs associated with construction and installation of custom cabinets as shown in plans.

13. Concrete (complete-in-place):

This item shall include all costs associated with concrete underpinning of corner of Entry (Room 100).

14. Roof Repair:

This item shall include all costs associated with repairing roof to resolve leaks at the entry vestibule.

15. Exterior Wall Finish:

This item shall include all costs associated with caulking and repainting exterior wood siding. Also included is the in-fill of wood and brick at two locations where through-wall air units are removed.

The mechanical fans and louvers at the gable ends of the building shall be removed. Openings shall be covered with R-panel similar to the panel in the remainder of the gable.

ALTERNATE #1: Remove and replace all R-panel in gable end walls

→NOTE: This work item must be completed prior to work Item 3.

16. Ceiling Install:

This item shall include all costs associated with removing existing ceiling tiles grid and replacing with new grid and new 2'x2' tegular acoustical tile ceiling.

17. Electrical:

This item shall include all costs associated with removal of existing lighting and replacing with new lighting as shown in plans. Also included in the electrical scope is the installation of new outlets as shown in plans.

BID SCHEDULE

REFER TO PAY ITEM DESCRIPTIONS & SCOPE OF WORK ABOVE FOR A DETAILED DESCRIPTION OF EACH BID ITEM. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS PRIOR TO BIDDING.

NAME OF BIDDER: _____

BASE BID:

Cost bid is for a building remediation project that includes all labor, equipment and material for the items listed below and any other items considered subsidiary to those items.

ITEM	DESCRIPTION	PRICE:
1.	General Conditions	\$ _____
2.	Mobilization/De-mobilization	\$ _____
3.	Spray Foam Insulation	\$ _____
4.	Exterior Weep Hole Clearing	\$ _____
5.	Gutter and Downspout Replacement	\$ _____
6.	Exterior Door Replacement	\$ _____
7.	Hose Bib Install	\$ _____
8.	Flooring Replacement	\$ _____
9.	Drywall Replacement	\$ _____
10.	Interior Wall Finish	\$ _____
11.	HVAC Replacement	\$ _____
12.	Cabinet Construction and Install	\$ _____
13.	Concrete (complete-in-place)	\$ _____
14.	Roof Repair	\$ _____
15.	Exterior Wall Finish	\$ _____
16.	Ceiling Install	\$ _____
17.	Electrical	\$ _____
ALTERNATE #1 PRICE		\$ _____
ALTERNATE #2 PRICE		\$ _____
ALTERNATE #3 PRICE		\$ _____

BASE BID TOTAL PRICE: _____
(In numbers)

BASE BID TOTAL PRICE: _____
(In words)

BID SUMMARY

TOTAL BASE BID: \$ _____

ALTERNATE #1 BID: \$ _____

ALTERNATE #2 BID: \$ _____

ALTERNATE #3 BID: \$ _____

PROJECT DURATION _____ CALENDAR DAYS

COMPANY NAME: _____

PRINT NAME: _____

SIGNATURE: _____

DATE: _____

ADDRESS: _____

CITY/STATE: _____

PHONE NO: _____

EMAIL: _____

STATE OF INCORPORATION: _____

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF _____
COUNTY OF _____

_____, of lawful age, being first duly sworn upon oath, states that (s)he is the agent authorized by the Bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the Architect, Engineer or other party to the Project is as follows:

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the Project is as follows:

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

(if none of the business relationships hereinabove mentioned exist, Affiant should so state.)

Affiant

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

Notary Public
My Commission Expires:

NOTE: This form must be submitted with the bid.

Non-Collusion Affidavit

STATE OF _____
COUNTY OF _____

_____, of lawful age, being first duly sworn, on oath says:

1. (S)He is the duly authorized agent of _____, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
2. (S)He is fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any county or state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

Name & Title _____

Address _____

County of _____

State of _____

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

Notary Public: _____

My commission expires: _____

NOTE: This form must be submitted with the bid.

CLAIM OR INVOICE AFFIDAVIT

STATE OF _____
COUNTY OF _____

The undersigned, of lawful age, being first duly sworn upon oath, states that this invoice or claim is true and correct. Affiant further states that the work as shown by this invoice or claim, have been completed in accordance with the plans, specifications, orders or requests furnished to the Affiant. Affiant further states that (s)he has not paid, given or donated or agree to pay, give or donate, either directly or indirectly, to any elected official, officer or employee of the State of Texas or Titus County any money or any other thing of value to obtain payment or the award of this contract.

Affiant

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

Notary Public

My Commission Expires:

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____ and _____, as Principal, and _____ as Surety, are hereby held and firmly bound unto TITUS COUNTY, TEXAS, (hereinafter called "OWNER"), in the penal sum of _____ DOLLARS (\$ _____) for the payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION is such that, whereas the Principal has submitted to the OWNER a certain BID, attached hereto and made a part hereof, to enter into Contract for _____, Project No. _____.

THE CONDITION OF THIS OBLIGATION is such that, if the OWNER shall make any award to the BIDDER, according to the terms of the advertised bidding documents of BID, made by the BIDDER therefore, and the BIDDER shall duly make and enter into Contract with the OWNER in accordance with the terms of said BID award and shall, in case of failure to do so, pay to the OWNER damages to which the OWNER may suffer by reason of such failure not exceeding the penalty of this Bond, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. It being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bonds shall in no way be impaired or affected by any extension of time within which the OWNER may accept such BID. Said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed, and these presents to be signed by their proper officers, the day and year set forth below.

Signed, seal and dated this _____ day of _____, 20_____.

Principal

By: _____
Printed Name and Title

Surety

By: _____
Printed Name and Title

ATTEST: (If by Corporation)

By: _____
Printed Name and Title

(Corporate Seal)

Address: _____

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

(SEAL) _____
Notary Public

NOTICE OF CONTRACT AWARD

Project Description: **BUILDING REMEDIATION**

The Owner has considered the bid submitted by you for the above-described work in response to its Advertisement for Bids dated _____, 20____ and its Information for Bidders.

Titus County, TX accepted your Bid on _____, 20____ for the amount of: \$

Written in words

If you fail to execute said agreement and to furnish required bonds and insurance certificates within ten (10) days from the date of this notice; the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your bid as abandoned and as a forfeiture of your bid bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this _____ day of _____, 20____.

Titus County, TX

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by _____
this _____ day of _____, _____.

By: _____ Title: _____ Date: _____

CONTRACT

This contract, made and entered into by and between Titus County, TX ("Owner") and

_____ ("Contractor")

for construction services for the Building Remediation.

WHEREAS: the Contractor has agreed to complete the **Titus County Building Remediation** for the total base bid price, as accepted by Titus County, TX for \$ _____.

THEREFORE, the Contractor, for the consideration herein named, hereby agrees to do and complete the work above mentioned in accordance with the plans and specifications contained in the bidding documents as adopted and approved by the Owner and issued "For Bidding and Construction".

It is further agreed that the Contractor will commence said work within 10 days from the date of the Notice to Proceed and perform the same vigorously and continuously and complete the said Project within _____ calendar days.

The Notice to Bidders, the Instructions to Bidders, the Special and General provisions of the plans and specifications and the Contractor's Bid Proposal are, by reference thereto, made a part of this contract as if fully set forth herein or attached hereto.

IN WITNESS WHEREOF, the Titus County, TX ("Owner") and _____ (Contractor) hereunto set their hands and seals the ____ day of _____, 20_____.

Titus County, TX

SEAL

ATTEST:

My commission expires

Contractor:

SEAL

Contractor

ATTEST:

(Signature of notary officer)

Contractor Signature

Typed Name & Title

My commission expires:

GENERAL CONDITIONS

1. Definitions
2. Additional Instructions & Detail Drawings
3. Scheduled, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services & Facilities
7. Inspection & Testing
8. Substitutions
9. Patents
10. Protection of Work, Property and Persons
11. Supervision by Contractor
12. Changes in the Work
13. Changes in Contract Price
14. Time Completion & Liquidated Damages
15. Correction of Work
16. Unforeseen Conditions
17. Suspension of Work, Termination & Delay
18. Payments to Contractor
19. Acceptance of Final Payment as Release
20. Insurance
21. Contract Security
22. Assignments
23. Indemnification
24. Separate Contracts
25. Subcontracting Persons
26. Engineer's Authority
27. Land and Rights-of-Way
28. Guaranty
29. Arbitration
30. Taxes

1. **DEFINITIONS:** Wherever used in the Contract Documents, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
 - a. **Addenda:** Written or graphic instruments issued prior to the execution of the Contract which modify or interpret the Contract Documents, Drawings and Specifications by additions, deletions, clarifications or corrections.
 - b. **Bid:** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 - c. **Bidder:** Any person, firm or corporation submitting a bid for the Work.
 - d. **Bonds:** Bid, performance, payment (statutory) and maintenance bonds and other instruments of security furnished by the Contractor and the Contractor's surety in accordance with the Contract Documents.
 - e. **Change Order:** A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents or authorizing an adjustment in the Contract Price or Contract Time.
 - f. **Contract:** This Contract, including the General Conditions, Sealed Bid Specifications and Contract Documents and any written amendments hereto.
 - g. **Contract Documents:** This Contract, including Advertisement for Bids, Information for Bidders, Bid, Bid Bond, Payment (Statutory) Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, Drawings, Specifications and Addenda.
 - h. **Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
 - i. **Contract Time:** The number of calendar days stated in the Contract Documents for the completion of the Work.
 - j. **Contractor:** The person, firm or corporation with whom the Owner has executed the Contract.
 - k. **Drawings:** The parts of the Contract Documents which show the characteristics and scope of the Work to be performed and which have been prepared or approved by the Engineer.
 - l. **Engineer:** The person, firm or corporation named as such in the Contract Documents.

- m. Field Order: A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.
- n. Notice to Proceed: Written communication issued by the Owner to the Contractor authorizing him/her to proceed with the Work and establishing the date for commencement of the Work.
- o. Notice of Award: The written notice by Owner to the apparently successful Bidder stating that, upon compliance by the apparently successful Bidder with the conditions enumerated therein within the time specified, Owner will sign and deliver the Contract.
- p. Owner: Titus County, TX.
- q. Project: The undertaking to be performed as provided in the Contract Documents.
- r. Resident Project Representative: The authorized representative of the Owner who is assigned to the Project site or any part thereof.
- s. Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor which illustrate how specific portions of the Work shall be fabricated or installed.
- t. Specifications: A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- u. Subcontractor: An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- v. Substantial Completion: That date certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, to allow the Project or specified part to be utilized for the purposes for which it is intended.
- w. Supplier: Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
- x. Work: All labor necessary to produce the construction required by the Contract Documents and all materials and equipment incorporated or to be incorporated in the Project.
- y. Written Notice: Any notice in writing to any party to the Contract regarding any part of this Contract. Said Written Notice shall be considered delivered and the service thereof completed when posted by certified or registered mail to said party at their last given address or delivered in person to said party or their authorized representative at the Project site.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS:

- a. The Contractor may be furnished additional instructions and detail Drawings by the Engineer as necessary to carry out the Work required by the Contract Documents.
- b. The additional Drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail Drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS:

- a. The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data, where applicable, as are required by the Contract Documents for the Work to be performed.
- b. Prior to the first partial payment estimate, the Contractor shall submit construction progress schedules showing the order in which the Contractor proposes to carry out the Work, including dates at which the various parts of the Work will be started, estimated date of completion of each part and, as applicable:
 - (1) The dates at which special detail Drawings will be required; and
 - (2) Respective dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- c. The Contractor shall also submit a schedule of payments the Contractor anticipates will be earned during the course of the Work.

4. DRAWINGS AND SPECIFICATIONS:

- a. The Drawings and Specifications are tools to be used by the Contractor to enable the Contractor to furnish all labor, materials, tools, equipment and transportation necessary for the proper performance of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Owner.
- b. In case of conflict between the Drawings and the Specifications, the Specifications shall govern. Figure dimensions and drawings shall govern over scale dimensions and detail drawings shall govern over general drawings.
- c. Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported, in writing, to the Engineer, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. SHOP DRAWINGS:

- a. The Contractor shall provide Shop Drawings and project samples as may be necessary for the performance of the Work as required by the Contract Documents. The Engineer shall promptly review all Shop Drawings. The Engineer's approval of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The approval of any Shop Drawing that substantially deviates from the requirement of the Contract Documents shall be evidenced by a Change Order.
- b. When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that he has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.

6. MATERIALS, SERVICES AND FACILITIES:

- a. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the Work within the specified time.

- b. Materials and equipment shall be so stored as to preserve their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located to facilitate prompt inspection.
- c. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- d. Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.
- e. Materials, supplies or equipment to be incorporated into the Work shall be purchased by the Contractor or the Subcontractor free and clear of chattel mortgages, conditional sales contracts or other agreements by which an interest is retained by the seller.

7. INSPECTION AND TESTING:

- a. All materials and equipment used in the construction of the Project shall be subject to adequate inspection in accordance with generally accepted standards as required and defined in the Contract Documents.
- b. The County will coordinate and arrange for inspections. Contractor shall notify the County when work is ready for standard inspections. Additionally, all work will be reviewed prior to the County's execution of the Contractor's progress pay requests.
- c. If the Contract Documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction require any specific work to be inspected, tested or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness. The Contractor will then furnish the Engineer the required certificates of inspection, testing or approval.
- d. Inspections, tests or approvals by the Engineer or others shall not relieve the Contractor from the obligation to perform the Work in accordance with the requirements of the Contract Documents.
- e. The Engineer and the Engineer's representatives will at all times have access to the Work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and for any inspection or testing thereof.
- f. If any Work is covered contrary to the written instructions of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and the covering replaced at the Contractor's expense.
- g. If the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing, as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such Work is defective, the Contractor will bear all expenses of such uncovering, exposing, observing, inspecting and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposing, observing, inspecting, testing and reconstruction and an appropriate Change Order shall be issued.

8. SUBSTITUTIONS: Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by referenced to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function may be considered. The Contractor may

recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalog number and if, in the opinion of the Engineer, such material, article or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

9. PATENTS: The Contractor shall pay all applicable royalties and license fees and shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design or product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the Engineer.
10. PROTECTION OF WORK, PROPERTY AND PERSONS:
 - a. The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby and for the protection of all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
 - b. The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor will notify owners of adjacent utilities when performance of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.
 - c. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the Engineer or Owner, shall act to prevent the threatened damage, injury or loss. The Contractor will give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby and a Change Order shall thereupon be issued covering the changes and deviations involved.
11. SUPERVISION BY CONTRACTOR: The Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the Work site a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

12. CHANGES IN THE WORK:

- a. The Owner may, at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract Documents or in the time required for performance of the work, an equitable adjustment shall be authorized by Change Order.
- b. The Engineer may also, at any time, by issuing a field order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Engineer unless the Contractor believes that such field order entitles the Contractor to a change in Contract Price or Time, or both, in which event, the Contractor shall give the Engineer written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter, the Contractor shall document the basis for the change in Contract Price or Time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from the Owner.

13. CHANGES IN CONTRACT PRICE: The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- a. Unit prices previously approved;
- b. An agreed lump sum.

14. TIME FOR COMPLETION AND LIQUIDATED DAMAGES:

- a. The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on a date specified in the Notice to Proceed.
- b. The Contractor will proceed with the Work at such rate of progress as to ensure full completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and the Owner that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.
- c. If the Contractor shall fail to complete the Work within the Contract Time or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the Bid for each calendar day the Contractor shall be in default after the time stipulated in the Contract Documents. The parties agree that it would be extremely difficult or impracticable to fix the amount of Owner's damages sustained by reason of Contractor default in reaching substantial completion of the Work within the Contract Time and that the amount of liquidated damages specified represents the parties' reasonable estimation of actual damages.
- d. The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to the following and the Contractor has promptly given written notice of such delay to the Owner or Engineer:
 - (1) Any preference, priority or allocation order duly issued by the Owner;
 - (2) Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, flood, epidemics, quarantine, restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; or

- (3) Any delays of Subcontractors occasioned by any of the causes specified in paragraphs 14d(1) and 14d(2) of this article.

15. CORRECTION WORK:

- a. The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents without expense to the Owner and shall bear the expense of making good all the Work of other contractors destroyed or damages by such removal or replacement.
- b. All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

16. UNFORESEEN CONDITIONS:

- a. The Contractor shall promptly, before such conditions are disturbed except in the event of an emergency, notify the Owner by Written Notice of:
 - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
 - (2) Unknown physical conditions at the site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in the Work the character provided for in the Contract Documents.
 - (3) Items of work differ materially from work described in the bid documents.
- b. The Owner shall promptly investigate the conditions and, if it is found that such conditions do so materially differ and cause an increase or decrease, an adjustment shall be made and the Contract Documents shall be modified by a Change Order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required Written Notice has been given and provided that the Owner may, if the Owner determines the facts so justify, consider and adjust any claims asserted before the date of final payment.

17. SUSPENSION OF WORK, TERMINATION AND DELAY:

- a. The Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days or until such further time as agreed upon by the Contractor in a Written Notice to the Contractor and the Engineer fixing the date on which Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, for any costs and/or delays incurred which are directly attributable to any suspension.
- b. Contract will be terminated if any of the following conditions occur:
 - (1) The Contractor is adjudged bankrupt or insolvent or makes a general assignment for the benefit of its creditors;
 - (2) A trustee or receiver is appointed for the Contractor or for any of its property;
 - (3) Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy of applicable laws;
 - (4) The Contractor repeatedly fails to supply sufficiently skilled workmen or suitable materials or equipment;
 - (5) The Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment;
 - (6) The Contractor disregards laws, ordinance, rules, regulations or orders of any public body having jurisdiction over the Work;
 - (7) The Contractor disregards the authority of the Engineer or otherwise violates any provision of the Contract Documents; then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of ten (10) days from delivery of a Written Notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a Change Order
- c. Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter occur. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- d. After ten (10) days from the delivery of a Written Notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit.
- e. If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the

Engineer, terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained.

In addition to and in lieu of terminating the Contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make payment as aforesaid, the Contractor may, upon ten (10) days Written Notice to the Owner and Engineer, stop the Work until paid all amounts then due, in which event and upon resumption of the Work, Change Orders shall be issued to adjust the Contract Price or extend the Contract Time, or both, to compensate for the costs and delays attributable to the stoppage of the Work.

- f. If the performance of all or any portion of the Work is suspended, delayed or interrupted as a result of a failure by the Owner or Engineer to act within the time specified in the Contract Documents or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays unnecessarily caused by the failure of the Owner or Engineer.

18. PAYMENT TO CONTRACTOR:

- a. Contractor will be required to use AIA G702 Application for Payment and G703 Continuation Sheet for payment application. The schedule of values for the project shall be provided to the Owner for review and approval within ten (10) business days of the Notice to Proceed.
- b. At least ten (10) calendar days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the Owner a partial payment estimate filled out and signed by the Contractor, covering the Work performed during the period covered by the partial payment estimate and supported by such data as the Owner may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by supporting data, satisfactory to the Owner, which will establish the Owner's title to the material and equipment and protect the Owner's interest therein, including applicable insurance. The Engineer will, within ten (10) days after the receipt of each partial payment estimate, either indicate approval of payment in writing and present the partial payment estimate to the Owner or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within ten (10) days of presentation of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 5% of said estimate.
- c. Payment for stored materials will not be permitted for this project.
- d. Prior to Substantial Completion, the Owner, with the approval of the Engineer and with the concurrence of the Contractor, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
- e. The Owner shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work or the restoration of any damaged Work except such as may be caused by agents or employees of the Owner.
- f. Upon completion and acceptance of the Work, the Engineer shall issue a certificate attached to the final payment request that the Work has been accepted under the conditions of the Contract Documents. The entire balance found to be due to the Contractor, including the retained percentages, except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the Work.

- (5) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
- b. Certificates of insurance acceptable to Owner shall be filed with the Owner prior to commencement of Work. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior written notice has been given to the Owner.

The successful contractor will be required to submit a certificate of insurance showing the coverages in accordance with the following table. The certificate must show Owner as an additional insured. If the insurance expires and coverage lapses for any reason, work will be stopped until contractor presents an acceptable insurance certificate.

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
Commercial General Liability Insurance	Not less than \$1,000,000 per occurrence
Business Automobile Policy	Not less than \$600,000 combined single limit
Workers' Compensation	Not less than statutory limits
All Risk Builder's Risk Insurance	Not less than \$500,000

Titus County shall be listed as the certificate holder and shall be listed as an additional insured.

- c. The Contractor shall procure and maintain, at the Contractor's own expense, during the Contract Time, in accordance with the provisions of the laws of the State in which the work is performed, Workers' Compensation insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the Project and, in case any Work is sublet, the Contractor shall require such Subcontractor similarly to provide Workers' Compensation insurance, including occupational disease provisions, for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the Project is not protected under the Workers' Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate and suitable insurance for the protection of its employees not otherwise protected.
- d. The Contractor shall secure, if applicable, "all risk" type Builder's risk insurance for Work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the Contract Price totaled in the Bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the Contract Time and until the Work is accepted by the Owner. The policy shall name as the insured the Contractor and the Owner.

21. **CONTRACT SECURITY:**

- a. The Contractor shall, within ten (10) days after the receipt of the Notice of Award, furnish the Owner with a performance bond, a maintenance bond and a payment (statutory) bond in penal sums equal to the amount of the Contract Price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents and upon the prompt payment by the Contractor to all persons supplying labor and materials in the performance of the Work required by the Contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Texas. The expense of these bonds shall be borne by the Contractor. If, at any time, a surety on any such Bond is declared bankrupt or loses its right to do business in the State of Texas, Contractor shall, within ten (10) days after notice from the Owner, substitute another bond and surety, both of

which must be acceptable to Owner. The premiums on such bond shall be paid by the Contractor. No further payment shall be deemed due nor made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

22. **ASSIGNMENTS:** Neither the Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of any right, title or interest therein or any obligations thereunder without written consent of the other party.

23. **INDEMNIFICATION:**

- a. The Contractor will indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claims, damages, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, which is caused in whole or in part by any negligent or willful act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- b. In any and all claims against the Owner or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by an of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under the Workers' Compensation Act, disability benefits acts or other employee benefits acts.
- c. The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

24. **SEPARATE CONTRACTS:**

- a. The Owner may perform additional work related to the Project or the Owner may let other contracts containing provisions similar to these. The Contractor will afford the other contractors who are parties to such contracts (or the Owner, if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate the Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.
- b. If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the Contract, Written Notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes the performance of such additional work by the Owner or other involves it in additional expense or entitles it to an extension of the Contract Time, the Contractor may make a claim therefor as provided in Sections 12 and 13.

25. SUBCONTRACTING PERSONS:

- a. The Contractor may utilize the services of specialty subcontracts on those parts of the Work, which, under normal contracting practices, are performed by specialty Subcontractors.
- b. The Contractor shall not award work to Subcontractor(s) in excess of fifty (50) percent of the Contract Price or in excess of fifty (50) percent of the labor and equipment required to install the Project without prior written approval of the Owner.
- c. The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors' and to give the Contractor the same power regarding termination of any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.
- e. Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the Owner.

26. ENGINEER'S AUTHORITY:

- a. The Engineer shall act as the Owner's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and work performed and shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.
- b. The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- c. The Engineer will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.
- d. The Engineer shall promptly make decisions relative to interpretation of the Contract Documents.

27. LAND AND RIGHTS-OF-WAY:

- a. Prior to issuance of the Notice to Proceed, the Owner shall obtain all land and right-of-way necessary for the carrying out and completion of the Work to be performed pursuant to the Contract Documents, unless otherwise mutually agreed.
- b. The Owner shall provide the Contractor with information that delineates and describes the lands owned and right-of-way acquired.
- c. The Contractor shall provide, at its own expense and without liability to the Owner, any additional land and access thereto that the Contractor may desire for temporary construction facilities or for storage of materials.

28. GUARANTEE: The Contractor shall guarantee all materials and equipment furnished and Work performed for a: period of one (1) year from the date of Substantial Completion. The Contractor warrants, and guarantees for a period of one (1) year from the date of Substantial Completion of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system resulting from such defects.

29. **ARBITRATION BY MUTUAL AGREEMENT:**
- a. All claims, disputes and other matters in question arising out of or relating to the Contract Documents or the breach thereof, except for claims which have been waived by making an acceptance of final payment as provided in Section 19, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be in writing and shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be rendered upon it in any court having jurisdiction thereof.
 - b. Notice of the request for arbitration shall be filed in writing with the other party to the Contract Documents and a copy shall be filed with the Engineer. Request for arbitration shall in no event be made on any claim, dispute or other matter in question that would be barred by the applicable statute of limitations.
 - c. The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings unless otherwise mutually agreed in writing.
30. **TAXES:** The Owner shall provide the Contractor documentation to provide suppliers of material for the Project to remove sales tax from the cost of materials.

SUPPLEMENTAL GENERAL CONDITIONS

The provisions of the Supplemental General Conditions as described herein change, amend or supplement the General Conditions and shall supersede any conflicting provisions of this contract. All provisions of the General Conditions which are not changed, amended or supplemented remain in force.

1. Contract Approval
2. Partial Payment Estimates
3. Conflict of Interest
4. Protection of Lives and Property
5. Remedies Requirements
6. Gratuities
7. Non-Resident Requirements
8. Payment for Material Stored on Site
9. Change Order Approval
10. Partial Occupancy and Use
11. Final Inspection
12. Warranty

1. CONTRACT APPROVAL:

- a. The contract between the successful bidder and the County must be approved by the Board of County Commissioners for the contract to be enacted and executed.

2. PARTIAL PAYMENT ESTIMATES:

- a. "Partial Payment Estimates" shall be used when making application for periodic payments due the Contractor.
- b. The Owner may, after consultation with the architect/Engineer, withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any approved partial payment estimate to such extent as may be necessary to protect the Owner from loss on account of:
 - (1) Defective work not remedied;
 - (2) Claims filed;
 - (3) Failure of Contractor to make payments properly to Subcontractors or suppliers;
 - (4) A reasonable doubt that the Work can be completed for the balance then unpaid;
 - (5) Damage to another contractor;
 - (6) Performance of Work in violation of the terms of the Contract Documents.
- c. Where Work on unit price items is substantially complete but lacks testing, clean-up and/or corrections, amounts shall be deducted from unit prices in partial payment estimates to amply cover such testing, cleanup and/or corrections.
- d. When the items in 2.b. and 2.c. are cured, payment shall be made for amounts withheld because of them.
- e. Payments will not be made that would deplete the retainage or place in escrow any funds required for retainage or invest the retainage for the benefit of the Contract.

3. CONFLICT OF INTEREST:

a. Unacceptable Bidders:

- (1) No Engineer or architect (individual or firm, including persons they employ) who has prepared plans and specifications will be considered an acceptable bidder. Any firm or corporation in which such Engineer or architect (including persons they employ) is an officer or an employee or holds or controls a substantial interest will not be considered an acceptable bidder.
- (2) Contracts or purchases by the Contractor shall not be awarded or made to a supplier or manufacturer if the Engineer or architect (firm or individual) who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Bids will not be awarded to firms or corporations owned or controlled wholly or in part by a member of the governing body of the Owner or to an individual who is such a member.

- b. None of the Owner's officers, employees or agents shall engage in the award or administration of this Contract if a conflict of interest, real or apparent would be involved. Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his partner or an organization which employs him or is about to employ him, or any of the above, has a financial or other interest in the Contractor. None of the Owner's officers, employees or agents shall solicit or accept gratuities, favors or anything of monetary value from the Contractor or Subcontractor.

4. PROTECTION OF LIVES AND PROPERTY:

- a. In order to protect the lives and health of its employees performing the Work under the Contract, the Contractor shall comply with all 4 pertinent provisions of the Occupational Safety and Health, Administration (OSHA) and any State safety and health agency requirements.
- b. The Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appurtenances and methods and for any damage, which may result from their failure or their improper construction, maintenance or operation.

5. REMEDIES: Unless otherwise provided in this Contract, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this contract or the breach thereof will be decided by arbitration, if the parties mutually agree, or in a court of competent jurisdiction with the State in which the Owner is located.

- a. The arbitration provisions of this section may be initiated by either party to this contract by filing with the other party and the Engineer/architect a written request for arbitration.
- b. Upon agreement to arbitrate, each party to this contract will appoint one arbitrator and the two arbitrators will select the third arbitrator.
- c. The arbitrators will select a hearing location as close to the Project site as possible.
- d. The procedure for conducting the hearing will follow the Construction Industry Arbitration Rules of the American Arbitration Association.

6. GRATUITIES:

- a. If the Contractor or any of the Contractor's agents or representatives offers or gives gratuities (in the form of entertainment, gifts or anything of value) to any official, employee or agent of the Owner in an attempt to secure this Contract or favorable treatment in awarding, amending

or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the Law or this Contract provides.

- b. In the event this Contract is terminated as provided in paragraph 6.a., the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.

7. NON-RESIDENT REQUIREMENTS:

- a. Any non-resident Contractor doing business in the State of Texas shall register with the Texas Tax Commission, the Texas Employment Security Commission, the State Industrial Court and the County Assessor of each county in which contract Work will be performed. This must be done prior to commencing Work under the Contract.

8. PAYMENT FOR MATERIAL STORED ON SITE:

- a. Invoices, approved and initialed by the consulting Engineer and the Owner, showing the quantity, size, cost, etc., of the material are required for payment.
- b. Payment will be made only for material stored in a location approved by the Owner. The storage area must provide adequate protection from the elements and the material must be stored so it can be promptly inspected. Material strung throughout the job site will not be considered properly stored.
- c. The five percent retainer that applies to material installed will also apply to materials stored on the site;
- d. When payment for material stored on the site is received, a paid invoice for that payment from the supplier must be submitted to the Owner prior to the payment of the next partial payment.

9. CHANGE ORDER APPROVAL:

- a. All Change Orders must be approved by the Owner or its delegated representative.

10. PARTIAL OCCUPANCY AND USE: The Owner, upon advance written notification to the Contractor, shall have the right to occupy and use any completed or partially-completed portions of the Project, regardless of the percentage of completion of the entire Project, when such occupancy and use is to the Owner's best interest. Such partial occupancy and use shall be upon the following terms:

- a. The Engineer shall make an inspection of the portion or portions of the Project concerned and report to the Owner his findings as to the acceptability and completeness of the Work. The Engineer's report shall include a list of items to be completed or corrected before final payment.
- b. The Owner, upon acceptance of the Engineer's report, shall give Written Notice to the Contractor of the Owner's intent to occupy and use said portions of the Project. The Owner's notice shall include a copy of the Engineer's report, shall clearly identify the portions of the Project to be occupied and used and shall establish the date of said occupancy and use.
- c. From the date thus established, the Owner shall assume all "responsibilities for operation, maintenance and the furnishing of water, gas and electrical power for the portions of the Project thus occupied and used. The Owner shall have the right to exclude the Contractor from those portions of the Project but shall provide the Contractor with reasonable access to complete or correct necessary items of Work.
- d. The guarantee required by the General Conditions shall not begin until completion and final acceptance of the entire Project except as to items of equipment specified, such as

instrumentation, electrical and mechanical equipment, which are thus used by the Owner. For said equipment, the warranty shall start from the date established in the written notice from the Owner.

- e. Occupancy or use of any space in the Project shall not constitute acceptance of Work not performed in accordance with the Contract or relieve the Contractor of liability to perform any Work required by the Contract but not completed at the time of said occupancy and use.
- f. The Contractor shall not be held responsible for fair wear and tear or damage resulting from said occupancy except to the extent such damage is covered by the warranty.
- g. The partial occupancy and use of any portion or portions of the Project by the Owner shall not constitute grounds for claims by the Contractor for release of any amounts retained from payments under the provisions of the Contract. The retained amounts will not be due until completion of the entire Project for final acceptance and final payment as set forth in the General Conditions.

11. FINAL INSPECTION:

- a. The general contractor shall compile a punch list for all trades. This list shall be provided to the Owner upon request. When the general contractor is satisfied that his punch list is corrected, the Owner, engineer or designated personnel will review the work in place and make a separate punch list.
- b. Final payment will be contingent upon the general contractor's completion of the incomplete or defective work items.

12. WARRANTY:

- a. The general contractor shall provide written manufacturer warranties for all installed components.
- b. All warranties shall be for minimum one-year from the date of substantial completion.
 - (1) Substantial completion occurs when the work is sufficiently complete in accordance with the construction documents and is sufficiently complete and safe for occupancy and ready to be used for its intended purpose.
- c. Form AIA G704 shall be provided by the general contractor for execution by the Owner for recording the date of substantial completion.

PERFORMANCE BOND

_____, as Principal, and _____,

a corporation organized under the laws of the State of _____ as surety, are held and firmly bound unto _____ in the penal sum of _____

_____ Dollars (\$ _____), in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that, whereas said Principal entered into a written contract _____ with _____ dated _____ for _____, all in compliance with the plans and specifications therefor, made a part of said contract and on file in the office of _____.

NOW, THEREFORE, if said Principal shall, in all particulars, well, truly and faithfully perform and abide by said contract and each and every covenant, condition and part thereof and shall fulfill all obligations resting upon said Principal by the terms of said contract and said specifications and if said Principal shall protect and save harmless said _____ from any pecuniary loss resulting from the breach of any of the items, covenants and conditions of said contract resting upon said Principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said contract and no deviations from the plan or mode of procedures herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly-authorized officers and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its Attorney-In-Fact, duly authorized to do so, the day and year set forth below.

Dated this day of _____ day of _____, _____

PRINCIPAL: _____

ATTEST:

By: _____

_____ SURETY: _____

By: _____
Attorney-In-Fact

STATUTORY (PAYMENT) BOND

No. _____

We, _____, as Principal, and _____, a corporation organized under the laws of the State of _____, as Surety, are held and firmly bound unto the State of _____ in the amount of _____ Dollars (\$ _____) for the payment of which we hereby bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20__.

WHEREAS, the said _____

did on _____ enter into a certain contract with _____

for the construction of _____;

NOW, THEREFORE, the condition of the above obligation is such that, if the Principal shall pay all indebtedness incurred for labor, materials or rental of machinery or equipment furnished in the construction of said public building or in making said public improvements, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF we have hereunto set our hands and seals the day and year first above written.

By: _____
Bonding Company

ATTEST (If by corporation)

By: _____

Attorney-In-Fact

**COUNTY COMMISSIONERS' CERTIFICATE OF APPROVAL OF
CONTRACT AND BONDS FOR TITUS COUNTY, TX**

The board of County Commissioners for Titus County, TX, do hereby certify as follows:

I have examined the construction contract between _____ ("Contractor") and Titus County, TX ("County") approved by the County on _____, 20__ ("Contract"), and the surety bonds given by the Contractor in connection with the performance of said Contract including the manner of execution of the Contract and surety bonds. On the basis of the forgoing, I am of the opinion that the surety bonds are in proper form and content and that the Contract has been duly authorized and executed by the County, acting through its duly authorized representatives, that said representatives have full power and authority to execute said Contract on behalf of the County and that the foregoing Contract constitutes a valid and legally binding obligation upon the County enforceable in accordance with the terms, conditions and provisions thereof.

Dated this _____ day of _____, 20__.

For and on behalf of the Board of County Commissioners,
County Judge