

**REGULATIONS AND SPECIFICATIONS  
FOR  
CITY OF KILLEEN  
FEDERALLY FUNDED  
COMMUNITY  
DEVELOPMENT DEPARTMENT PROJECTS**



**BID # 17-01  
STEWART NEIGHBORHOOD PROJECT – PHASE 3 (SIDEWALK  
RECONSTRUCTION)  
#16.04/b-16-mc-48-0020**

**CITY OF KILLEEN  
BELL COUNTY, TEXAS**

Community Development Department  
802 N. 2<sup>nd</sup> Street, Building E  
P.O. Box 1329 (76540)  
Killeen, Texas 76541  
254.501.7845

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CITY OF KILLEEN  
NOTICE TO BIDDERS

September 25, 2016

Notice is hereby given that that sealed bids for concrete improvements for the Stewart Neighborhood Project – Phase 3 (Sidewalk Reconstruction) consisting of concrete paving demolition and installation subject to the *City of Killeen Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects* (attached hereto) and such other provisions, specifications, drawings, or other data as attached, will be received by the Purchasing Division at 207A W, Avenue D, Killeen, Texas, 76541, until the hour of **3:30 PM, October 13, 2016** for the following:

**BID NUMBER: #17-01**  
**PROJECT: STEWART NEIGHBORHOOD PROJECT-PHASE 3 (Sidewalk Reconstruction)**  
**#16.04/B-16-MC-48-0020**  
**KILLEEN, TEXAS**

This project is funded, in whole or in part, by federal funds from the **U.S. Department of Housing & Urban Development**. The bid may be awarded per item. Bidders may bid on every item or some of the items. Contractor/Subcontractor(s) will be responsible for meeting all requirements set forth by the federal funds and including the requirements of the *City of Killeen Special Conditions for Community Development Department Contracts and Community Development Department General Conditions of the Contract for Construction-CDBG and HOME Programs*.

Copies of the Federal Regulations, Bid Packet including the Bidding Requirements, Conditions of the Contract, Bid Forms, Davis-Bacon Wage Scale, Specifications and Drawings, and all other contract documents may be obtained at no charge via electronic transmission [email] or at the City's Purchasing Division web site, or by physical examination of the bid documents at no charge through the:

**City of Killeen Community Development Department,  
802 N. 2<sup>nd</sup> Street, Building E, Killeen Arts & Activities Center, Killeen, Texas 76541**

**A required pre-bid meeting will be conducted at 10:00 AM, OCTOBER 4, 2016 at the Community Development Training Room, 802 N. 2<sup>ND</sup> STREET, BUILDING E, Killeen, Bell County, TX 76541. Bidders will be briefed on associated requirements with the bid and bidding process. Bidders are expected to make their own inspection to determine necessary measurements for bidding the project.**

All questions and requests for clarification must be submitted electronically **prior to 2:00 PM, OCTOBER 6, 2016 via email to Randy Jimenez at [rjimenez@killeentexas.gov](mailto:rjimenez@killeentexas.gov) with Bid #17-01 Questions Stewart Neighborhood Phase 3 Sidewalk Reconstruction** in the subject line of the email. There will be no exceptions. All responses to questions will be sent to all known plan holders in the form of an addendum.

Addenda will be provided to all known plan holders and posted online at the City of Killeen web site, and the Electronic State Business Daily (ESBD); the Central Texas Chapter of Associated General Contractors (Centex AGC); AMTEK Information Services (Amtekusa); Construction Data Company (CDCnews); Construction Software Technologies, Inc. (iSqFt); Virtual Builders Exchange, LLC (BXTX); and Construction Market Data/ConstructConnect™, DemandStar and IonWave E-bid.

Bidder shall submit **two (2) signed originals of bid documents** on the bid forms provided and in accordance with *City of Killeen Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects* along with a bid security in the sum equal to and not less than five percent (5%) of the amount of the base bid, payable, without recourse, to the City of Killeen. The security may be in the form of a certified cashier's check or Bid Bond. Bids not accompanied by appropriate security will not be considered.

Bids must be plainly marked on the outside of the envelope as follows:

**BID: #17-01**  
**CLOSING TIME AND DATE: 3:30 PM, OCTOBER 13, 2016**  
**PROJECT: STEWART NEIGHBORHOOD PROJECT-PHASE 3 (Sidewalk Reconstruction)**  
**#16.04/B-16-MC-48-0020**  
**KILLEEN, TEXAS**

Bid documents must be complete when received by the Purchasing Division. Bids will be opened and read aloud at **3:45 PM, OCTOBER 13, 2016** in the **Council Chambers, Killeen City Hall, 101 North College Street, Killeen, Texas, 76541**. The City of Killeen reserves the right to reject any or all bids.

## CITY OF KILLEEN BIDDING TERMS, CONDITIONS, AND REQUIREMENTS FOR FEDERALLY FUNDED COMMUNITY DEVELOPMENT DEPARTMENT PROJECTS

### I. GENERAL CONDITIONS

Bidders are required to submit their bids upon the following express conditions:

Bidders shall make all investigation necessary to be thoroughly informed regarding plant and facilities for delivery of material and equipment as required by the Bid conditions. No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.

In the event the bidder finds an error, discrepancy, ambiguity or omission in the bid documents prior to the submittal of the bid, the Bidder is obligated to contact the City with written notice of such error, discrepancy, ambiguity, or omission. The written notice shall identify the nature and location of the error, discrepancy, ambiguity, or omission. Corrections or modifications to the bid documents will only be made by written addendum as prescribed herein. By submittal of a bid, Bidder represents that they have thoroughly reviewed the bid documents and that they have not identified any error, discrepancy, ambiguity or omission that would affect the bid award, cost, progress or performance of the project work.

Unless specifically stated otherwise in the specifications, only new products or equipment will be acceptable.

Bidders shall thoroughly inform themselves of all clauses contained within the **City of Killeen General Conditions of the Contract for Construction-Community Development Block Grant Program and Home Investment Partnerships Act Program**.

### II. QUALIFICATIONS OF BIDDER AND CONTRACTOR(S)

The Owner may make such investigations as he deems necessary to determine the ability of the bidder and/or subcontractor 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 bidder is specifically advised that any person, firm, or other party to whom is proposed to award a subcontract under this contract:

- a. Must be acceptable to the Owner after verification of the current eligibility status; and
- b. Must comply with applicable certifications included in, but not limited to, **Special Conditions for Community Development Department Contracts**

The City of Killeen receives funding from the U.S. Department of Housing and Urban Development (HUD). The Federal funding is made available to city departments, area non-profits and faith based entities, and public service agencies, who provide services to low- and moderate-income Killeen residents, for new construction, improvements, and/or rehabilitation/renovation to target area streets/sidewalks, water and sanitary sewer lines, parks and recreation, and for

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Bidder's Initials

commercial buildings owned and occupied by area public service agencies. In order to provide the best possible service to these entities the City continuously seeks professional, quality contractors and subcontractors to complete a certification process prior to participating in City of Killeen Federally Funded Community Development Department construction projects.

The certification process is different than the Contractor Registration, which is a general construction registration issued by the city. The Community Development Department Contractor Certification is free of charge and includes verification of: the name, ownership type and number of years in business; reference to what specific trades, including licensing, and annual volume of work the contractor is engaged in; financial and insurance information; references from customers and material suppliers; participation in Apprentice or Trainee programs registered with the U.S. Department of Labor; and guarantees provided on completed jobs. Contractor certifications are confirmed by written notice from the Community Development Department Staff. Upon certification, the contractor is expected to perform all work in a workmanlike manner, maintaining a level of professionalism by, both the contractor, its employees, and subcontractors. Certifications are renewed every two years or as instructed by governing policy or regulation.

An open line of communication [between the contractor, city and department and program staff, and the project recipient] is essential in understanding the work being performed and achieving a project completed to everyone's satisfaction.

Community Development Department Staff is responsible for meeting with contractors and providing a brief program and bidding procedures orientation. Additional information may be obtained from the Community Development Department offices located at 802 N. 2<sup>nd</sup> Street, Building E, Killeen, TX 76541, or by calling 254-501-7845 or on the city's web site at <http://www.killeentexas.gov/index.php?section=179>

### III. PREPARATION OF BIDS

**1. Bids will be prepared by a qualified responsible Bidder in accordance with the following:**

- (a) All information required by the Bid shall be furnished. The Bidder shall print or type his/her name and manually sign the Bid and each continuation sheet on which an entry is made.
- (b) Unit prices shall be shown and where there is an error in extension of the price, the unit price shall govern.
- (c) Alternate bids will not be considered unless authorized by the Bid document.
- (d) Proposed delivery time shall include weekends and holidays.

**2. Conditions of Work**

All bidders must inform themselves fully of the conditions relating to the construction of the Project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his/her obligation to furnish all material and labor necessary to carry out the provisions of his/her Contract. Insofar as possible the Contractor, in carrying out his/her work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

**3. Equal Employment Opportunity and Small and/or Minority Business Enterprise Requirements**

Bidder agrees that if this bid is accepted, he/she will not engage in employment practices, which

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have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, disability, or political belief or affiliation.

**4. Description of Supplies**

Any catalog or manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Bidders are required to state exactly what they intend to furnish otherwise they will be required to furnish the item as specified.

**5. Taxes**

Bidders shall not include federal taxes, property taxes or State of Texas limited sales excise and use taxes in bid prices since the City of Killeen is exempt from payment of such taxes.

**6. Discounts**

- (a) Any Bidder and his/her subcontractor(s) may provide material or material discounts to any project where ownership involves a duly authorized non-profit organization that is granted the designation as a 501(c)(3) or (4) status from the Internal Revenue Service. All discounts shall be included in the bidder's final bid price and reflected on the appropriate bid form.
- (b) Prompt payment discounts will be considered in making the award provided the period of the discount offered is sufficient to permit payment within such period, in the regular course of business.
- (c) In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.

**7. Insurance/Permits**

Bidder shall carry insurance in accordance with types and amounts listed in the General Conditions of the Contract for Construction Community Development Block Grant Program and Home Investment Partnerships Act Program for the duration of the project, which shall include items owned by the City/Owner in the care, custody, and control of the Bidder prior and during construction and warranty period. Bidder shall furnish Certificates of Insurance as evidence thereof. Copies of policy declaration pages and all policy endorsements shall be furnished upon request.

The Bidder shall procure and pay all permits, licenses, and approvals necessary for the execution of this contract prior to the start of work.

**8. Clarification or Objection to Bid Specifications**

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications, or other bid documents, or any part thereof, he may submit to Purchasing, a request for clarification by the deadline established in the Bid. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the bid, if made, shall be made only by an addendum duly issued. A copy of such addendum will be distributed to each known person receiving a set of bids. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract. Any objection to the specifications and requirements, as set forth in the bid documents must be filed in writing with the Purchasing Division by the deadline established in the Bid.

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**IV. ADDENDA AND INTERPRETATIONS**

No interpretation of the meaning of the Plans, Specifications, or other pre-bid documents will be made to any bidder orally. Every request for such interpretation shall be in writing and submitted, via email to: [rjimenez@killeentexas.gov](mailto:rjimenez@killeentexas.gov) with **BID #17-01 Questions- Stewart Neighborhood Project-Phase3 (Sidewalk Reconstruction)** in the subject line, to be given consideration, questions must be received by **the time and date specified in the Invitation to Bidders notice** for the project. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be e-mailed or faxed to all known plan holders (at the respective addresses furnished for such purposes) and posted: online at the City of Killeen web site, Demand Star, the Electronic State Business Daily (ESBD); the Central Texas Chapter of Associated General Contractors (Centex AGC); the AMTEK Information Services (Amtekusa); Construction Data Company (CDCnews); Bidders' Resource Inc; Construction Software Technologies, Inc. (iSqFt); Virtual Builders Exchange, LLC (BXTX); and Reed Elsevier, Inc. (Reed Business Information). Failure of any bidder to receive any such Addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All Addenda so issued shall become part of the contract documents.

**V. SUBMISSION OF BIDS**

A state or local unit of government receiving a grant from the Federal Government, which requires contracting for construction or facility improvement, shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds.

**1. Bid Security (applies to bids exceeding \$50,000)**

Each bid must be accompanied by a certified check of the bidder or a bid bond prepared on the bid bond form attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of 5% of the bid.

Such checks or bid bonds shall be retained a minimum of five (5) days after the opening of bids. Bid bonds or checks remaining will be returned to unsuccessful bidders upon Owner confirmation of bidder certifications, or, if no award has been made within 90 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his bid.

**2. Bid Forms**

Each bid must be submitted on the prescribed forms and accompanied by all documents requested on the Bidder's Checklist form. All blank spaces must be filled in, in ink or typewritten and all foregoing Certifications must be fully completed and executed when submitted.

**TWO (2) sets of bid documents shall be sealed and submitted, with original signatures, no later than the specified date of the bid closing to:**

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Bidder's Initials

Delivery Address:  
City of Killeen  
Purchasing Division  
207A W. Avenue D  
Killeen, TX 76541

**3. Power of Attorney**

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**4. Unacceptable Provisions**

By submitting your bid/proposal, you acknowledge that the City of Killeen will not accept any bid/proposal, or execute any submitted contract in conjunction with a bid/proposal that requires the City to agree to unacceptable provisions that include the following:

- Governing law other than the law of the State of Texas
- Venue other than Bell County
- Mandatory arbitration
- Artificial limitation of liability
- Artificial statute of limitation
- Waiver of trial by jury

**5. Bid Changes Prior to Bid Closing**

Bids and changes thereto shall be enclosed in a sealed envelope addressed to the Purchasing Department, City of Killeen. The names and address of Bidder, the date and hour of the bid closing and the project number shall be placed on the outside of the envelope.

**6. Bids Not Considered**

Telegraphic bids will not be considered. However, bids may be modified by written notice provided such notice is received prior to the time and date set for the bid closing.

**7. Acceptance of Subcontracts/Subcontractors**

The bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this contract:

- a. Must be acceptable to the Owner after verification of the current eligibility status; and
- b. Must comply with applicable certifications included in, but not limited to those certifications contained in Special Conditions for Community Development Department Contracts

**8. Time of Completion**

Bidder must agree to commence work on or within ten (10) days after a date to be specified in a written "Notice to Proceed" and to complete project within a maximum of **180 days** of the beginning of Contract start date or Notice to Proceed, whichever is later.

**VI. RECEIPT OF BIDS**

Bids will be received by the Owner at the office of the Purchasing Division until **3:30 PM**,

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Bidder's Initials

**OCTOBER 13, 2016. The envelopes containing the bids must be sealed and addressed to: City of Killeen Purchasing Division, 207A W. Avenue D, Killeen, Texas 76541 and designated as Bid #17-01, opening time and date. Then, at 3:45 PM, in the Killeen City Council Chambers those bids received will be publicly opened and read aloud.**

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids.

Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof.

**1. Obligation of Bidder**

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Specifications, Plans, and Contract Documents (including all addenda). The failure or omission of any bidder to examine any forms, instrument, or documents shall in no way relieve any bidder from any obligation with respect to his bid.

**2. Late Bids or Modifications**

Any bid received after the time and date specified is considered "late" and shall not be opened. Modifications received after the time set for the bid closing will not be considered.

**VII. WITHDRAWAL OF BIDS**

**No bidder may withdraw a bid for up to ninety (90) days after the actual date of the opening, or postponement thereof.**

**VIII. BID PROTEST**

Any bidder wishing to file a protest concerning alleged improprieties with this solicitation must submit a formal protest in writing to the Purchasing Division within five (5) business days after the specified time of the bid closing. The formal written protest must identify the:

- bidder contesting the solicitation;
- project name and number; and
- specific grounds for the protest, with all supporting documentation

A response to the protest will be prepared by Purchasing within ten (10) business days of receipt of the protest. All determinations made by the City are final.

**IX. REJECTION OF BIDS**

The City may reject a bid if:

- The Bidder misstates or conceals any material fact in the bid, or
- The bid does not strictly conform to law or the requirements of the bid, or
- The bid is conditional, except that the Bidder may qualify his bid for acceptance by the City as an "All or None" basis.
- The City may however, reject all bids whenever it is deemed in the best interest of the City to do so.

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## X. AWARD OF CONTRACT

Considerations in the award of the contract may include those goods and/or services, proposed by the bidder, that present the best value for the project based on, but not limited to:

- Unit price
- Total bid price
- Terms and discounts
- Delivery date
- Product warranty
- Special needs and requirements of City
- Past experience with product/service
- City's evaluation of the bidder's ability, financial, strength, and ethical standards
- Quality of the bidder's goods or services
- The extent to which the goods or services meet the municipality's needs
- Vendor's past performance
- Demurrage charges, freight costs and mileage
- Estimated costs of supplies, maintenance, etc.
- Estimated surplus value, life expectancy
- Results of testing samples
- Conformity to specifications
- Training requirements, location, etc.
- Location of maintenance facility/service person; ability to provide for minimum down time
- The total long-term cost to the municipality to acquire the bidder's goods or services

- a) If, at the time this Contract is to be awarded, the lowest estimate submitted by a qualified responsible Contractor does not exceed the amount of funds then estimated by the Owner as available to finance the Contract, the Owner may award the Contract on the estimate submitted combined with such alternate additions or deductions applied in the numerical order in which they are listed in the Bid as this produces a net amount, which is within the available funds to finance the Contract.
- b) The City reserves the right to accept any item or group of items of this bid, unless the Bidder qualifies his bid by specific limitation.
- c) Prices must be quoted "F.O.B. Destination (Killeen) with all transportation charges prepaid", unless otherwise specified in the Invitation for Bids.
- d) If identical bids are received from two or more bidders and those bids are the lowest and best bid, the tie shall be broken in accordance with provisions in Section 271.901 of the Texas Local Government Code.

### 1. Safety Standards and Accident Prevention

With respect to all work performed under this Contract, the Contractor shall:

- a) Comply with the safety standards provisions of applicable laws, building and construction codes and the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 and the requirements of Title 29 of the Code of Federal Regulations, Chapter XVII Part 1910 Occupational Safety Health, and Standards.
- b) Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c) Maintain at his office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

### 2. Texas Workers' Compensation Commission Rule 29 TAC §110.110

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Bidder's Initials

The State of Texas requires Workers' Compensation insurance by law for work being performed for a municipality. ***The City of Killeen cannot waive this requirement.*** Bidder is required to provide worker's compensation insurance for all persons or entities providing service on the project. This would include, but not limited to contractors and sub-contractors. Food and beverage vendors, office supply deliveries, and delivery of portable toilets are not included since those deliveries and labor are not permanently incorporated into the project. The rule affects all building and construction projects, which were advertised for bid after September 1, 1994. The City must retain all workers' compensation certificates for the duration of the project and for three years from the completion of the project. Prior to awarding a contract, Bidder must provide certificate(s) of coverage for all persons and entities.

Contact your insurance agent or call the Texas Workers' Compensation Insurance Fund at **1-800-252-3439**, there may be some relief for you through the Texas Workers' Compensation Insurance Fund. You can also review options and obtain further information through The Texas Department of Insurance web site at <http://www.tdi.state.tx.us/consumer/wc.html>

## **XI. LIQUIDATED DAMAGES, BONDING**

### **1. Failure to Enter Into Contract**

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid.

### **2. Liquidated Damages**

Liquidated damages represents every day the project is not complete. Bidder agrees to pay as liquidated damages, the sum of **\$300.00** for each consecutive calendar day after the maximum number of contract days stated in the written "Notice to Proceed" with the exception of approved weather days.

### **3. Performance and Payment Bonding**

If the Performance and Payment Bonds are required or voluntarily provided, the successful Contractor must furnish performance and payment bonds from a solvent company authorized to do business in the State of Texas and appearing on the U.S. Treasury list. Such bonds must be on the forms provided by the City of Killeen for one hundred percent (100%) of the contract price, conditioned that the contractor will faithfully perform the contract executed and promptly pay all amounts due to others, in accordance with Chapter 53, Texas Property Code or Chapter 2253, Texas Government Code, as applicable.

Bonding requirements:

Payment Bonds shall be required for all projects to ensure proper payment for all laborers, subcontracts, materials or other expenditures incurred to complete the project. Prior to the release of the required retainage, or other such amounts claimed as unpaid by laborers, subcontractors, material providers, etc., by the Owner, Contractor shall submit Affidavits of Release of Lien from all parties participating in the completion of the project.

For all bid/proposal amounts exceeding \$25,000, Contractor is required to provide Performance Bonds equal to the total contract amount.

Required bonds shall be delivered with the executed Contract prior to the commencement of any work on the project. The surety on such bond or bonds shall be duly authorized and admitted to do business in the State of Texas and licensed by the State to issue Surety bonds, must meet the requirements of Texas Property Code 53.201 et seq. or Texas government Code 2253 et seq., as applicable, and must be satisfactory to the Owner. The person actually writing and signing the bonds must be a Texas Local

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Bidder's Initials

Recording Agent who has been duly authorized by the Insurance Company to write and sign bonds on behalf of said Insurance Company, as evidenced by the accompanying power of attorney. All bonds must contain the Local Recording Agent's license number.

If the Insurance Company requirements are not satisfied, the Contractor must procure new bonds within five (5) days of the receiving notice from Owner. If the Agent requirements are not satisfied, the bonds shall be returned to the Insurance Company, or Agency, if any, for signature by a Texas local recording agent.

## **XII. CHANGES IN WORK**

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Total approved change orders for the project shall not exceed twenty five percent (25%) of the original contract amount.

## **XIII. LAWS AND REGULATIONS**

The bidder's attention is directed to the fact that all applicable federal and state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

## **XIV. PAYMENT TERMS**

Payment for project will be made by the City of Killeen only upon completion and acceptance of the work by the Owner (refer to paragraph XI-2, Liquidated Damages-Time for Completion) unless otherwise specified in the Agreement between the Owner and Contractor.

If a performance bond is furnished, contractor will be paid in the following manner:

Contractor may receive payment on a monthly draw basis for work actually completed during the preceding thirty (30) day period. Payment will then be based on all work completed less ten percent (10%) retainage, with retainage being released upon final completion and acceptance of the project by Owner and receipt of all applicable Affidavits of Release of Lien for all materials, labor and other work completed or supplied by others.

### **1. Prevailing Wage Scale**

All employees (including laborers and/or mechanics) will be paid according to the prevailing Wage Scale provided.

### **2. Certified Payroll Documentation**

Contractor and each subcontractor shall submit weekly certified payroll documentation for each week until the contract expires. The Prime Contractor is responsible for ensuring that his/her subcontractors submit the required payroll certifications and documentation.

## **XV. TERMINATION OF CONTRACT**

This contract shall remain in effect until terminated in accordance with the General Conditions of the Contract for Construction - CDBG and HOME Programs.

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Bidder's Initials

**XVI. CONFLICT OF INTEREST**

Pursuant to Title 24-Housing and Urban Development Part 570 Community Development Block Grants, 24 CFR 570.611 and 24 CFR 92.356, the federal statues of Title 2-Office of Management and Budget Guidance on Grant Agreements at 2 CFR 200.317 and 200.318 regarding the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, and procurement of property and services by participating jurisdictions, State recipients, and subrecipients for all proposals for federal grants and/or federal contracts in support (including federal pass-through funding) of housing and community development programs and other jointly sponsored projects submitted on, or after, January 1, 2014.

Therefore the Bidder represents that no member of the Killeen City Council or any officer or employee of the City of Killeen shall have a financial interest direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City, or be financially interested directly or indirectly in the sale to the City any land, materials, supplies, or services except on behalf of the City as an officer or employee. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof shall thereby forfeit the office or position. Any violation of this section with the knowledge express or implied of the person or corporation contracting with the governing body of the City shall render the contract void by the City Manager or Council.

**XVII. LAW AND VENUE**

This agreement shall be governed and construed according to the laws of the State of Texas. Venue for purposes of any and all lawsuits, causes of actions, claims, or disputes shall be in Bell County, Texas.

**XVIII. ACKNOWLEDGEMENT**

The Bidder, by his signature, represents that he has read the "City of Killeen Terms and Conditions for Federally Funded Community Development Department Projects" and will comply with these terms and conditions.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

BID NUMBER: #17-01  
PROJECT: STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
#16.04/ b-16-mc-48-0020  
KILLEEN, TEXAS

\_\_\_\_\_  
Bidder's Initials

CITY OF KILLEEN  
SPECIAL CONDITIONS  
FOR COMMUNITY DEVELOPMENT DEPARTMENT CONTRACTS

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**INTRODUCTION:** The following special conditions must be included in contracts that are fully or partially paid with CDBG/HOME funds. Some items such as bonding and insurance will also be included elsewhere in the contract documents. CONTRACTOR must comply with bonding and insurance requirements as well as the following Federal requirements.

CONTRACTOR shall comply with all applicable special conditions for Community Development Department Contracts as contained herein, and shall insert appropriate provisions in all sub-contracts covering work under this contract to insure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of sub-contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

CONTRACTOR shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

The CONTRACTOR must submit to the City of Killeen within ten (10) days of notification of acceptance of bids, the names and addresses of the sub-contractors the Contractor proposes to utilize on the project in order for the City to approve utilization of said sub-contractors. If other sub-contractors are proposed during the construction phase, their names and addresses are to be submitted prior to utilization for approval.

Incorporated by reference on the attached **General Conditions of the Contract for Construction-Community Development Block Grant Program and Home Investment Partnership Act Program** are Federal Labor Laws and other federal law language.

**I. SPECIAL CONDITIONS FOR ALL CDBG CONTRACTS**

**A. "Section 3" of the Housing and Urban Development Act of 1968**

*[applies to Contracts of \$100,000 and all subcontracts of \$100,000 or more]*

Because this project receives direct Federal financial assistance, compliance with Section 3 of the Housing and Development Act of 1968, as amended and the regulation implementing that Section 3 requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. CONTRACTOR understands that this requires the project to make training, employment and contracting opportunities available, to the greatest extent feasible, to lower-income County residents and businesses.

**B. Remedies for Violation or Breach of Contract Terms**

The CONTRACTOR understands that all claims, disputes and other matters in question between the parties to this agreement, arising out of or relating to this agreement or the breach thereof, shall be resolved as provided by State of Texas law. Venue shall be in the County of Bell, Texas. Failure to timely comply with the contract without approval from the City of Killeen shall be deemed a breach of this agreement and the expenses and costs incurred by the City of Killeen shall be the burden of the Contractor. Disputes regarding the interpretation of this contract shall be resolved in favor of the City of Killeen.

**C. Patent and Copyrights**

CONTRACTOR understands that the U.S. Department of Housing and Urban Development and the City of Killeen retain patent rights and copyrights on any project, which involves research, developmental, experimental, or demonstration work.

**D. Rights to Inventions Made Under a Contract or Agreement**

If the federal award meets the definition of “funding agreement” under [37 CFR 401.2\(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued the by the awarding agency.

**E. Adherence to State Energy Conservation Plan**

CONTRACTOR shall recognize and adhere to mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

**F. Access to Records (*For all contracts other than those awarded under small purchase procedures*)**

CONTRACTOR understands that the City of Killeen and its representatives, the State of Texas, the U.S. Department of HUD, the Comptroller General of the United States, or any of their authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract, for the purpose of performing audit or project monitoring, and such records shall be subject to examination, copying, excerpting or transcribing.

**G. Contract Work Hours and Safety Standards (40 U.S.C. 3701-3708)**

*(Applies to any contracts in excess of \$100,000.00, which may involve the employment of mechanics or laborers. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.)*

CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of that standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. (This requirement applies to time spent on federally assisted contracts only.) The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous as determined under construction safety and health standards promulgated by the Secretary of Labor.

**H. Equal Employment Opportunity Laws** compliance under Executive Order 11246, 11375 and supplemental regulations at 41 CFR part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor including:

**1. Certification of Non-segregated Facilities** (for contracts over \$10,000.00)

**2. Title VI, Civil Rights Act of 1964**

Affirmatively furthering the policies of the Fair Housing Act

**3. Section 109 of the Housing and Community Development Act of 1974.**

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act.

**4. Section 503 of the Rehabilitation Act of 1973 (for contracts \$2,500.00 or over)**

**5. Age Discrimination Act of 1975**

Prohibits against discrimination on the basis of age.

**6. Section 504 of the Rehabilitation Act of 1973**

Prohibits against discrimination on the basis of disability.

**II. ADDITIONAL SPECIAL CONDITIONS FOR ALL CDBG CONSTRUCTION CONTRACTS.**

**A. Copeland "Anti-Kickback Act"**

CONTRACTOR shall comply with the Copeland "Anti-Kickback Act" (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3). No contractor or subcontractor shall induce any person employed in the construction, completion, or repair of public buildings or public work, financed in whole or in part by loans or grants from the United States, by any means, to give up any part of the compensation to which he/she is otherwise entitled. Workers must be paid weekly, and deductions from workers' pay must be permissible, and contractors/subcontractors must submit weekly payrolls and maintain those records for a minimum of three (3) years after completion of the project. The City of Killeen shall report all suspected or reported violations to the U.S. Department of Labor and to the U.S Department of Housing and Urban Development.

**B. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)**

CONTRACTOR shall comply with requirements contained in Section 1352 of title 31, United States Code, certifying that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**C. Davis-Bacon Requirements**

*(CDBG Construction Contracts over \$2,000.00; and Housing Contracts of 8 or more units)*

*(HOME Construction Contracts of 12 or more units; any amount)*

CONTRACTOR shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required

by Federal program legislation all prime construction contracts in excess of \$2,000.00 must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by the Department of Labor regulations at 29 CFR Parts 1, 3, 5, 6, and 7). Under this Act Contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors shall be required to pay wages not less than once a week and that deductions from workers' pay be permissible. A copy of the applicable prevailing wage rates is included in this solicitation and a decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. Any known changes to these wage rates prior to award of contract, shall be made known to offerers. In addition, Contractors will be required to provide payroll information to the City of Killeen on a weekly basis for verification of compliance. The City of Killeen shall report all suspected or reported violations of this condition to the U.S. Department of Housing and Urban Development and/or the U.S. Department of Labor. *(See attached wage determination schedule applicable to project)*

#### **D. Contract Termination**

This contract may be terminated in accordance with section 34 of the City of Killeen Community Development Department General Conditions of the Contract for Construction Community Development Block Grant Program and Home Investment Partnerships Program.

#### **E. Equal Employment Opportunity (Construction Projects over \$10,000)**

CONTRACTOR shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). The Contractor also agrees to ensure that Minority Business Enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement.

In this regard the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.

#### **F. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, and EPA Regulations of Non-Exempt Federal Contracts (Construction Contracts over \$100,000)**

The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)); Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738; and Environmental Protection Agency Regulations (40 CFR, Part 15), which prohibit the use under Non-Exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations will be reported to HUD and to the USEPA Assistant Administrator for Enforcement (EN-329).

### **III. RESTRICTION ON ALL PUBIC WORKS PROJECTS**

No Contractor, or subcontractor, of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR) may be awarded a contract or a subcontract.

IN ACCORDANCE WITH THE APPLICABLE STATUTES AND THE REGULATIONS GOVERNING THE SPECIAL CONDITIONS FOR COMMUNITY DEVELOPMENT DEPARTMENT CONTRACTS, THE BIDDER/CONTRACTOR CERTIFIES THAT HE HAS READ AND WILL COMPLY WITH THESE CONDITIONS:

\_\_\_\_\_  
Signature / Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

Date: \_\_\_\_\_

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
#16.04/ b-16-mc-48-0020  
KILLEEN, TEXAS

# General Conditions of the Contract for Construction

## Community Development Block Grant Program and HOME Investment Partnerships Act Program

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**General Conditions of the Contract for Construction**  
**Community Development Block Grant Program and HOME Investment Partnerships Act Program**

**Conduct of Work**

**1. Definitions**

**(a) "Architect"** means the person or other entity engaged by the CITY/OWNER to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a CITY/OWNER uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

**(b) "CITY/OWNERS"** means the City of Killeen and the **Owner(s) of the premises upon which the project will be completed, if any.** Both the City and Owner(s) are parties to this contract as identified in the Agreement between the owners.

**(c) "Contract"** means the contract entered into between the CITY/OWNER and the Contractor. It includes the forms of Estimate/Contractor, the Contractor Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Contractors (form HUD-5369-A), these General Conditions of the Contract for Construction, the applicable wage rate determinations from either the U.S. Department of Labor or HUD, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

**(d) "Contracting Officer"** means the person delegated the authority by the CITY/OWNER to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor.

The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the CITY/OWNER in all dealings with the Contractor.

**(e) "Contractor" (including Bidder)** means the person or other entity entering into the contract with the CITY/OWNER to perform all of the work required under the contract.

**(f) "Drawings"** means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled **Specifications and Drawings for Construction** herein.

**(g) "HUD"** means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of a HUD Grant Agreement to provide financial assistance to the CITY/OWNER, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the CITY/OWNER for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

**(h) "Project"** means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

**(i) "Specifications"** means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

**(l) "Work"** means materials, workmanship, and manufacture and fabrication of components.

**2. Contractor's Responsibility for Work**

**(a)** The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the CITY/OWNER pursuant to the clause entitled **Availability and Use of Utility Services** herein. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect and the CITY/OWNER.

**(b)** The Contractor shall perform on the site, and with its own organization, work equivalent to at least 12 percent (unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the CITY/OWNER.

**(c)** At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

**(d)** The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the CITY/ OWNER, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

**(e)** The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall

verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

**(f)** The Contractor shall confine all operations (including storage of materials) on CITY/OWNER premises to areas authorized or approved by the Contracting Officer.

**(g)** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall

- (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the CITY/OWNER and all rubbish caused by its work;
- (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer;
- (3) perform all specified tests; and,
- (4) deliver the installation in complete and operating condition.

**(h)** The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

### **3. Architect's Duties, Responsibilities, and Authority**

**(a)** The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

**(b)** The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the **Changes** clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

**(c)** The Architect's duties and responsibilities may include but shall not be limited to:

- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the CITY/OWNER, which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
- (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
- (3) Reviewing and making recommendations with respect to -(i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
- (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

### **4. Other Contracts**

The CITY/OWNER may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with CITY/OWNER employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by CITY/OWNER employees.

## **CONSTRUCTION REQUIREMENTS**

### **5. Preconstruction Conference and Notice to Proceed**

**(a)** Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the CITY/OWNER, its Architect, and other interested parties convened by the CITY/OWNER. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The CITY/OWNER will provide the Contractor with the date, time, and place of the conference.

**(b)** The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

### **6. Construction Progress Schedule**

**(a)** The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor

fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

**(b)** The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled **Inspection and Acceptance of Construction**, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the CITY/OWNER. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

**(c)** Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the **Default** clause of this contract.

### **7. Site Investigation and Conditions Affecting the Work**

**(a)** The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the CITY/OWNER, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the CITY/OWNER.

**(b)** The CITY/OWNER assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the CITY/OWNER. Nor does the CITY/OWNER assume responsibility for any understanding reached or representation made concerning conditions, which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

**(c)** Prior to the start of construction, the CITY/OWNER shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

### **8. Differing Site Conditions**

**(a)** The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

**(b)** The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the CITY/OWNER within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

**(c)** No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

**(d)** No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

### **9. Specifications and Drawings for Construction**

**(a)** The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer,

who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

**(b)** Wherever in the specifications or upon the drawings the words “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import are used, it shall be understood that the “direction”, “requirement”, “order”, “designation”, or “prescription”, of the Contracting Officer is intended and similarly the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by”, or “acceptable to”, or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

**(c)** Where “as shown”, “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean, “provide complete in place”, that is “furnished and installed”.

**(d)** “Shop drawings” means drawings, submitted to the CITY/OWNER by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The CITY/OWNER may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

**(e)** If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the CITY/OWNER’s reasons therefore. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

**(f)** If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

**(g)** It shall be the responsibility of the Contractor to make timely requests of the CITY/OWNER for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved to avoid delay.

**(h)** The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the CITY/OWNER and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

**(i)** This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

#### **10. As-Built Drawings**

**(a)** “As-built drawings,” as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. “As-built drawings” shall be synonymous with “Record drawings”.

**(b)** As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

**(c)** This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

#### **11. Material and Workmanship**

**(a)** All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

**(b)** Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the CITY/OWNER right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of re-testing materials, which fail to meet contract requirements, and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Prohibition against use of lead-based paint. The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

## **12. Permits, Codes, and Surveys**

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled **Changes** herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the CITY/OWNER can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

(c) Unless otherwise expressly provided for in the Specifications, the CITY/OWNER will furnish to the Contractor all surveys necessary for the execution of the work.

## **13. Health, Safety, and Accident Prevention**

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 327 et seq.; and,

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed

under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

**(d)** The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

**(e)** The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the CITY/OWNER, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

**(f)** When the use of explosives is necessary for the prosecution of work, The Contractor shall observe all local, state and Federal laws in purchasing and handling explosives, take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Contractor shall notify all owners of public utility property of intention to use explosives at least 24 hours before blasting is done close to such property. Any supervision or direction of the use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

**(g)** Contractor shall put up and maintain in good conditions, sufficient red or warning lights at night, suitable barricades and other danger signals and safety devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or Contract.

#### **14. Temporary Heating**

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the CITY/OWNER in the condition and at the time required by the specifications.

#### **15. Availability and Use of Utility Services**

**(a)** The CITY/OWNER shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the CITY/OWNER or, where the utility is produced by the CITY/OWNER, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

**(b)** The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the CITY/OWNER, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

#### **16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements**

**(a)** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site which, are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

**(b)** The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

**(c)** The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

**(d)** The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

**(e)** Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

**(f)** New work, which connects to existing work, shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

**(g)** No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

**(h)** If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such

surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

**(i)** The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

**(j)** The Contractor shall indemnify and save harmless the CITY/OWNER from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the CITY/OWNER may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

**(k)** The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

### **17. Temporary Buildings and Transportation of Materials**

**(a)** Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the CITY/OWNER. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

**(b)** The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

### **18. Clean Air and Water** Applicable to Contracts in Excess of \$150,000

**(a)** Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

**(b)** In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Contractor agrees to —

- (1) Not utilize any facility in the performance of this contract or any subcontract, which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
- (2) Promptly notify the Contracting Officer if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
- (3) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
- (4) Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

### **19. Energy Efficiency**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

### **20. Inspection and Acceptance of Construction**

**(a)** Definitions. As used in this clause -

(1) "**Acceptance**" means the act of an authorized representative of the CITY/OWNER by which the CITY/OWNER approves in writing and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

(2) "**Inspection**" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms

to contract requirements.

(3) **“Testing”** means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to CITY/OWNER inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) CITY/OWNER inspections and tests are for the sole benefit of the CITY/OWNER and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the CITY/OWNER after acceptance of the completed work under paragraph (j) below.

(d) The presence or absence of the CITY/OWNER inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer’s written authorization.

All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The CITY/OWNER may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The CITY/OWNER shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The CITY/OWNER may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the CITY/OWNER not to conform to contract requirements, unless the CITY/OWNER decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the CITY/OWNER may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor’s right to proceed.

(i) If any work requiring inspection is covered up without approval of the CITY/OWNER, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the CITY/OWNER considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the CITY/OWNER will promptly arrange for the inspection. Unless otherwise specified in the contract, the CITY/OWNER shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the CITY/OWNER’s right under any warranty or guarantee.

## **21. Use and Possession Prior to Completion**

(a) The CITY/OWNER shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the CITY/OWNER intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The CITY/OWNER’s possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the CITY/OWNER has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the CITY/OWNER’s possession or use, notwithstanding the terms of the clause entitled **Permits and Codes** herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the CITY/OWNER delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## 22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

## 23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of (one year unless otherwise indicated) from the date of final acceptance of the work. If the CITY/OWNER takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year (unless otherwise indicated) from the date that the CITY/OWNER takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to CITY/OWNER-owned or controlled real or personal property when the damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defects of equipment, material, workmanship or sign furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the CITY/OWNER shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed in writing, for the benefit of the CITY/OWNER; and,

(3) Enforce all warranties for the benefit of the CITY/OWNER.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the CITY/OWNER may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the CITY/OWNER nor for the repair of any damage that results from any defect in CITY/OWNER furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the CITY/OWNER's rights under the **Inspection and Acceptance of Construction** clause of this contract with respect to latent defects, gross mistakes or fraud.

## 24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the CITY/OWNER's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

## **ADMINISTRATIVE REQUIREMENTS**

### 25. Contract Period

The Contractor shall complete all work required under this contract within **the specified number of calendar days** of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

### 26. Order of Precedence

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable federal, state or local law or regulation, the law or regulation demonstrating the greatest stringency shall prevail; provided that such law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

**27. Payments**

**(a)** The CITY/OWNER shall pay the Contractor the price as provided in this contract.

**(b)** The CITY/OWNER may make progress payments approximately every 30 days as the work proceeds based on all work completed, which shall meet the standards of quality established under the contract, as approved by the Contracting Officer. The CITY/OWNER may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors, which are qualified small businesses.

**(c)** Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

**(d)** The Contractor shall submit periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

**(e)** Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts, which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

**(f)** Except as otherwise provided in State law, the CITY/OWNER shall retain five (5) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the CITY/OWNER may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the CITY/OWNER shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

**(g)** The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment, which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the CITY/OWNER's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the CITY/OWNER.

**(h)** All material and work covered by progress payments made shall, at the time of payment become the sole property of the CITY/OWNER, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the CITY/OWNER to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the CITY/OWNER in the course of their employment, the Contractor shall restore such damaged work without cost to the CITY/OWNER and to seek redress for its damage only from those who directly caused it.

**(i)** The CITY/OWNER shall make the final payment due the Contractor under this contract after (1) completion and

final acceptance of all work; and (2) presentation of release of all claims against the CITY/OWNER arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

**(j)** Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

**(k)** The CITY/OWNER shall not (1) determine or adjust any claims for payment or disputes arising thereunder between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the CITY/OWNER to withhold moneys from the Contractor shall in no wise impair the obligations of any surety or sureties under any bonds furnished under this contract.

## **28. Contract Modifications**

**(a)** Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

**(b)** The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the CITY/OWNER address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

**(c)** When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the CITY/OWNER's approved threshold), such modification shall not be effective until the required approval is received by the CITY/OWNER.

## **29. Changes**

**(a)** The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) CITY/OWNER-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

**(b)** Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

**(c)** Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

**(d)** If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the CITY/OWNER is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

**(e)** The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

**(f)** The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of

the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

**(g)** The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

**(h)** The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

**(i)** Failure to reach an agreement on any proposal shall be a dispute under the clause entitled **Disputes** herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

**(j)** Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

**(k)** Total approved change orders for the project shall not exceed twenty five percent (25%) of the original contract amount.

### **30. Suspension of Work**

**(a)** The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the CITY/OWNER.

**(b)** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

**(c)** A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### **31. Disputes**

**(a)** "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon within 10 days.

**(b)** Except for disputes arising under the clauses entitled **Labor Standards**, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof, which are not disposed of by agreement, shall be resolved under this clause.

**(c)** All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the CITY/OWNER against the Contractor shall be subject to a written decision by the Contracting Officer.

**(d)** The Contracting Officer shall, within 15 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

**(e)** The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

### **32. Default**

**(a)** If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed

with the work (or separable part of the work) that has been delayed. In this event, the CITY/OWNER may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the CITY/OWNER resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the CITY/OWNER in completing the work.

**(b)** The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the CITY/OWNER or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the CITY/OWNER, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision, which shall be subject to the provisions of the **Disputes** clause of this contract.

**(c)** If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the CITY/OWNER.

### **33. Liquidated Damages**

Each contractor must submit his bid with the distinct understanding that, in case of its acceptance, time for completion shall be considered the essence of the Agreement; and that the expense entailed by the City/Owner by delayed completion of the work covered by the Agreement within the time stipulated therein shall entitle the City/Owner to a fixed sum, per day as liquidated damages for each and every calendar day's delay not caused by the City/Owner or its contractors, provided, however, that the collection of any or all of the said money may be waived at the discretion of the City.

**(a)** If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled **Default** of this contract, the Contractor shall pay to the CITY/OWNER as liquidated damages, the sum of **\$100.00 for each day of delay for Contracts under \$50,000; or \$300.00 for each day of delay for Contracts exceeding \$50,000.** If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages, which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the CITY/OWNER. The Contractor remains liable for damages caused other than by delay.

**(b)** If the CITY/OWNER terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the CITY/OWNER in completing the work.

**(c)** If the CITY/OWNER does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

### **34. Termination for Convenience**

**(a)** The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the CITY/OWNER. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

**(b)** If the performance of the work is terminated, either in whole or in part, the CITY/OWNER shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the CITY/OWNER of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the CITY/OWNER to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the CITY/OWNER or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the CITY/OWNER; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

**(c)** The Contracting Officer will act on the Contractor's claim within 60 days (unless otherwise indicated) of receipt of

the Contractor's claim.

**(d)** Any disputes with regard to this clause are expressly made subject to the provisions of the **Disputes** clause of this contract.

### **35. Assignment of Contract**

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the CITY/OWNER under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

### **36. Insurance**

The Contractor shall carry insurance in the following types and amounts for the duration of the Contract, which shall include items owned by the City in care, custody and control of the Contractor prior and during construction and warranty period, and furnish Certificates of Insurance on the forms provided as evidence thereof. Copies of policy declaration pages and all policy endorsements shall be provided to City/Owner ten (10) days prior to commencing work, and otherwise shall be furnished upon request.

#### **(1) Worker's Compensation Insurance Coverage**

##### **a. Definitions:**

**Certificate of coverage ("certificate")** – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services in a project, for the duration of the project.

Duration of the project-includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the City.

Persons providing services on the project ("subcontractor" in Section 406.096)- includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owners-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

**b.** The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

**c.** The Contractor must provide a certificate of coverage to the City prior to being awarded the contract.

**d.** If the coverage period shown on the Contractor's current certificated of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

**e.** The Contractor shall obtain from each person providing services on a project, and provide to the City:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- (2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

**f.** The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

**g.** The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

**h.** The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

**i.** The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code Section 401.11(44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the Contractor, prior to the end of the coverage period, a new certificated of coverage showing

extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
  - (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the City, in writing, by certified mail or personal deliver, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) – (7), with the certificates of coverage to be provided to the person for whom they are providing services.

j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier or, in case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

k. The Contractor's failure to comply with any of the provision is a breach of contract by the Contractor, which entitles the City to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

**(2) Commercial General Liability Insurance requirements are as follows:**

**a. Contracts under \$50,000, minimum limits of:**

**General Aggregate \$300,000**  
**Products & Completed**  
**Operations Aggregate \$300,000**  
**Personal & Advertising Injury \$300,000**  
Fire Damage (Any One Fire) \$ 50,000  
**Medical Expense**  
**(Any One Person) \$5,000**

**b. Contracts exceeding \$50,000, minimum limits of:**

**General Aggregate \$1,000,000**  
**Products & Completed**  
**Operations Aggregate \$1,000,000**  
**Personal & Advertising Injury \$500,000**  
Fire Damage (Any One Fire) \$ 50,000  
**Medical Expense**  
**(Any One Person) \$ 5,000**

**(3) City's and Contractor's protective liability insurance policy naming the City of Killeen as insured.** Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Minimum limits of liability shall be as follows:

**a. Contracts under \$50,000:**

**Per Occurrence \$100,000**  
**Aggregate \$300,000**

**b. Contracts exceeding \$50,000:**

**Per Occurrence \$500,000**  
**Aggregate \$1,000,000**

**(4) Automobile Liability Insurance for all owned, non-owned and hired vehicles with minimum limits for:**

**a. Contracts under \$50,000:**

**Bodily Injury each person \$100,000**  
**Each occurrence \$300,000**  
Property Damage limits \$50,000  
**or Combined Single**  
**Limit \$300,000**

**b. Contracts exceeding \$50,000 to a maximum of \$500,000:**

**Bodily Injury each person \$250,000**  
**Each occurrence \$500,000**  
Property Damage limits \$100,000

**or a Combined Single Limit      \$600,000**

**(5) Construction All Risk / All Risk-Builder's Risk Insurance:**

**Construction All Risk (CAR) insurance** for insurable construction projects shall be insured in the amount of the contract price for such projects through the date specified as "final completion and acceptance" by Owner. Contractor shall maintain in force, at its own expense, insurance covering contractor's labor and materials, used for completion of the work performed under this contract, against all risks of direct physical loss, to an extent equal to two (2) times the actual cash value or cost of repair for any single/individual item or specification statement, for damages caused by acts of third parties (theft and vandalism). The insurable interest on the CAR shall include the owner, general/prime contractor and subcontractors of every tier as insureds. The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by Construction All Risk Insurance required under this section, except as to such rights as they may have in the proceeds of such insurance. Contractor shall require similar waivers by Subcontractors and Sub-subcontractors.

**All Risk Builders Risk Insurance** for insurable building projects shall be insured in the amount of the contract price for such improvements through the date specified as "final completion and acceptance" by Owner. Contractor shall maintain in force, at its own expense, insurance covering contractor's labor and materials, used for completion of the work performed under this contract, against all risks of direct physical loss for the full contract value, for damages caused by acts of third parties (theft and vandalism). The insurable interest on the CAR shall include the owner, general/prime contractor and subcontractors of every tier as insureds. The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by All Risk Builders Risk Insurance required under this section, except as to such rights as they may have in the proceeds of such insurance. Contractor shall require similar waivers by Subcontractors and Sub-subcontractors.

If insurance policies are not written for amount specified in 2 and 3 above, Contractor is required to carry an Excess Liability Insurance Policy for any difference in amounts specified.

Contractor shall be responsible for deductibles and self-insured retentions, if any, stated in policies. Any self-insured retention shall not exceed ten percent (10%) of minimum required limits. All deductibles or self-insured retentions shall be disclosed on Certificated of Insurance required above.

Contractor shall not commence work at site under this Contract until he has obtained required insurance and until such insurance has been reviewed by the City's Project Manager. Contractor shall not allow any Subcontractors to commence work until insurance required has been obtained and approved. Approval of insurance by the City shall not relieve or decrease liability of Contractor hereunder.

Insurance to be written by a company licensed to do business in the State of Texas at the time policy is issued and acceptable to the City.

Contractor shall produce an endorsement to each affected policy:

- (1) Naming City of Killeen, P.O. Box 1329, Killeen, Texas 76540, as additional insured (except Workers' Compensation and Builders Risk).
- (2) To provide a waiver of subrogation to the City of Killeen.
- (3) That obligates the insurance company to notify the Project Manager, City of Killeen, P.O. Box 1329, Killeen, Texas 76540, that no policies will be cancelled or reduced, restricted or limited until thirty (30) days after the City has received written notice as evidenced by return receipt of registered or certified letter.
- (4) That the "other" insurance clause shall not apply to the City, where City of Killeen is an additional insured shown on policy. It is intended that policies required in the agreement, covering both the City and Contractor, shall be considered primary coverage as applicable.

Contractor shall not cause any insurance to be cancelled nor permit any insurance to lapse during term of this Contract or as required in the Contract.

If Contractor is underwritten on a claims-made basis, the retroactive date shall be prior to, or coincident with, the date of this Contract and the Certificate of Insurance shall state that coverage is claims-made and also the retroactive date. Contractor shall maintain coverage for duration of this Contract. Contractor shall provide the City annually a Certificate of Insurance as evidenced of such insurance. It is further agreed that Contractor shall provide the City a 30-day notice of aggregate erosion, an advance of the retroactive date, cancellation and/or renewal.

It is also agreed that Contractor will invoke the tail option at request of the City and, that Extended Reporting Period (ERP) premium shall be paid by the Contractor.

The City reserves the right to review and renegotiate the insurance requirements of the section during effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed

necessary and prudent by the City based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor.

The City shall be entitled, upon request, and without expense, to receive copies of policies and all endorsement thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

Actual losses not covered by insurance as required by this section shall be paid by Contractor.

**All insurance shall be from an insurance carrier admitted to do business in the State of Texas and has at least an "A" rating with AM Best Company and acceptable to the CITY/OWNER.**

### **37. Payment Bond and Performance Bond/ Additional or Substitute Bond**

When Performance and Payment Bonds are required or voluntarily provided, the Contractor shall furnish performance and payment bonds from a solvent company authorized to do business in the State of Texas and appearing on the U.S. Treasury list. Such bonds must be on the forms provided by the City/Owner for one hundred percent (100%) of the contract amount, conditioned that the contractor will faithfully perform the contract executed and promptly pay all amounts due to other, in accordance with Chapter 53, Texas Property Code or Chapter 2253, Texas Government Code, as applicable.

The surety on such bonds shall be duly authorized and admitted to do business in the State of Texas and licensed by this State to issue Surety bonds and must meet the requirements of Texas Property Code 53.201 et seq. or Texas Government Code 2253 et seq., as applicable and must be satisfactory to the CITY/OWNER. The Persons actually writing and signing the bonds must be a Texas Local Recording Agency who has been duly authorized by the Insurance Company to write and sign bonds on behalf of said Insurance Company, as evidenced by an accompanying power of attorney. All bonds must contain the Local Recording Agent's license number.

Payment Bonds shall be required for all projects to ensure proper payment for all laborers, subcontract, materials, or other expenditures incurred to complete the project. Prior to the release of the required retainage, or other such amounts claimed as unpaid by laborers, subcontractors, material providers, etc., by the Owner, Contractor shall submit Affidavits of Release of Lien from all parties participating in the completion of the project.

For all proposal/bid amounts exceeding \$25,000, the City of Killeen will require Performance Bonds for one hundred percent (100%) of the contract price.

The City of Killeen will make payment for the Project: a) in monthly installments; or b) upon completion and acceptance of the work on the Project by the City of Killeen. Affidavits of Release of Lien documents will be required, for each payment request, as evidence of payment for all material suppliers, laborers, and subcontractors made by only upon completion.

**If the Performance and Payment Bonds are required or voluntarily provided, the successful Contractor must furnish the bonds from a solvent company authorized to do business in the State of Texas and appearing on the U.S. Treasury list. Such bonds must be delivered to City prior to the commencement of any work on the project. Such bonds must be on the forms provided by the City of Killeen for one hundred percent (100%) of the contract price, conditioned that the Contractor will faithfully perform the contract executed, in accordance with Article 5160, Revised Civil Statutes.**

### **38. Subcontracts**

**(a)** Definitions. As used in this contract -

(1) **"Subcontract"** means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contractor a subcontract.

(2) **"Subcontractor"** means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

**(b)** The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

**(c)** The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons, either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

**(d)** The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the CITY/OWNER or between the subcontractor and HUD.

### **39. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms**

**The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:**

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

### **40. Equal Employment Opportunity**

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to,
  - (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the **Indian Preference** clause of this contract.

### **41. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that

employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

**(b)** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

**(c)** The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

**(d)** The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

**(e)** The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

**(f)** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**(g)** Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

#### **42. Interest of Members of Congress**

No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

#### **43. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees.**

No member, officer, or employee of the CITY/OWNER, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the CITY/OWNER was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

#### **44. Limitations on Payments made to Influence Certain Federal Financial Transactions**

**(a)** The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

**(b)** The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

#### **45. Royalties and Patents**

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the CITY/OWNER harmless from loss on account thereof; except that the CITY/OWNER shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

#### **46. Examination and Retention of Contractor's Records**

(a) The CITY/OWNER, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract", as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the **Disputes** clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the CITY/OWNER, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### **47. Labor Standards - Davis-Bacon and Related Acts**

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the construction work to be performed under the contract, except if the construction work has been determined to be "Nonroutine Maintenance" subject to the terms of that clause of this contract.

##### **(a) Minimum Wages.**

(1) All laborers and mechanics employed or working upon the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe

benefit, which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(b) Withholding of funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**(c) Payrolls and basic records.** (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records, which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (d)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or

the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(d) Apprentices and Trainees**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**(e) Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

**(f) Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

**(g) Compliance with Davis-Bacon and related Act requirements.**

All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(h) Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the

procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the CITY/OWNER, HUD, the U.S. Department of Labor, or the employees or their representatives.

**(i) Certification of eligibility.** (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**(j) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.**

In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.

**(k) Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

(l) **Employment of Certain Persons Prohibited.** No person under the age of sixteen years and no person who, at the time, is serving sentences in a penal or correctional institution shall be employed on the work covered by this contract.

#### **48. Non-Federal Prevailing Wage Rates**

**(a)** Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

**(b)** An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

**(c)** An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

#### **49. Procurement of Recovered Materials**

**(a)** In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor Shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items:

(1) are not reasonably available in a reasonable period of time;

(2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the

National Institute of Standards and Technology, if applicable to the item; or  
(3) are only available at an unreasonable price.

**(b)** Paragraph (a) of this clause shall apply to items purchased under this contract where:

(1) the Contractor purchases in excess of \$10,000 of the item under this contract; or

(2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

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**AGREEMENT**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_, AD.

**BETWEEN** the Owners:            **CITY OF KILLEEN**  
101 N. College Street (76541)  
P.O. Box 1329  
Killeen, Texas 76540-1329  
Attn.: City Manager  
Tel: 254. 501.7847    **EMAIL:**

**NAME**  
**ADDRESS**  
City, State, Zip Code  
Attn: Other Representative  
Tel: 000.000-0000    **EMAIL:**

and the Contractor:            **Contractor Name**  
0000 Street  
City, State, Zip Code  
Attn: Contractor’s President/Representative  
Tel: 000.000.0000    Fax: 000.000.0000

The Project is:                    **Project Name**  
**Project Address**  
**Local /HUD Project Number**

Contracting Officer:            **NAME OF CONTRACTING OFFICER**  
**Tel: 000.000-0000    Email:**

Architect/Engineer:            **As Applicable**

Project Shop Drawings by:    **As Applicable**

The Owner and Contractor agree as set forth below:

**ARTICLE 1**  
**THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Terms, Conditions (General and Supplementary), and Requirements of Federally funded Community Development Division Projects, Drawings, Specifications, Bidding Terms, Conditions and Requirements, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the

Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. Contractor must submit Certificates of Insurance, and Payment and Performance Bonds in the amounts required under the Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects, Special Conditions for Community Development Division Contracts and General Conditions of the Contract for Construction-Community Development Block Grant and Home Investment Partnerships Act Programs

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**3.1** The date of commencement is the date from which the Contract Time of Paragraph 25 of the General Conditions of the Contract for Construction is measured, and shall be the date indicated in a notice to proceed to be issued by the Owners.

**Work to commence upon issuance of Notice to Proceed.**

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**3.2** The Contractor shall achieve Substantial Completion of the entire Work not later than **one hundred fifty (150) days after commencement with completion expected not later than one hundred eighty (180) days after commencement**, subject to adjustments of this Contract Time as provided in the Contract Documents.

**There will be a liquidated damage charge to the Contractor of \$300 per calendar day for each day the project is not completed beyond the above stated limit.**

## ARTICLE 4 CONTRACT SUM

**4.1** The Owners shall pay the Contractor in current funds for the Contractor's performance of the Contract for the Contract Sum of **WRITTEN CONTRACT SUM IN DOLLARS AND CENTS/100, (\$NUMBER CONTRACT SUM)** dollars, subject to the following funding sources listed below and to additions and deductions as provided in the Contract Documents.

**4.1a** Financial obligations associated with the Contract Sum are limited to the following dollar amount and source of funds: **NAME of fund source and amount.**

4.2 The Contract Sum is based upon the following alternatives, if any, which are described in the Contract Documents and are hereby accepted by the Owners: **Acceptance and approval of bidder's submission for the Written Bid Amount according to the project Specifications.**

Lump Sum Price, if any, are as follows: **WRITTEN CONTRACT SUM DOLLARS AND CENTS/100, (\$NUMBER CONTRACT SUM).**

## **ARTICLE 5 PROGRESS PAYMENTS**

5.1 Based upon Applications for Payment submitted to the Owners or Owner Representative by the Contractor and Certificates of Payment issued by the Owner or Owner Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and in accordance with paragraph 27 of the General Conditions of the Contract for Construction.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.3 The Owner shall make payments to the Contractor within thirty (30) days of receipt of Application.

5.4 Each Application for Payment shall be based upon the schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owners may require. This Schedule, unless objected to by the Owners, shall be used as a basis for reviewing the Contractor's Application for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of **ten percent (10%) (FIVE PERCENT 5% for Public Works Contracts)**. Pending final determination of cost to the Owner of approved changes in the Work, amounts not in dispute and authorized may be included if the Contract Sum has been adjusted by a Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitable stored off the site at location agreed upon in writing), less retainage of **ten percent (10%) (FIVE PERCENT 5% for Public Works Contracts)**;

**5.6.3** Subtract the aggregate of previous payments made by the Owner; and

**5.6.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Paragraph 27 of the General Conditions.

**5.7** The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

**5.7.1** Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to **Ninety-five (95%)** percent of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work and unsettled claims; and

**5.7.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Paragraph 27 of the General Conditions of the Contract for Construction.

**5.8** Reduction or limitation of retainage, if any, shall be as follows: **listed as applicable**

## **ARTICLE 6** **FINAL PAYMENT**

Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Paragraph 20 of the General Conditions of the Contract for Construction, and (2) Appropriate payroll documents must have been submitted and obligations must have been met, and satisfactory evidence to include either a "Release of Mechanic's and Materialman's Lien" or an "Affidavit of Payment of Debts and Claims" from subcontractor(s) or supplier(s), and (3) to satisfy other requirements, if any, which necessarily survive final payment; and (4) a final Certificate of Payment has been issued by the Owner or Owner Representative; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate of Payment.

## **ARTICLE 7** **MISCELLANEOUS PROVISIONS**

**7.1** Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**7.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due, to contractor, at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere affect the validity of this provision. Legal*

*advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**7.3** Other provisions, attached hereto and incorporated by reference for all purposes, which are directly attributed to this contract, the Contractor will comply with:

- a. Applicable sections of the General Conditions of the Contract for Construction Community Development Block Grant and Home Investment Partnerships Act Program;
- b. the award of subcontracts to small business firms, minority firms, women's business enterprises and labor surplus area firms, whenever possible;
- c. certification regarding debarment, suspension and other responsibility matters;
- d. submitted Affirmative Action Plan

### **ARTICLE 8** **DEFAULT**

**8.1** Whenever Contractor or Owner shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this contract and Contractor or Owner shall fail to commence and take such steps as are necessary to remedy the same within ten (10) days after Contractor or Owner shall have been given a written notice specifying the same, Contractor or Owner may pursue their respective rights and remedies provided under law.

### **ARTICLE 9** **TERMINATION OR SUSPENSION**

**9.1** The Contract may be terminated by the Owner or the Contractor as provided in Paragraph 34 of the General Conditions of the Contract for Construction.

**9.1.2** Owner may terminate the contract for cause for Contractor's failure to perform work, non-adherence to established federal, state and/or local laws, or a violation of any of the contract provisions. Upon written termination, Owner may exclude Contractor from the Project site and pursue any remedies available to him.

**9.2** The Work may be suspended by the Owner as provided in Paragraph 30 of the General Conditions of the Contract for Construction.

### **ARTICLE 10** **ENUMERATION OF CONTRACT DOCUMENTS**

**10.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**LIST OF CONTRACT DOCUMENTS (may vary, as applicable)**  
**Invitation and Advertisement for Proposals**  
**Addendum (as applicable)**  
**Conditions of the Contract**

Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects  
Special Conditions for Community Development Division Contracts  
General Conditions of the Contract for Construction-Community Development Block Grant and Home Investment Partnerships Act Programs

**Bid Forms**

Bidder Check List  
Receipt and Acknowledgement of Contract Conditions  
Bid Proposal Form-Unit Price Contract  
Certificate of Corporate Resolution  
Texas Workers' Compensation Insurance Coverage  
Section 3 Employment Opportunities Clause  
Contractor Certification for Subcontracting with Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms  
Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Wage Scale: General Decision#: (General Decision Number)

**10.1.2 Construction specifications:**

Applicable specifications associated with PROJECT NAME, PROJECT NUMBER at the applicable geographic location; LIST ALL SPECIFICATIONS SECTIONS.

**10.1.3 Other documents, if any, forming part of the Contract Documents are as follows: AS APPLICABLE**

**ARTICLE 11  
GOVERNANCE FOR LITIGATION PURPOSES**

**11.1** This agreement shall be governed and construed according to the laws of the State of Texas. Venue for the purposes of any and all lawsuits, causes of actions, claims, or disputes shall be in Bell County, Texas.

**IN WITNESS WHEREOF**, the parties to these presents have executed **two (2) originals** of this contract, one original to be maintained by the City of Killeen and one original to be maintained by the CONTRACTOR, in the year and day first above mentioned.

**OWNERS**

\_\_\_\_\_  
CITY MANAGER  
City of Killeen  
Killeen, Texas

\_\_\_\_\_  
(Date)

**CONTRACTOR**

\_\_\_\_\_  
CONTRACTOR PRESIDENT NAME  
Contractor Business Name  
City, State

\_\_\_\_\_  
(Date)

**ATTEST**

\_\_\_\_\_  
(Signature)

**ADD OTHER OWNER INFO AS APPLICABLE**

**CONTRACTOR'S ACKNOWLEDGEMENT**

**STATE OF TEXAS §**

**COUNTY OF \_\_\_\_\_ §**

**BEFORE ME, A Notary Public, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purpose of and consideration herein expressed, in the capacity therein stated.**

**GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.**

\_\_\_\_\_  
Notary Public, in and for the State of Texas

**ADD ADDITIONAL NOTARY STATEMENT AS APPLICABLE**

WAGE DECISION

General Decision Number: TX160016 01/08/2016 TX16

Superseded General Decision Number: TX20150016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennan and Williamson Counties) and HIGHWAY Construction Projects

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date  
0 01/08/2016

\* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER		
Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	

## WAGE DECISION

	Rates	Fringes
Laborer, Utility.....	\$ 12.27	
Pipelaye.....	\$ 12.79	
Work Zone Barricade Servicer.....	\$ 11.85	
PAINTER (Structures).....	\$ 18.34	
<b>POWER EQUIPMENT OPERATOR:</b>		
Agricultural Tractor.....	\$ 12.69	
Asphalt Distributor.....	\$ 15.55	
Asphalt Paving Machine.....	\$ 14.36	
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	
Concrete Pavement Finishing Machine.....	\$ 15.48	
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	
Directional Drilling Locator.....	\$ 11.67	
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	
Excavator over 50,000 lbs...	\$ 17.71	
Foundation Drill, Truck Mounted.....	\$ 16.93	
Front End Loader, 3 CY or Less.....	\$ 13.04	
Front End Loader, Over 3 CY.	\$ 13.21	
Loader/Backhoe.....	\$ 14.12	
Mechanic.....	\$ 17.10	
Milling Machine.....	\$ 14.18	
Motor Grader, Fine Grade....	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	
Pavement Marking Machine....	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	
Roller, Asphalt.....	\$ 12.78	
Roller, Other.....	\$ 10.50	
Scraper.....	\$ 12.27	
Spreader Box.....	\$ 14.04	
Trenching Machine, Heavy....	\$ 18.48	

WAGE DECISION

	Rates	Fringes
Servicer.....	\$ 14.51	
Steel Worker		
Reinforcing.....	\$ 14.00	
Structural.....	\$ 19.29	
TRAFFIC SIGNAL INSTALLER		
Traffic Signal/Light Pole Worker.....	\$ 16.00	
TRUCK DRIVER		
Lowboy-Float.....	\$ 15.66	
Off Road Hauler.....	\$ 11.88	
Single Axle.....	\$ 11.79	
Single or Tandem Axle Dump Truck.....	\$ 11.68	
Tandem Axle Tractor w/Semi Trailer.....	\$ 12.81	
WELDER.....	\$ 15.97	

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

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

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with haracters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation

## WAGE DECISION

identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because

**WAGE DECISION**

those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

# PROJECT SPECIFICATIONS

BID # 17-01

DATE 09/01/2016

# Killeen Stewart Neighborhood Project-Phase 3 (Sidewalk Reconstruction)



City of Killeen Community Development Department  
802 N. 2<sup>nd</sup> Street, Building E  
Killeen, Texas 76541  
254-501-7845  
[chayward@killeentexas.gov](mailto:chayward@killeentexas.gov)

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SECTION 8 – LINE ITEM LIST

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SECTION 10 – CONSTRUCTION STANDARDS AND DETAILS

## **SECTION 1 - SUMMARY OF WORK**

### **PART 1 - GENERAL**

#### **1.1 WORK COVERED BY CONTRACT DOCUMENTS**

A. Project Identification: Stewart Neighborhood Project-Phase3 (Sidewalk Reconstruction) #16.04/B-16MC-48-0020

1. Project: Stewart Neighborhood Project-Phase 3 (Sidewalk Reconstruction) – selected sidewalk areas in the Stewart Neighborhood (on Alexander Street, Gray Drive, Culp Avenue, Carol Way, Franz Drive, and Duncan Street) at Alexander Street and Rancier Avenue (FM439), Culp Avenue at Stewart Street, Gray Drive at Stewart Street, Carol Way between Gray Drive and Culp Avenue, Franz Drive off of Culp Avenue, and Duncan Street from Stewart Street to 18<sup>th</sup> Street, Killeen, Bell County, Texas (root/tree removal, concrete paving including demolition and installation).

2. Owner: City of Killeen, Texas

B. Architect Identification: NONE

C. The Project consists of concrete paving including new installation, demolition of existing sidewalk and approaches with installation of same (sections, portions, size, etc.) and tree and root removal to 1'-0" below finish grade as identified in the bidding documents in the area known locally as Stewart Neighborhood (Gray Park and Castle Heights Subdivisions), Killeen, Bell County, Texas.

### **PART 2 - ALTERNATES**

#### **2.2 SUMMARY**

A. This Section includes administrative and procedural requirements for alternates and line item lists.

#### **2.3 DEFINITIONS**

A. Alternate: An amount proposed by Proposer and stated on the Proposal Form for certain work defined or identified in the Proposal Requirements that may be added to or deducted, from a Base Proposal amount. Owner may decide to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.

1. The cost or credit for each alternate is the net addition to or deduction from the Contract Sum to incorporate alternate into the Work. No other adjustments are made to the Contract Sum.

B. Line Item Lists: An amount proposed by Proposer and stated on the Proposal Form for certain work defined or identified in the Proposal Requirements that may be added in a numerical order whereby the calculated total of the line item listed will result in a Proposal amount. Owner may decide to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.

1. The cost or credit for each line item is the net addition to or deduction from the Contract Sum to incorporate line items listed into the Work. No other adjustments are made to the Contract Sum.

## 2.4 PROCEDURES

A. Coordination: Modify or adjust affected adjacent work as necessary to completely integrate work of the alternate or line item list into Project.

1. Include as part of each alternate or line item listed, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation whether or not indicated as part of alternate.

B. Notification: Immediately following award of the Contract, notify each party involved, in writing, of the status of each alternate/line item listed. Indicate if such have been accepted, rejected, or deferred for later consideration. Include a complete description of negotiated modifications to alternates/line items.

C. Execute accepted alternates/line items under the same conditions as other work of the Contract.

D. RESERVED

E. Alternate or Line Item List Acceptance Priority: The Owner's first priority in accepting alternates/line items is to meet the budget.

1. Owner may add or deduct line items in numerical order with the goal to reduce the cost of the project to within the approved budget amount.

## PART 3 - EXECUTION

### 3.1 SCHEDULE OF ALTERNATES

ADD/DEDUCT ALTERNATES

NONE

### 3.2 INDIVIDUAL LINE ITEM(S)

A complete list of line items is located at the back of this document.

### 3.3 RELATED WORK

#### 3.3.1 BACKFILL and RESTORE

A. The Contractor shall backfill all excavations at the end of each day.

B. Backfill and Restore Area: Backfill, compact, and restore area(s) where obstructions have been removed. Backfill tree-stump holes or other minor excavations created or encountered during the construction process. Backfill the remaining hole with material equal in composition and density to the surrounding area.

1. Use soil excavated from the excavated areas, and as necessary to backfill, provide a loose, friable soil mix free of reproductive parts of weeds and harmful substances, and detrimental amounts of foreign matter.

2. Restore the ground surface, including any material disked loose or washed out, to its original slope. Compact with approved material by sprinkling. Add St. Augustine sod to disturbed areas.

i. Unless otherwise directed, dispose of removed materials and debris (roots, tree, concrete and other spoils) daily from work site.

- C. Shrinkage or swell factors are the Contractor's responsibility.
- D. Backfill areas will not be measured or paid for directly but will be subsidiary to pertinent items.

## **SECTION 2- CONTRACT MODIFICATION PROCEDURES**

### **2.1 PROPOSAL REQUESTS**

A. Owner-Initiated Proposal Requests: Owner/owner's designated representative will issue a detailed description of proposed changes in the Work that may require adjustment to the Contract Sum or the Contract Time. If necessary, the description will include supplemental or revised drawings and specifications.

1. Proposal Requests issued by Owner are for information only. Do not consider them instructions either to stop work in progress or to execute the proposed change.

2. Within 10 days after receipt of Proposal Request, submit a quotation estimating cost adjustments to the Contract Sum and the Contract Time necessary to execute the change.

a. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

b. Maximum amount allowed for overhead and profit shall be 15%. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

c. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship on the appropriate form provided by Owner. Use available total float before requesting an extension of the Contract Time.

B. Contractor-Initiated Proposals: If latent or unforeseen conditions require modifications to the Contract, Contractor may propose changes by submitting a request for a change.

1. Include a statement outlining reasons for the change and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Sum and the Contract Time.

2. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

3. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

C. Proposal Request Form: Use owner provided form for Proposal Requests.

## 2.2 ALLOWANCES -NOT USED

## 2.3 CHANGE ORDER PROCEDURES

A. On Owner's approval of a Proposal Request, Owner will issue a Change Order for signatures of Owner and Contractor on owner provided form.

## **SECTION 3 – PAYMENT PROCEDURES**

### 3.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Specification Sections, apply to this Section.

### 3.2 SUMMARY

A. This Section specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.

B. Related Sections include the following:

2. Section 2 "Contract Modification Procedures" for administrative procedures for handling changes to the Contract.

### 3.3 SCHEDULE OF VALUES

A. Coordination: Coordinate preparation of the Schedule of Values with preparation of Contractor's Construction Schedule.

1. Correlate line items in the Schedule of Values with other required administrative forms and schedules, including the following:

- a. Application for Payment forms with Continuation Sheets.
- b. Submittals Schedule (as applicable)

2. Submit the Schedule of Values to Owner/owner's designated representative at earliest possible date but no later than fifteen days before the date scheduled for submittal of initial applications for Payment.

3. Subschedules: Where the Work is separated into phases requiring separately phased payments, provide subschedules showing values correlated with each phase of payment.

B. Format and Content: Use the Project Manual table of contents as a guide to establish line items for the Schedule of Values. Provide at least one line item for each or group Specification Section.

1. Identification: Include the following Project identification on the Schedule of Values:

- a. Project name and location.
- b. Name of Owner/Owner's Representative.
- c. Project number.
- d. Contractor's name and address.
- e. Date of submittal.

2. Arrange the Schedule of Values in tabular form with separate columns to indicate the following for each item listed:

- a. Related Specification Section or Division.

- b. Description of the Work.
- c. Name of subcontractor (as applicable).
- d. Name of manufacturer or fabricator.
- e. Name of supplier.
- f. Change Orders (numbers) that affect value.
- g. Dollar value.

1) Percentage of the Contract Sum to nearest one-hundredth percent, adjusted to total 100 percent.

3. Provide a breakdown of the Contract Sum in enough detail to facilitate continued evaluation of Applications for Payment and progress reports. Provide several line items for principal subcontract amounts, where appropriate.

4. Provide a separate line item in the Schedule of Values for each part of the Work where Applications for Payment may include materials or equipment purchased or fabricated and stored, but not yet installed.

a. Differentiate between items stored on-site and items stored off-site. Include evidence of insurance or bonded warehousing if required.

5. Provide separate line items in the Schedule of Values for initial cost of materials, for each subsequent stage of completion, and for total installed value of that part of the Work.

6. Each item in the Schedule of Values and Applications for Payment shall be complete. Include total cost and proportionate share of general overhead and profit for each item.

a. Temporary facilities and other major cost items that are not direct cost of actual work-in-place may be shown either as separate line items in the Schedule of Values or distributed as general overhead expense, at Contractor's option.

7. Schedule Updating: Update and resubmit the Schedule of Values before the next Applications for Payment when Change Orders or Construction Change Directives result in a change in the Contract Sum.

### 3.4 APPLICATIONS FOR PAYMENT

A. Each Application for Payment shall be consistent with previous applications and payments as certified by Owner/Owner's Representative (Architect, Engineer, etc.) and paid for by Owner.

1. Initial Application for Payment, Monthly Application for Payments, Application for Payment at time of Substantial Completion, and final Application for Payment involve additional requirements.

B. Payment Application Times: The date for each progress payment is indicated in the Agreement between Owner and Contractor. The period of construction Work covered by each Application for Payment shall be the most recent thirty-days (30-days) unless specified and indicated in the Agreement.

C. Payment Application Forms: Use form(s) provided by Owner/Owner's Representative or approved format as form for Applications for Payment.

D. Application Preparation: Complete every entry on form. Notarize and execute by a person authorized to sign legal documents on behalf of Contractor.

Owner/Owner's Representative (Architect, Engineer, etc.) will return incomplete applications without action.

1. Entries shall match data on the Schedule of Values and Contractor's Construction Schedule. Use updated schedules if revisions were made.
2. Include amounts of Change Orders and Construction Change Directives issued before last day of construction period covered by application.

E. Transmittal: Submit 3 signed and notarized original copies of each Application for Payment to Owner/Owner's Representative (Architect, Engineer, etc.) by a method ensuring receipt within 24 hours. One copy shall include waivers of lien and similar attachments, if required, from all subcontractors, and sub-tier contractors.

1. Transmit each copy with a transmittal form listing attachments and recording appropriate information about application.

F. Waivers of Mechanic's Lien: With each Application for Payment, submit waivers of mechanic's lien from every entity who is lawfully entitled to file a mechanic's lien arising out of the Contract and related to the Work covered by the payment.

1. Submit partial waivers on each item for amount requested, before deduction for retainage, on each item.
2. When an application shows completion of an item, submit final or full waivers.
3. Owner/Owner's Representative reserves the right to designate which entities involved in the Work must submit waivers.

4. Waiver Delays: Submit each Application for Payment with Contractor's waiver of mechanic's lien for construction period covered by the application.

- a. Submit final Application for Payment with or preceded by final waivers from every entity involved with performance of the Work covered by the application who is lawfully entitled to a lien.

5. Waiver Forms: Submit waivers of lien on forms, executed in a manner acceptable to Owner or as provided by Owner.

G. Initial Application for Payment: Administrative actions and submittals that must precede or coincide with submittal of first Application for Payment include the following:

1. List of subcontractors.
2. Owner's document "Contractor's/Subcontractor's Affidavit of Release of Liens."
3. Schedule of Values.
4. Contractor's Construction Schedule (preliminary if not final).
5. Products list.
6. Submittals Schedule (preliminary if not final).
7. List of Contractor's staff assignments.
8. List of Contractor's principal consultants.
9. Copies of building permits, as applicable.
10. Copies of authorizations and licenses from authorities having jurisdiction for performance of the Work.
11. Report of preconstruction conference.
12. Certificates of insurance and insurance policies.

H. Application for Payment at Substantial Completion: After issuing the Certificate of Substantial Completion, submit an Application for Payment showing 90 percent completion for portion of the Work claimed as substantially complete.

1. Include documentation supporting claim that the Work is substantially complete and a statement showing an accounting of changes to the Contract Sum.

I. Final Payment Application: Submit final Application for Payment with final releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:

1. Evidence of completion of Project closeout requirements.

2. Insurance certificates for products and completed operations where required and proof that taxes, fees, and similar obligations were paid.

3. Updated final statement, accounting for final changes to the Contract Sum.

4. Owner's document - "Contractor's Affidavit of Payment of Debts and Claims."

5. Evidence that claims have been settled.

6. Final, liquidated damages settlement statement, as applicable.

## **SECTION 4 – PROJECT MANAGEMENT AND COORDINATION**

### **4.1 RELATED DOCUMENTS**

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Specification Sections, apply to this Section.

### **4.2 COORDINATION**

A. Coordination: Coordinate construction operations included in various Sections of the Specifications to ensure efficient and orderly installation of each part of the Work. Coordinate construction operations, included in different Sections, that depend on each other for proper installation, connection, and operation.

1. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.

2. Coordinate installation of different components with other contractors to ensure maximum accessibility for required maintenance, service, and repair.

3. Make adequate provisions to accommodate items scheduled for later installation.

B. If necessary, prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices, reports, and list of attendees at meetings.

1. Prepare similar memoranda for Owner and separate contractors if coordination of their Work is required.

C. Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other construction activities and activities of other

contractors to avoid conflicts and to ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:

1. Preparation of Contractor's Construction Schedule.
2. Preparation of the Schedule of Values.
3. Installation and removal of temporary facilities and controls.
4. Delivery and processing of submittals.
5. Progress meetings.
6. Preinstallation conferences.
7. Project closeout activities.

D. Conservation: Coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials.

1. Salvage materials and equipment involved in performance of, but not actually incorporated into, the Work.

E. Staff Names: Within 10 days of starting construction operations, submit a list of principal staff assignments, including superintendent and other personnel in attendance at Project site. Identify individuals and their duties and responsibilities; list telephone numbers, including mobile and office telephone numbers. Provide names, addresses, and telephone numbers of individuals assigned as standbys in the absence of individuals assigned to Project.

#### 4.3 PROJECT MEETINGS

A. General: Schedule and conduct meetings and conferences at Project site or other site designated by Owner/Owner's Representative.

1. Attendees: Inform participants and others involved, and individuals whose presence is required, of date and time of each meeting. Notify Owner and Owner's Representative of scheduled meeting dates and times.
2. Agenda: Prepare the meeting agenda. Distribute the agenda to all invited attendees.
3. Minutes: Record significant discussions and agreements achieved. Distribute the meeting minutes to everyone concerned, including Owner and Owner's Representative, within 3 days of the meeting.

B. Preconstruction Conference: Owner/Owner's Representative shall schedule a preconstruction conference before starting construction, at a time convenient to Owner/Owner's Representative (Architect, Engineer, etc.) but no later than 15 days after execution of the Agreement. Hold the conference at Project site or another convenient location. Conduct the meeting to review responsibilities and personnel assignments.

1. Attendees: Authorized Representatives of Owner/Owner's Representative (Architect, Engineer, etc.), and their consultants; Contractor and its superintendent; major subcontractors; manufacturers; suppliers; and other concerned parties shall attend the conference. All participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.

C. Preinstallation Conferences: Conduct a preinstallation conference at Project site before each construction activity that requires coordination with other construction.

1. Attendees: Installer and representatives of manufacturers and fabricators involved in or affected by the installation and its coordination or integration with other materials and installations that have preceded or will follow, shall attend the meeting. Advise Architect of scheduled meeting dates.
  2. Record significant conference discussions, agreements, and disagreements.
  3. Do not proceed with installation if the conference cannot be successfully concluded. Initiate whatever actions are necessary to resolve impediments to performance of the Work and reconvene the conference at earliest feasible date.
- D. Progress Meetings: Conduct progress meetings at weekly/bi-monthly/monthly intervals based upon Project completion schedule. Coordinate dates of meetings with preparation of payment requests.
1. Attendees: In addition to representatives of Owner, each contractor, subcontractor, supplier, and other entity concerned with current progress or involved in planning, coordination, or performance of future activities shall be represented at these meetings. All participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.

## **SECTION 5 – QUALITY REQUIREMENTS**

### **5.1 INDUSTRY STANDARDS**

- A. Applicability of Standards: Unless the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.
- B. Publication Dates: Comply with standards in effect as of the date of the Contract Documents, unless otherwise indicated.
- C. Conflicting Requirements: Where compliance with two or more standards is specified and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirement. Refer uncertainties and requirements that are different, but apparently equal, to Owner/Owner's Representative for a decision before proceeding.
1. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified shall be the minimum provided or performed. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. To comply with these requirements, indicated numeric values are minimum or maximum, as appropriate, for the context of the requirements. Refer uncertainties to Owner/Owner's Representative for a decision before proceeding.

D. Copies of Standards: Each entity engaged in construction on Project must be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents.

1. Where copies of standards are needed to perform a required construction activity, obtain copies directly from the publication source and make them available on request.

## 5.2 EQUIPMENT

A. General: Provide equipment suitable for use intended.

B. Self-Contained Toilet Units: Single-occupant units of chemical, aerated recirculation, or combustion type; vented; fully enclosed with a glass-fiber-reinforced polyester shell or similar nonabsorbent material.

C. Drinking-Water Fixtures: Containerized, tap-dispenser, bottled-water drinking-water units, including paper cup supply.

## 5.3 SECURITY AND PROTECTION FACILITIES INSTALLATION

A. Environmental Protection: Provide protection, operate temporary facilities, and conduct construction in ways and by methods that comply with environmental regulations and that minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects. Avoid using tools and equipment that produce harmful noise. Restrict use of noisemaking tools and equipment to hours that will minimize complaints from persons or firms near Project site.

B. Stormwater Control: Protect the existing storm water inlets and conduct construction in ways and methods to avoid and prevent possible waterway contamination or pollution.

## **SECTION 6 - PRODUCT REQUIREMENTS**

### 6.1 – GENERAL

A. Products: Items purchased for incorporating into the Work, whether purchased for Project or taken from previously purchased stock. The term "product" includes the terms "material," "equipment," "system," and terms of similar intent.

1. New Products: Items that have not previously been incorporated into another project or facility, except that products consisting of recycled-content materials are allowed, unless explicitly stated otherwise. Products salvaged or recycled from other projects are not considered new products.

2. Named Products: Items identified by manufacturer's product name, including make or model number or other designation, shown or listed in manufacturer's published product literature that is current as of date of the Contract Documents.

3. Comparable Product: Product that is demonstrated and approved through submittal process, or where indicated as a product substitution, to have the indicated qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics that equal or exceed those of specified product.

B. Substitution Requests: Submit three copies of each request for consideration. Identify product or fabrication or installation method to be replaced. Include Specification Section number and title and Drawing numbers and titles.

## 6.2 QUALITY ASSURANCE

A. Compatibility of Options: If Contractor is given option of selecting between two or more products for use on Project, product selected shall be compatible with products previously selected, even if previously selected products were also options.

## 6.3 PRODUCT WARRANTIES

Definitions:

Manufacturer's Warranty: Preprinted written warranty published by individual manufacturer for a particular product and specifically endorsed by manufacturer to Owner.

A. Warranties specified in other Sections shall be in addition to, and run concurrent with, other warranties required by the Contract Documents. Manufacturer's disclaimers and limitations on product warranties do not relieve Contractor of obligations under requirements of the Contract Documents.

B. Special Warranties: Prepare a written document that contains appropriate terms and identification, ready for execution. Submit a draft for approval before final execution.

1. Manufacturer's Standard Form: Modified to include Project-specific information and properly executed.

## 6.4 COMPARABLE PRODUCTS

A. Where products or manufacturers are specified by name a substitute "equal" can be used by submitting the following, in addition to other required submittals, to obtain approval of another product:

1. Evidence that the proposed product does not require extensive revisions to the Contract Documents, that it is consistent with the Contract Documents and will produce the indicated results, and that it is compatible with other portions of the Work.
2. Detailed comparison of significant qualities of proposed product with those named in the Specifications. Significant qualities include attributes such as performance, weight, size, durability, visual effect, and specific features and requirements indicated.
3. Evidence that proposed product provides specified warranty.
4. List of similar installations for completed projects with project names and addresses and names and addresses of architects and owners, if requested.
5. Samples, if requested.

## 6.5 EXECUTION REQUIREMENTS

This Section includes general procedural requirements governing execution of the Work.

A. Existing Conditions: The existence and location of site improvements, utilities, and other construction indicated as existing are not guaranteed. Before beginning work, investigate and verify the existence and location of mechanical and electrical systems and other construction affecting the Work.

1. Before construction, verify the location and points of connection of utility services as needed for construction.

B. Acceptance of Conditions: Examine substrates, areas, and conditions, with Installer or Applicator present where indicated, for compliance with requirements for installation tolerances and other conditions affecting performance.

Proceed with installation only after unsatisfactory conditions have been corrected. Proceeding with the Work indicates acceptance of surfaces and conditions.

## 6.6 PREPARATION

A. Field Measurements: Take field measurements as required to fit the Work properly.

Recheck measurements before installing each product. Where portions of the Work are indicated to fit to other construction, verify dimensions of other construction by field measurements before fabrication. Coordinate fabrication schedule with construction progress to avoid delaying the Work.

B. Space Requirements: Verify space requirements and dimensions of items shown diagrammatically to those items to be installed.

C. Review of Contract Documents and Field Conditions: Immediately on discovery of the need for clarification of the Contract Documents, submit a request for information to owner's representative. Include a detailed description of problem encountered, together with recommendations for changing the Contract Documents.

## 6.7 CONSTRUCTION LAYOUT

A. Verification: Before proceeding to lay out the Work, verify layout information shown in Drawings, in relation to the property, survey, and other existing benchmarks. If discrepancies are discovered, notify owner's representative promptly.

B. Comply with manufacturer's written instructions and recommendations for installing products in applications indicated.

C. Install products at the time and under conditions that will ensure the best possible results. Maintain conditions required for product performance until Substantial Completion.

D. Conduct construction operations so no part of the Work is subjected to damaging operations or loading in excess of that expected during normal conditions of occupancy.

E. Tools and Equipment: Do not use tools or equipment that produce harmful noise levels.

F. Anchors and Fasteners: Provide anchors and fasteners as required to anchor each component securely in place, accurately located and aligned with other portions of the Work.

G. Joints: Make joints of uniform width. Where joint locations in exposed work are not indicated, arrange joints for the best visual effect. Fit exposed connections together to form hairline joints.

H. Hazardous Materials: Use products, cleaners, and installation materials that are not considered hazardous.

## 6.8 PROGRESS CLEANING

A. General: Clean Project site and work areas daily, including common areas. Coordinate progress cleaning for joint-use areas where more than one installer has worked. Enforce requirements strictly. Dispose of materials lawfully.

B. Site: Maintain Project site free of waste materials and debris.

C. Work Areas: Clean areas where work is in progress to the level of cleanliness necessary for proper execution of the Work.

D. Installed Work: Keep installed work clean. Clean installed surfaces according to written instructions of manufacturer or fabricator of product installed, using only cleaning materials specifically recommended. If specific cleaning materials are not recommended, use cleaning materials that are not hazardous to health or property and that will not damage exposed surfaces.

H. Waste Disposal: Burying or burning waste materials on-site will not be permitted. **Washing waste materials into sewers or into waterways will not be permitted.**

I. During handling and installation, clean and protect construction in progress and adjoining materials already in place. Apply protective covering where required to ensure protection from damage or deterioration at Substantial Completion.

J. Clean and provide maintenance on completed construction as frequently as necessary through the remainder of the construction period.

K. Limiting Exposures: Supervise construction operations to assure that no part of the construction, completed or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period.

## 6.9 PROTECTION OF INSTALLED CONSTRUCTION

A. Provide final protection and maintain conditions that ensure installed Work is without damage or deterioration at time of Substantial Completion.

B. Comply with manufacturer's written instructions for temperature and relative conditions.

## 6.10 CORRECTION OF THE WORK

A. Repair or remove and replace defective construction. Restore damaged components and finishes.

1. Repairing includes replacing defective parts, refinishing damaged surfaces, touching up with matching materials, and properly adjusting operating equipment.

2. Restore permanent facilities used during construction to their specified condition.

## SECTION 7 - CLOSEOUT PROCEDURES

This Section includes administrative and procedural requirements for contract closeout.

## 7.1 SUBSTANTIAL COMPLETION

A. Preliminary Procedures: Before requesting inspection for determining date of Substantial Completion, complete the following. List items below that are incomplete in request.

1. Prepare a list of items to be completed and corrected (punch list), the value of items on the list, and reasons why the Work is not complete.
2. Advise Owner of pending insurance changeover requirements.
3. Submit specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents.
4. Obtain and submit releases permitting Owner unrestricted use of the Work and access to project site.
5. Deliver tools, spare parts, extra materials, and similar items to location designated by Owner. Label with manufacturer's name and model number where applicable.
6. Advise Owner's personnel of changeover in security provisions.
7. Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.
8. Submit changeover information related to Owner's occupancy, use, operation, and maintenance, as applicable.
9. Complete final cleaning requirements, including touchup painting.
10. Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.

B. Inspection: Submit a written request for inspection for Substantial Completion. On receipt of request, owner's representative will either proceed with inspection or notify Contractor of unfulfilled requirements. Owner's representative will conduct an inspection or will notify Contractor of items, either on Contractor's list or additional items identified by owner's representative, that must be completed or corrected before a statement of substantial completion will be issued.

1. Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.
2. Results of completed inspection will form the basis of requirements for Final Completion.

## 7.2 FINAL COMPLETION

A. Preliminary Procedures: Before requesting final inspection for determining date of Final Completion, complete the following:

1. Submit a final Application for Payment (retainage held).
2. Submit certified copy of statement of Substantial Completion and inspection list of items to be completed or corrected (punch list), endorsed and dated by owner's representative.

The certified copy of the list shall state that each item has been completed or otherwise resolved for acceptance.

3. Submit evidence of final, continuing insurance coverage complying with insurance requirements.

4. Instruct Owner's personnel in operation, adjustment, and maintenance of products, equipment, and systems, as applicable.
- B. Inspection: Submit a written request for final inspection for acceptance. On receipt of request, Architect will either proceed with inspection or notify Contractor of unfulfilled requirements. Architect will prepare a final Certificate for Payment after inspection or will notify Contractor of construction that must be completed or corrected before certificate will be issued.
  1. Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

### 7.3 OPERATION AND MAINTENANCE MANUALS (as applicable)

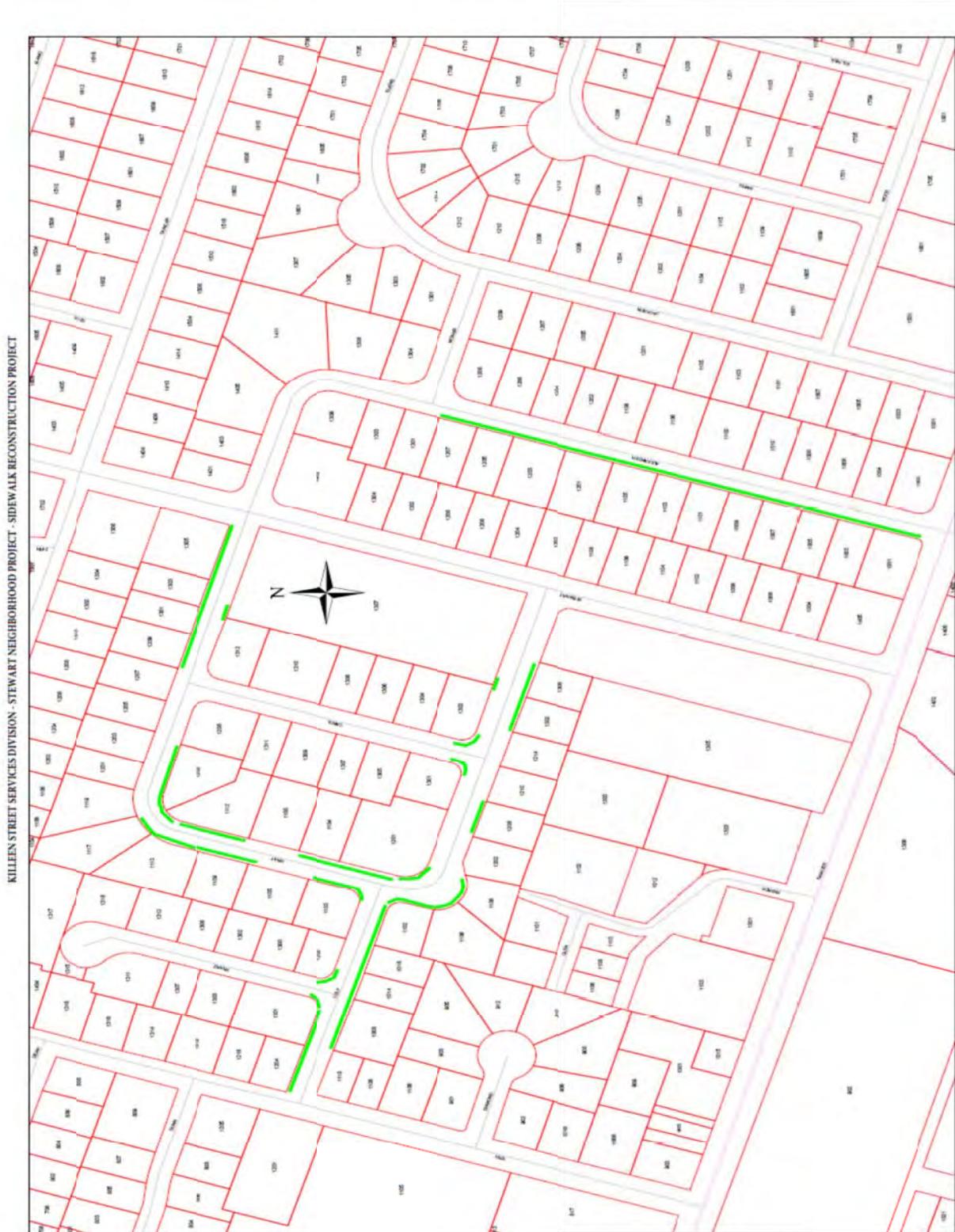
- A. Assemble three (3) sets of operation and maintenance data indicating the operation and maintenance of each system, subsystem, and piece of equipment not part of a system.
- B. Organize operation and maintenance manuals into suitable sets of manageable size.
  1. Bind and index data in heavy-duty, 3-ring, vinyl-covered, loose-leaf binders, in thickness necessary to accommodate contents, with pocket inside the covers to receive folded oversized sheets. Identify each binder on front and spine with the printed title "OPERATION AND MAINTENANCE MANUAL," Project name, and subject matter of contents.
- C. Organize warranty documents into an orderly sequence based on the table of contents of the Project Manual.
  1. Bind warranties and bonds in heavy-duty, 3-ring, vinyl-covered, loose-leaf binders, thickness as necessary to accommodate contents, and sized to receive 8-1/2-by-11-inch paper.

## SECTION 8 – LINE ITEM LIST

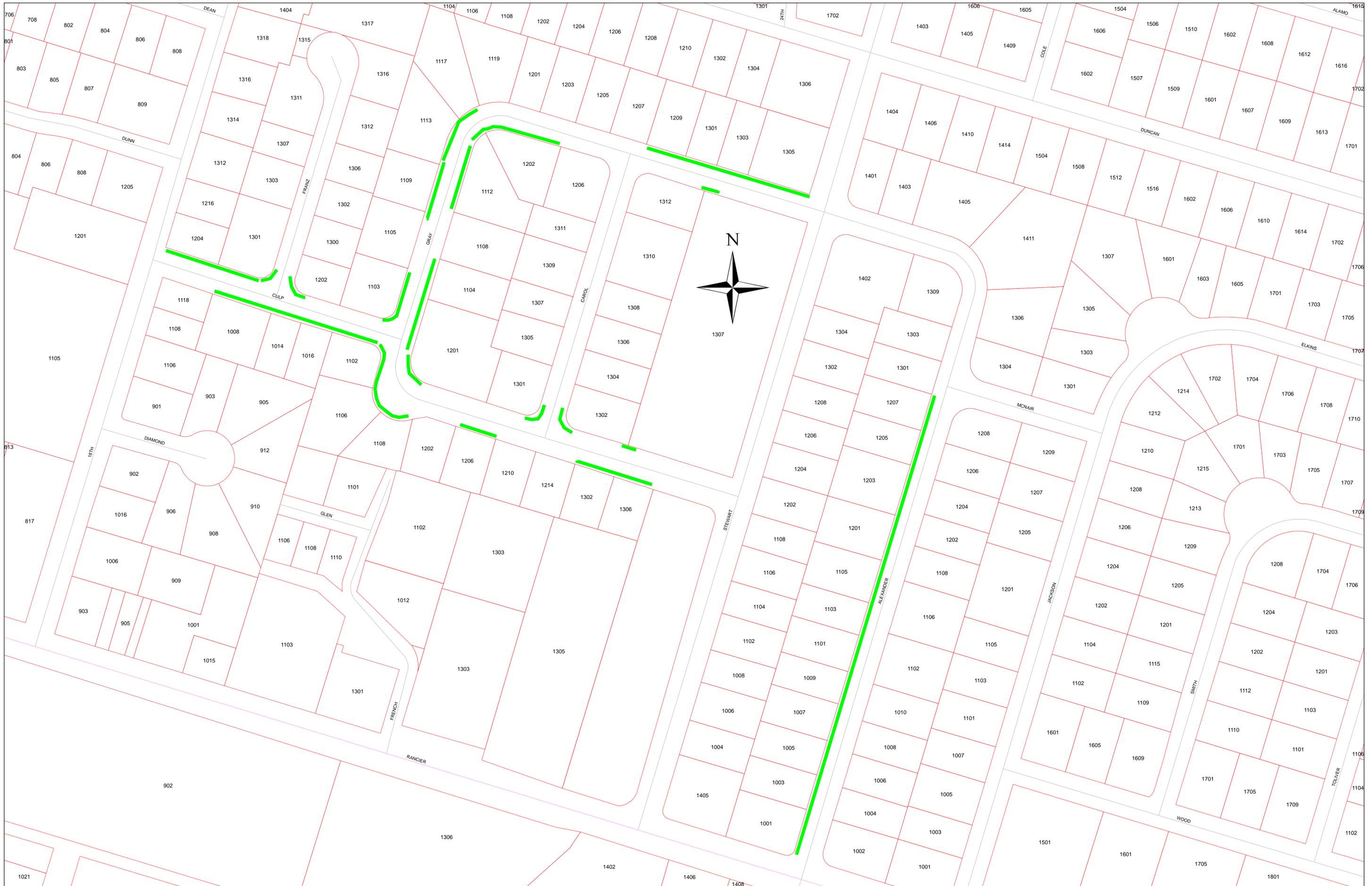
BID #17-01	Stewart Neighborhood Project-Phase 3 (Sidewalk Reconstruction)				
Item	LINEITEM LIST - DESCRIPTION				
Mob	Mobilization				
DESCRIPTION	Sidewalk <small>demo/remove/replace</small>	Driveway Approach <small>demo/remove/replace</small>	ADA Ramp <small>demo/remove/replace</small>	Tree <small>tree &amp; root removal 1'-0" below finish grade</small>	
LINE ITEM	Unit Identification- /General Location (Address)	Est. SY	Est. SY	ADA Ramp	Each
<b>1-ALEXANDER STREET</b>					
1	22-1207	67	14	N/A	0
2	23-1205	65	15	N/A	0
3	24-1203	97	17	N/A	0
4	25-1201	83	0	N/A	3
5	26-1105	82	15	N/A	1
6	27-1103	66	15	N/A	0
7	28-1101	67	15	N/A	0
8	29-1009	65	15	N/A	1
9	30-1007	67	15	N/A	0
10	31-1005	66	0	N/A	0
11	32-1003	66	16	N/A	1
12	33-1001	45	16	TYPE 7	1
13	2-15-City Park at Gray Drive	0	0	TYPE 7	0
14	3-16-City Park at Culp Ave.	0	0	TYPE 7	0
<b>4-GRAY DRIVE</b>					
15	1-1305	16	15	N/A	1
16	2-1303	29	16	N/A	0
17	3-1301	29	16	N/A	1
18	4-1209	30	16	N/A	1
19	5-1117	18	0	N/A	0
20	6-1113	14	0	N/A	1
21	7-1109	35	21	N/A	1
22	8-1103	0	0	TYPE 7	0
23	9-1201	45	20	TYPE 7	0
24	10-1104	38	15	N/A	1
25	11-1112	68	18	N/A	2
26	12-1202	22	0	TYPE 7	0
27	13-1206	39	23	TYPE 7	1
28	14-Gray /Carol	50	0	TYPE 7	1
<b>5-CULP AVENUE</b>					
29	24-1306	36	31	N/A	0
32	23-1302	19	0	N/A	0
33	22-1206	28	31	N/A	0
34	17-Culp/Carol	36	0	TYPE 7	2
35	18-Culp/Carol	65	0	TYPE 7	2
36	22-1206	28	31	N/A	0
37	21-1108	31	25	N/A	0
38	20-1106	0	35	N/A	0
39	19-1102	75	26	TYPE 7	3
<b>6-FRANZ DRIVE</b>					
40	30-Franz/Culp	44	0	TYPE 7	0
41	31-Franz/Culp	0	0	TYPE 7	0
42	32-Franz to 18th	86	71	TYPE 7	1
43	33-18th to Franz	48	0	TYPE 7	0
44	34-1008	50	17	N/A	1
45	35-1014	14	18	N/A	0
46	36-1016	25	15	N/A	2
Total		1854	613	15	28

## SECTION 9 – LOCATION MAP

Project location indicated by “green” line  
See large map sheet for specific location detail



KILLEEN STREET SERVICES DIVISION - STEWART NEIGHBORHOOD PROJECT - SIDEWALK RECONSTRUCTION PROJECT



## SECTION 10 – CONSTRUCTION STANDARDS AND DETAILS

### 1.0 PEDESTRIAN SIDEWALK WIDTHS, RAMPS GENERAL NOTES

#### 1.01 RESIDENTIAL SIDEWALK WIDTHS

1. Contracts associated with Reconstruction, Residential Sidewalk Widths shall not exceed the width of the existing sidewalk, drivewalks, driveways, etc. in the location of the prescribed work.

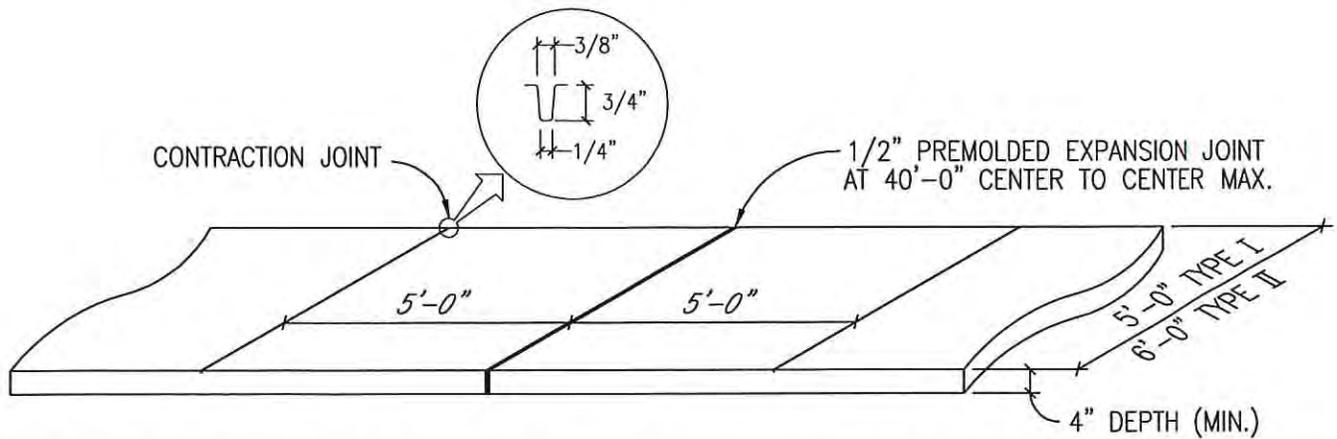
#### 1.02 TRUNCATED DOMED SURFACES

1. Use of Armor-Tile™ Cast in Place tactile walking surface systems, 24” x 48” will replace use of pavers with truncated domed surfaces.  
(See attached Armor-Tile detail sheet)
2. Face finish - Contractor is responsible for coordinating face finish with Owner prior to ordering materials.

**City of Killeen  
Department of Public Works**

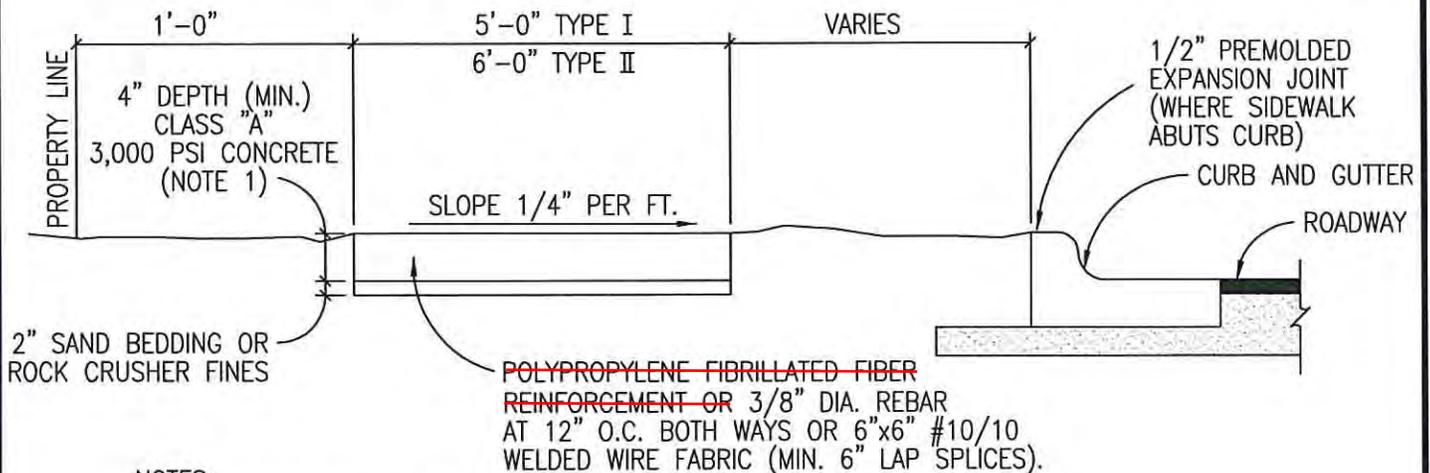
**Construction Standards and Details**

**Detail Sheets  
DS1- DS 20**



TYPE I - FOR USE WHEN SIDEWALK IS PLACED 2' OR MORE FROM THE BACK OF CURB.

TYPE II - FOR USE WHEN SIDEWALK IS PLACED ADJACENT TO THE BACK OF CURB.



NOTES:

1. FOR ROLLER STAMPED SIDEWALK: MATCH TO SPECIFICATIONS.
2. STANDARD LOCATION OF SIDEWALK IS OFF BACK OF CURB. SPECIAL DESIGNS MAY BE APPROVED BY THE CITY ENGINEER, PRIOR TO FINAL DESIGN.
3. SIDEWALK SHALL CONFORM TO CURRENT AMERICANS WITH DISABILITIES ACT STANDARDS.
4. FOR PROJECTS IN WHICH PEDESTRIAN COMPONENTS (SIDEWALKS, HANDICAP RAMPS, ETC.) TOTAL CONSTRUCTION COST \$50,000 OR MORE, CONSTRUCTION PLANS SHALL BE SUBMITTED AND APPROVED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION BY THE ENGINEER OF RECORD.
5. ANY VARIANCE IN TEXTURE, GRADE OR ALIGNMENT MUST BE APPROVED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION.
6. ALL CONCRETE SURFACES SHALL RECEIVE A LIGHT BROOM FINISH UNLESS NOTED OTHERWISE IN THE PLANS.

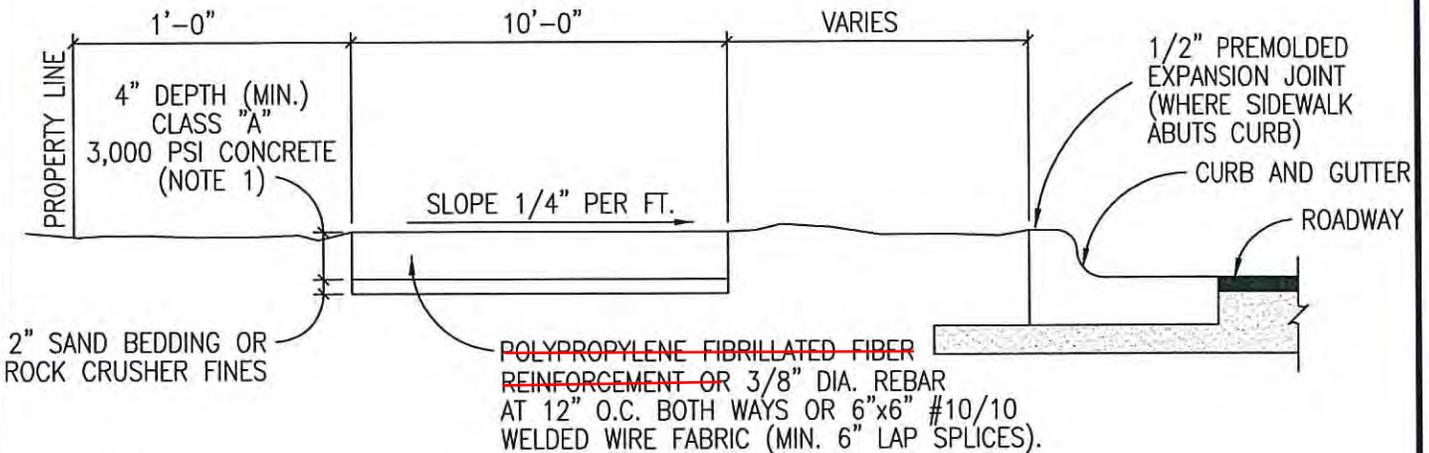
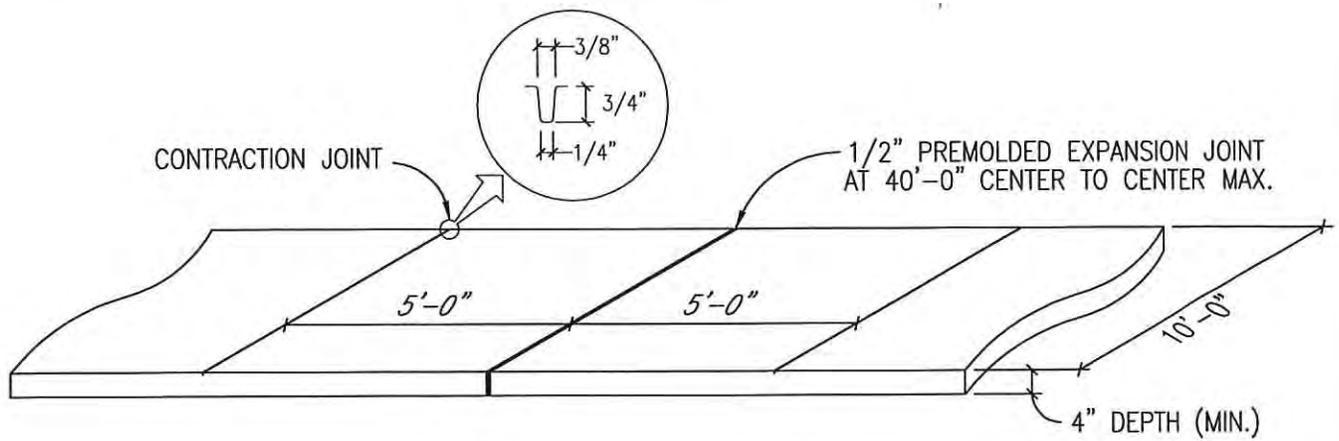
**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

**SIDEWALK SECTION**  
**STANDARD**

CONSTRUCTION STANDARDS AND DETAILS



T-14  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



NOTES:

1. FOR ROLLER STAMPED HIKE AND BIKE: MATCH TO SPECIFICATIONS.
2. STANDARD LOCATION OF HIKE AND BIKE IS OFF BACK OF CURB. SPECIAL DESIGNS MAY BE APPROVED BY THE CITY ENGINEER, PRIOR TO FINAL DESIGN.
3. HIKE AND BIKE SHALL CONFORM TO CURRENT AMERICANS WITH DISABILITIES ACT STANDARDS.
4. FOR PROJECTS IN WHICH PEDESTRIAN COMPONENTS (SIDEWALKS, HANDICAP RAMPS, ETC.) TOTAL CONSTRUCTION COST \$50,000 OR MORE, CONSTRUCTION PLANS SHALL BE SUBMITTED AND APPROVED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION BY THE ENGINEER OF RECORD.
5. ANY VARIANCE IN TEXTURE, GRADE OR ALIGNMENT MUST BE APPROVED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION.
6. ALL CONCRETE SURFACES SHALL RECEIVE A LIGHT BROOM FINISH UNLESS NOTED OTHERWISE IN THE PLANS.

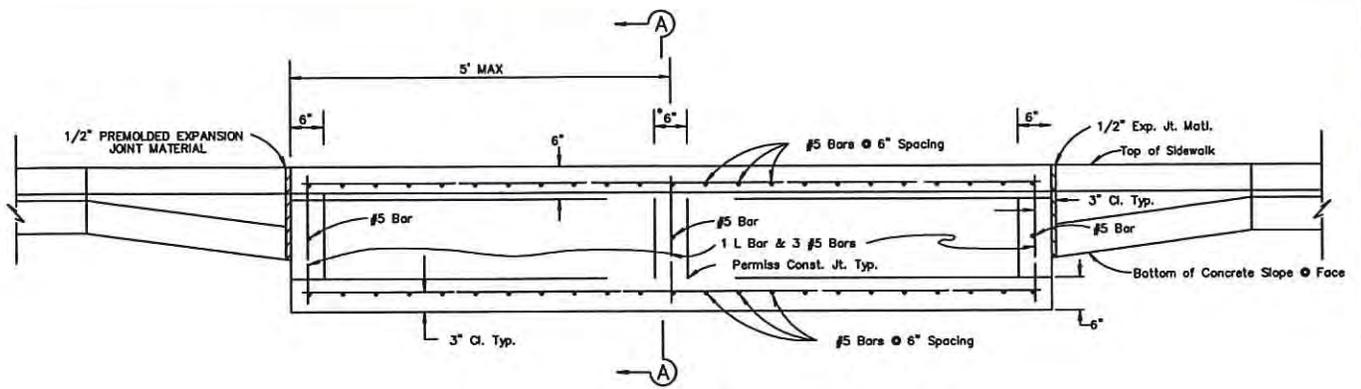
CITY OF KILLEEN  
 DEPARTMENT OF PUBLIC WORKS

HIKE AND BIKE  
 SECTION DETAIL

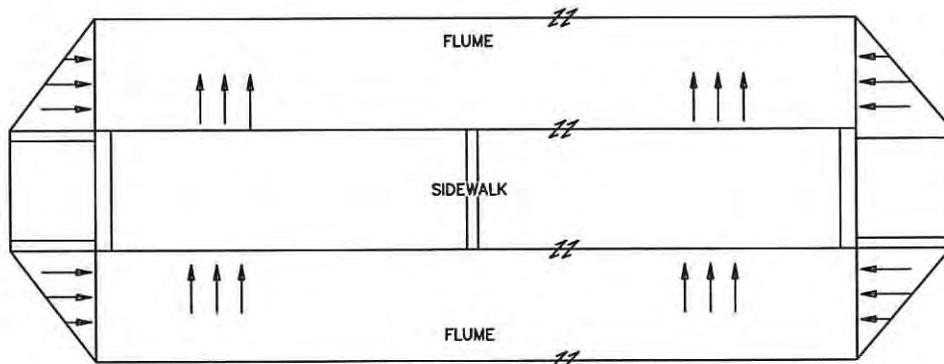
CONSTRUCTION STANDARDS AND DETAILS



T-15  
 SCALE: N.T.S.  
 ISSUE DATE: 03-12-13



SECTION A-A



PLAN VIEW

NOTE:

1. CONCRETE SHALL BE CLASS "A" 3,000 PSI COMPRESSIVE STRENGTH AT 28 DAYS.
2. REINFORCEMENT STEEL SHALL CONFORM TO ASTM A 615, GRADE 60.
3. ALL CONCRETE SURFACES SHALL RECEIVE A LIGHT BROOM FINISH UNLESS OTHERWISE SPECIFIED IN THE PLANS.

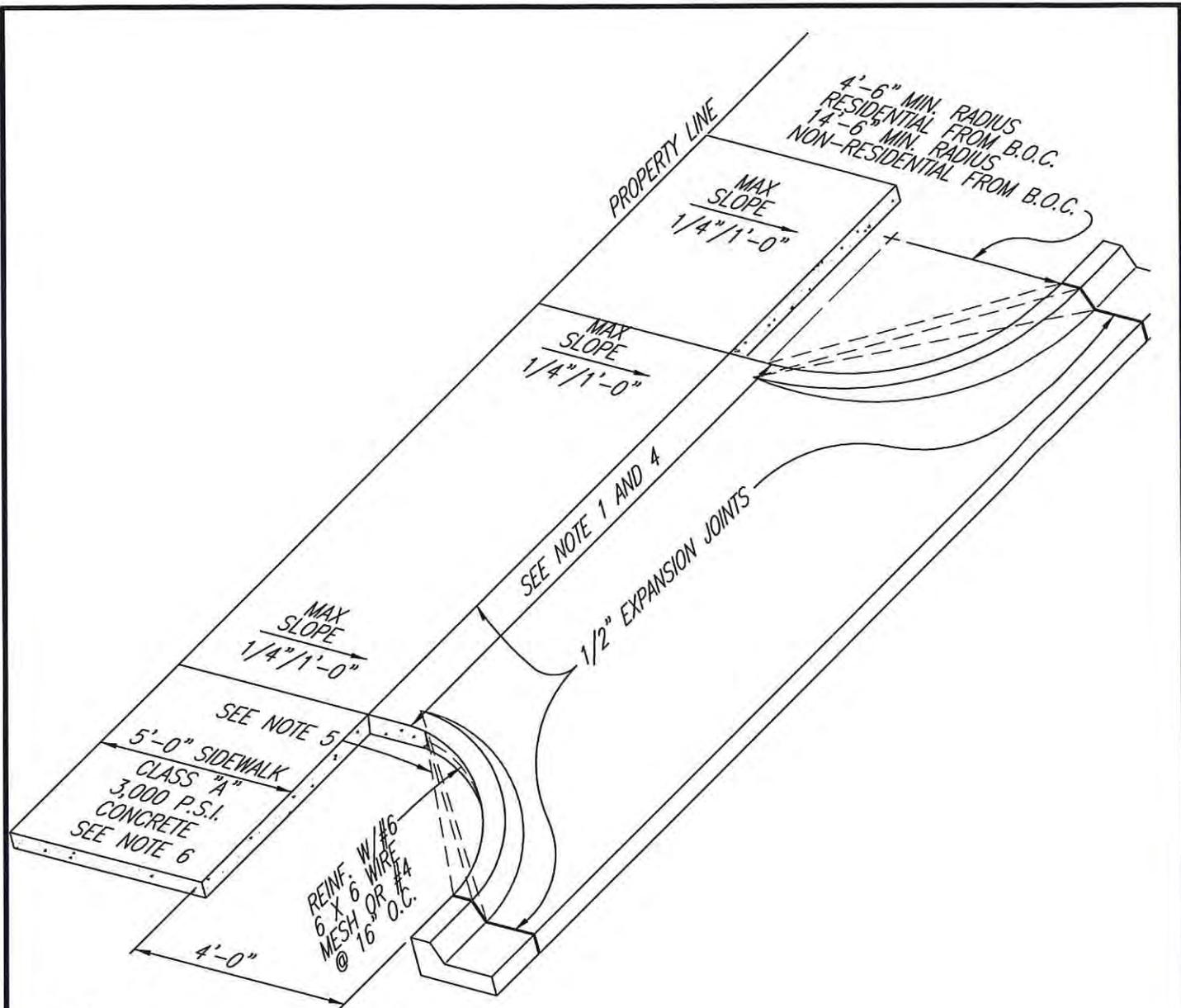
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

FREESPAN SIDEWALK  
SECTIONS

CONSTRUCTION STANDARDS AND DETAILS



T-16  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



NOTES:

1. DRIVEWAY PERMITS TO BE ACQUIRED FROM CITY HALL.
2. SPACING OF DRIVEWAY CUTS SHALL BE AS REQUIRED BY THE CITY ENGINEER.
3. LINEAR "RADIUS" AT CORNERS, PERMITTED FOR "SINGLE FAMILY" OR "TWO FAMILY" RESIDENTIAL DRIVEWAY APPROACH.
4. SIDEWALK LOCATION TO BE APPROVED BY CITY ENGINEER PRIOR TO FINAL DESIGN. SIDEWALK WIDTH SHALL BE DETERMINED BY BUILDING PERMIT.
5. SIDEWALK TO BE CONSTRUCTED PER DETAILS T-14 OR T-15, AS APPLICABLE.

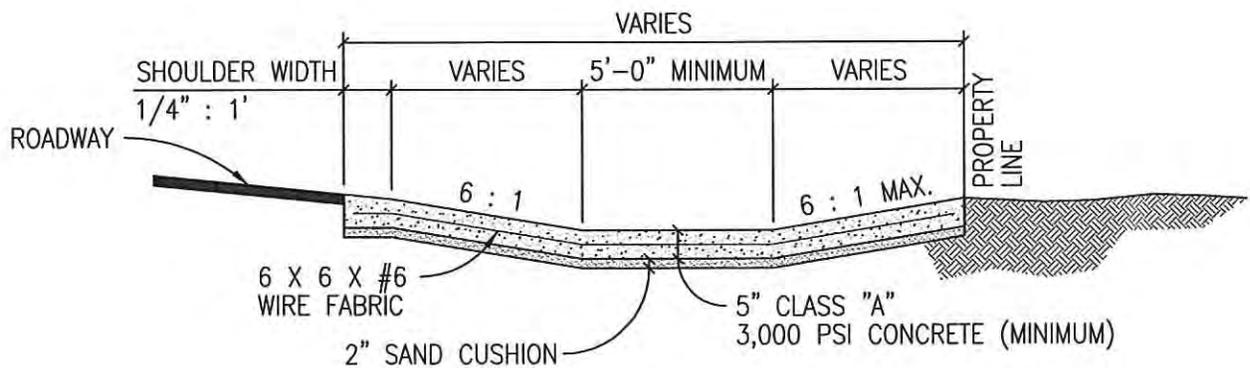
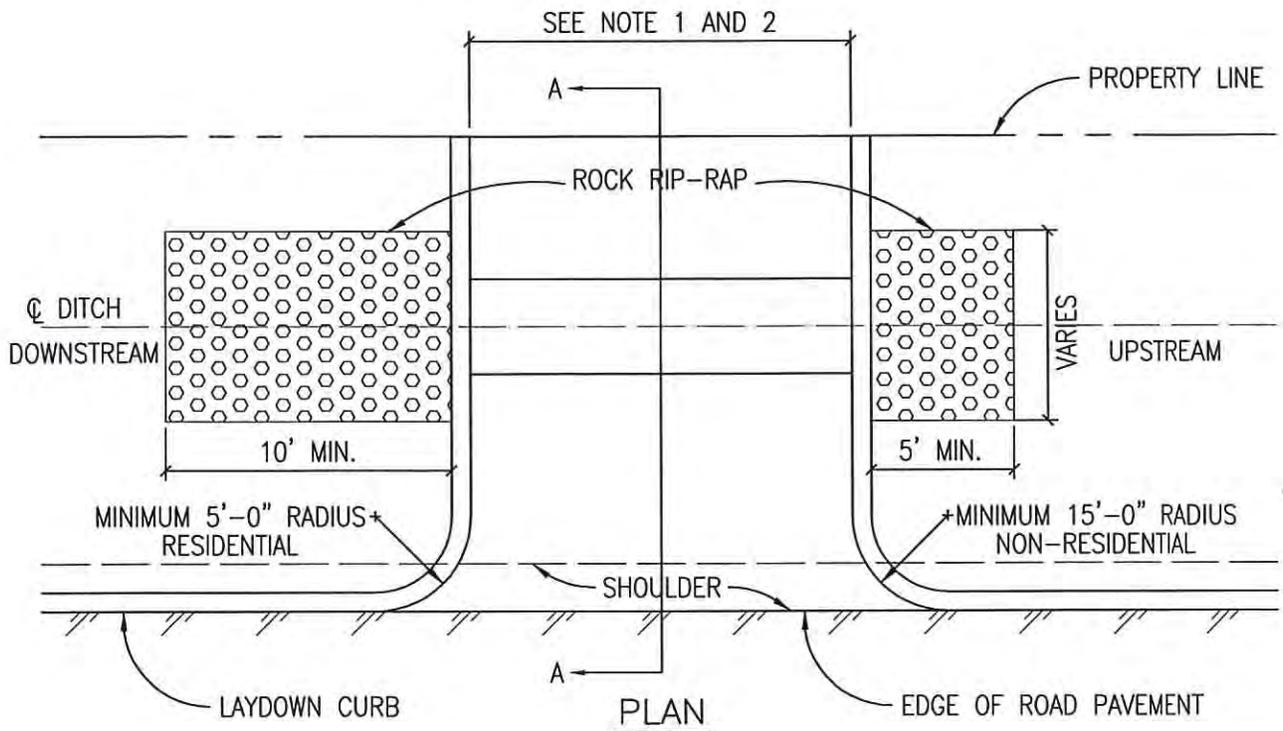
**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

CONCRETE DRIVEWAY APPROACH  
TYPICAL

CONSTRUCTION STANDARDS AND DETAILS



T-17  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



NOTES:

1. ROCK RIP-RAP SHALL EXTEND 10' MINIMUM FROM THE DOWN STREAM SIDE AND 5' MINIMUM FROM THE UPSTREAM SIDE USING THE AVERAGE STONE SIZE, AS DETERMINED BY THE ENGINEER.
2. MINIMUM CHANNEL SIDE SLOPE SHALL BE 4:1.

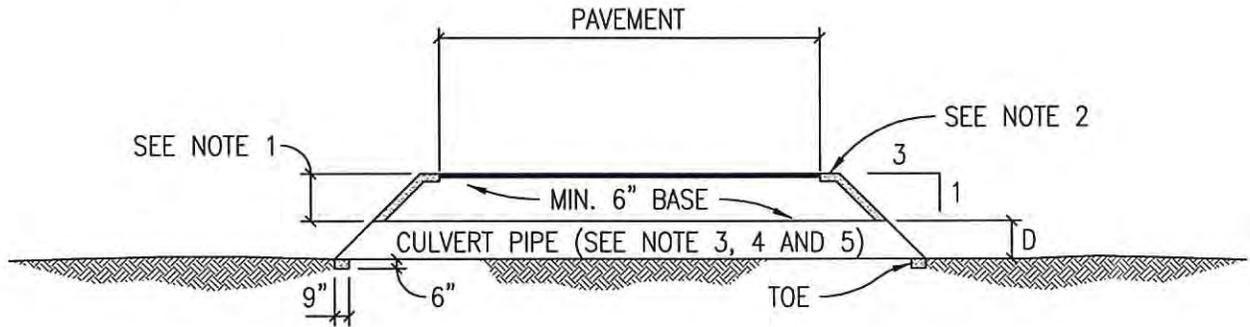
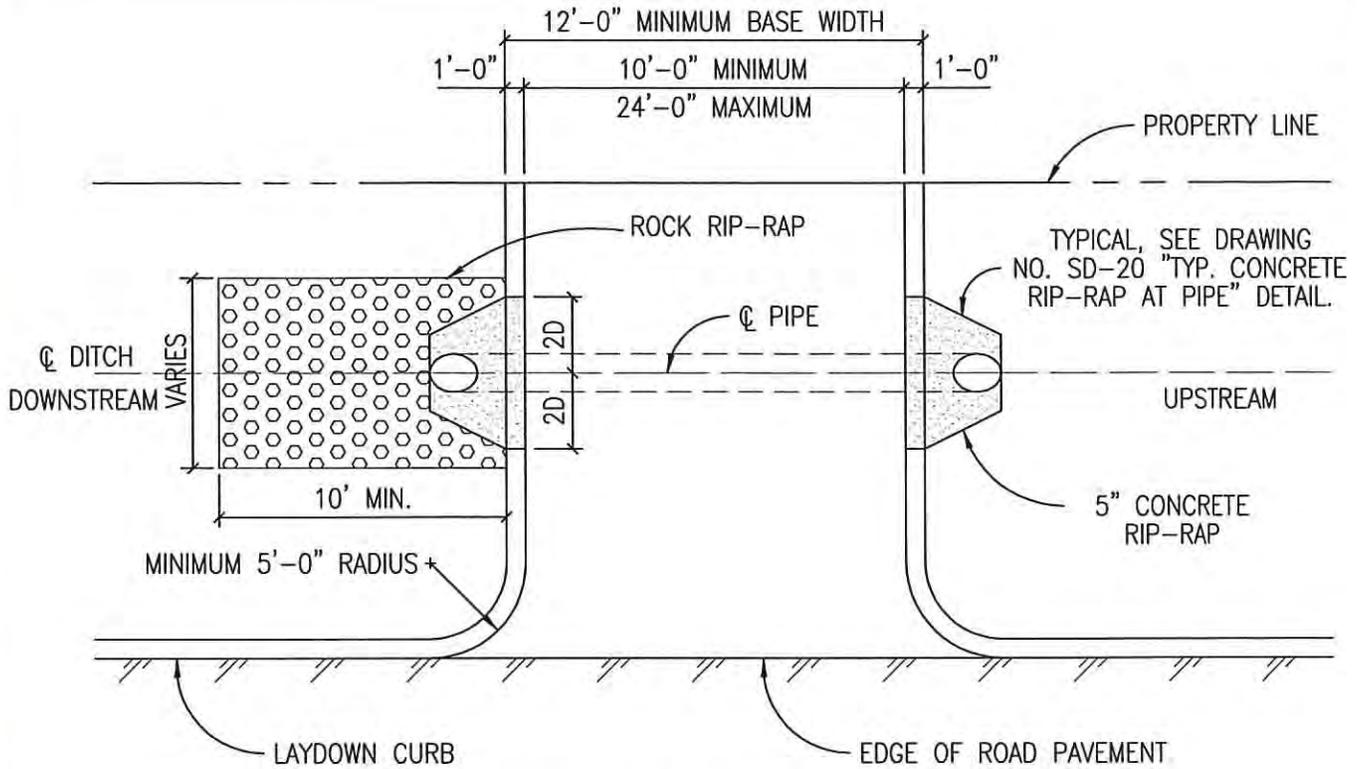
**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

**CONCRETE DIP**  
**DRIVEWAY APPROACH**

CONSTRUCTION STANDARDS AND DETAILS



T-18  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



NOTES:

1. MINIMUM COVER OVER CULVERT PIPE SHALL BE 6" (SEE NOTE 5).
2. 5" CONCRETE RIP-RAP SHALL BE INSTALLED.
3. CULVERT PIPE TO BE MINIMUM OF 18" DIAMETER.
4. CULVERT PIPE MATERIAL TO BE CMP/R.C.P. (CLASS IV), UNLESS PRIOR APPROVAL IS GRANTED BY THE CITY OF KILLEEN.
5. MINIMUM COVER OVER CULVERT PIPE SHALL PROVIDE H<sub>2</sub>O LOADING.
6. BACKFILL AROUND CULVERT PIPE SHALL BE SELECT MATERIAL TO BE PLACED AND COMPACTED TO 95% TEX-114E.
7. RIP-RAP SHALL EXTEND 10' FROM THE DOWN STREAM SIDE USING THE NOMINAL STONE SIZE AS DETERMINED BY THE ENGINEER.
8. MINIMUM CHANNEL SIDE SLOPE SHALL BE 4:1.

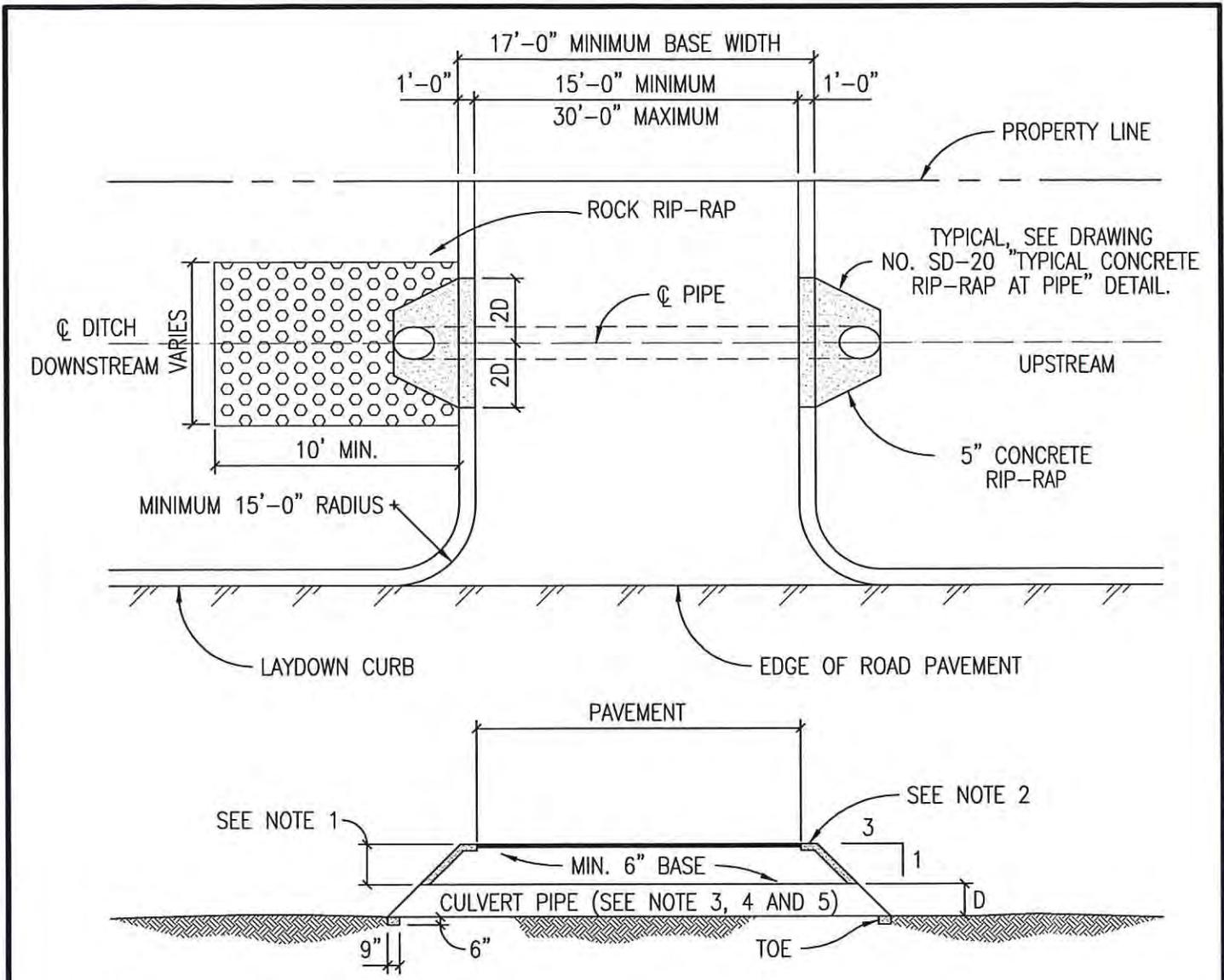
**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

**RURAL RESIDENTIAL DRIVEWAY APPROACH  
WITH CULVERT PIPE**

CONSTRUCTION STANDARDS AND DETAILS



T-19  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



**NOTES:**

1. MINIMUM COVER OVER CULVERT PIPE SHALL BE 6" (SEE NOTE 5).
2. 5" CONCRETE RIP-RAP SHALL BE INSTALLED.
3. CULVERT PIPE TO BE MINIMUM OF 18" DIAMETER.
4. CULVERT PIPE MATERIAL TO BE CMP/R.C.P. (CLASS IV), UNLESS PRIOR APPROVAL IS GRANTED BY THE CITY OF KILLEEN. CLASS III RCP MAY BE USED WHERE A MINIMUM OF 12" OF BASE IS PLACED.
5. MINIMUM COVER OVER CULVERT PIPE SHALL PROVIDE H2O LOADING.
6. BACKFILL AROUND CULVERT PIPE SHALL BE SELECT MATERIAL TO BE PLACED AND COMPACTED TO 95% TEX-114E.
7. ROCK RIP-RAP SHALL EXTEND 10' FROM THE DOWN STREAM SIDE USING THE AVERAGE STONE SIZE DIA. OF 8" AT A DEPTH OF 16" (MINIMUM).
8. MINIMUM CHANNEL SIDE SLOPE SHALL BE 4:1.

**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

**RURAL NON-RESIDENTIAL UNDIVIDED DRIVEWAY  
APPROACH WITH CULVERT PIPE**

CONSTRUCTION STANDARDS AND DETAILS



T-20  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13

NOTES:

1. COMMERCIAL SIDEWALK WIDTHS – 6'  
RESIDENTIAL SIDEWALK WIDTHS – 5'
2. ALL SLOPES ARE MAXIMUM ALLOWABLE. FLATTER SLOPES THAT WILL STILL DRAIN PROPERLY ARE ENCOURAGED.
3. ALL CONCRETE SURFACES SHALL RECEIVE A LIGHT BROOM FINISH UNLESS NOTED OTHERWISE IN THE PLANS.
4. FOR PURPOSES OF WARNING, THE CURB RAMPS SHALL HAVE A LIGHT REFLECTIVE VALUE AND TEXTURE THAT SIGNIFICANTLY CONTRASTS WITH THAT OF ADJOINING PEDESTRIAN ROUTES.
5. TEXTURES MAY CONSIST OF PAVERS WITH TRUNCATED DOMED SURFACES. TEXTURES ARE REQUIRED TO BE DETECTABLE UNDERFOOT. SURFACES THAT WOULD ALLOW WATER TO ACCUMULATE ARE PROHIBITED. TEXTURES SHALL BE AT LEAST 2- FEET IN LENGTH IN THE DIRECTION OF THE RAMP AND COVER THE WIDTH OF THE RAMP.
6. COLOR CONTRAST, FOR EXAMPLE, CAN BE ACCOMPLISHED WITH COLORED CONCRETE PAVERS THAT HAVE TRUNCATED DOMES WHICH WOULD PROVIDE A CONTRAST WITH TYPICALLY LIGHT COLORED CONCRETE.
7. ADDITIONAL INFORMATION ON CURB RAMP LOCATION, DESIGN, VISIBILITY AND TEXTURE MAY BE FOUND IN THE CURRENT EDITION OF THE TEXAS ACCESSIBILITY STANDARDS (TAS) PREPARED AND ADMINISTERED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION (TDLR).
8. RAISED MEDIANS SEPARATE OPPOSING DIRECTIONS OF TRAFFIC AND PROVIDE A REFUGE AREA FOR PEDESTRIANS IF THEY ARE UNABLE TO CROSS THE ENTIRE ROADWAY IN THE ALLOTTED SIGNAL PHASE. TO SERVE AS A REFUGE AREA, THE MEDIAN SHOULD BE A MINIMUM OF 6 FEET WIDE. MEDIANS SHOULD BE DESIGNED TO PROVIDE ACCESSIBLE PASSAGE OVER OR THROUGH THEM.
9. ALL SIDEWALK PLANS AND DETAILS SHALL BE SUBMITTED TO AND APPROVED BY THE TEXAS DEPARTMENT OF LICENSING AND REGULATION (TDLR).
10. ANY PART OF THE ACCESSIBLE ROUTE WITH A SLOPE GREATER THAN 1:20 (5%) SHALL BE CONSIDERED A RAMP. IF A RAMP HAS A RISE GREATER THAN 6 INCHES OR A HORIZONTAL PROJECTION GREATER THAN 72 INCHES, THEN IT SHALL HAVE HANDRAILS ON BOTH SIDES. THE ONLY EXCEPTION IS AT CURB RAMPS. HANDRAILS ARE NOT REQUIRED ON CURB RAMPS. CURB RAMPS SHALL BE PROVIDED WHEREVER AN ACCESSIBLE ROUTE CROSSES (PENETRATES) A CURB. CURB RAMPS ARE GENERALLY INTERPRETED AS ONLY THE PORTION TYING DIRECTLY INTO THE ROADWAY.
11. TRAFFIC SIGNAL OR ILLUMINATION POLES, GROUND BOXES, CONTROLLER BOXES, SIGNS, DRAINAGE FACILITIES AND OTHER ITEMS SHALL BE PLACED SO NOT TO OBSTRUCT THE ACCESSIBLE ROUTE.
12. ALL SIDEWALKS WILL BE DOWELED INTO EXISTING SIDEWALKS, DRIVEWALKS, DRIVEWAYS, INLET BOXES, RETAINING WALLS, ETC.

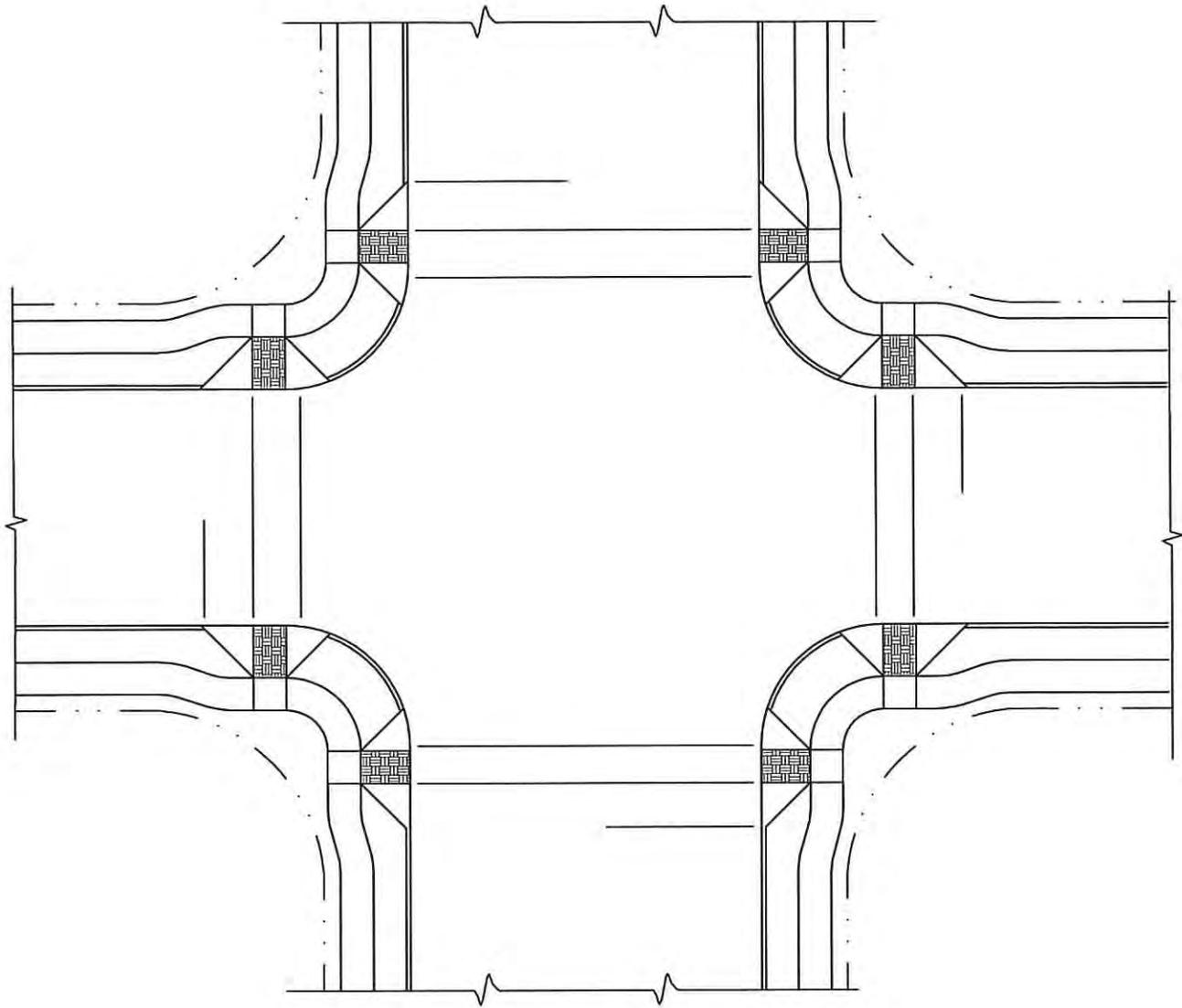
**CITY OF KILLEEN**  
**DEPARTMENT OF PUBLIC WORKS**

**PEDESTRIAN RAMPS**  
**GENERAL NOTES**

**CONSTRUCTION STANDARDS AND DETAILS**



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SCALE: N.T.S.  
ISSUE DATE: 03-12-13



OFFSET SIDEWALKS

NOTE: CURB RAMPS WITH RETURNED CURBS  
 INSTEAD OF SIDE FLARES ARE PERMITTED  
 WHERE PEDESTRIANS WOULD NOT NORMALLY  
 WALK ACROSS THE RAMP

**CITY OF KILLEEN**  
 DEPARTMENT OF PUBLIC WORKS

TYPICAL  
 INTERSECTION LAYOUT  
 CONSTRUCTION STANDARDS AND DETAILS

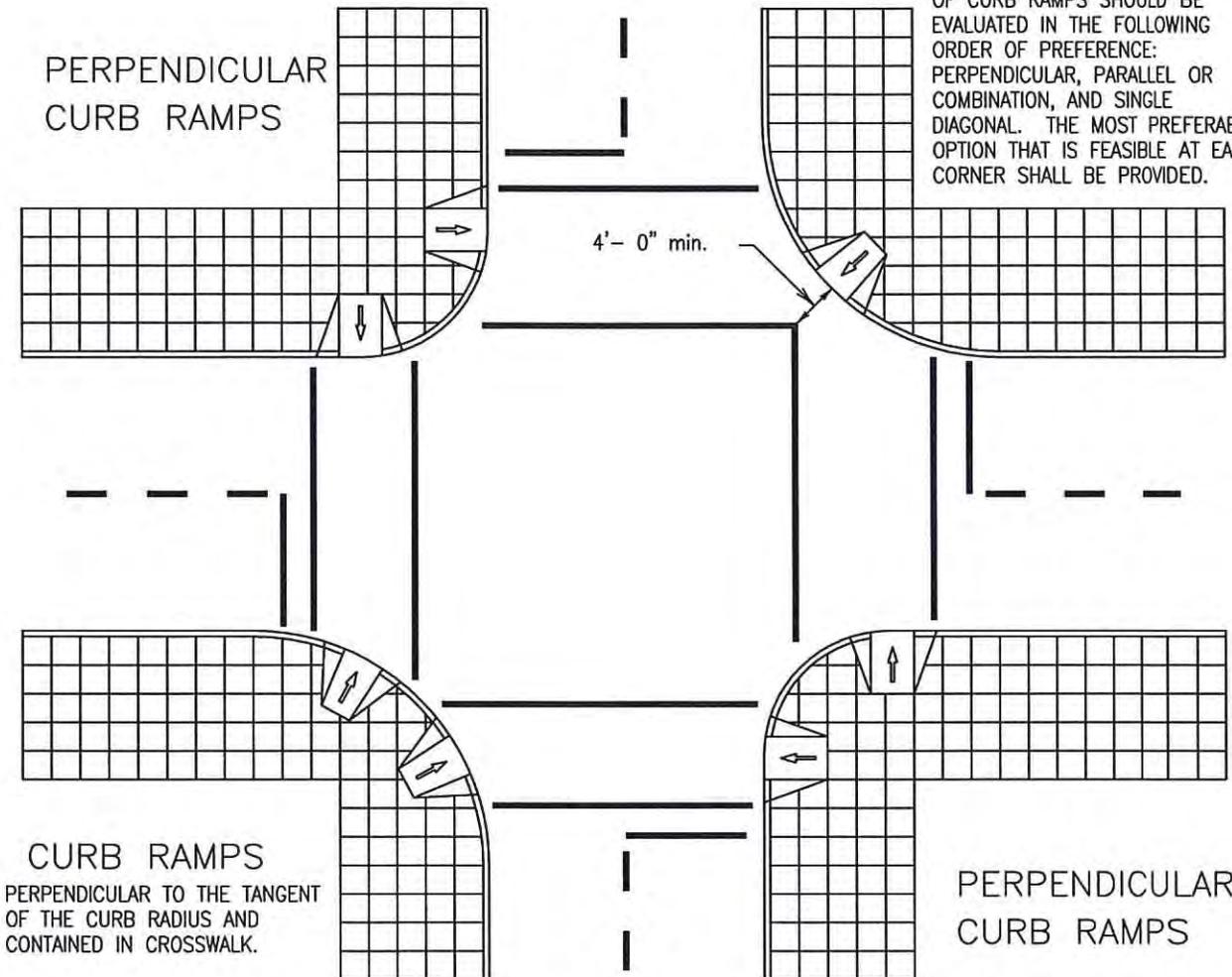


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 SCALE: N.T.S.  
 ISSUE DATE: 03-12-13

# SINGLE DIAGONAL CURB RAMP

FOR ON-SYSTEM NEW CONSTRUCTION, RECONSTRUCTION AND REHABILITATION PROJECTS WHERE PEDESTRIAN FACILITIES ARE NEWLY CONSTRUCTED OR SUBSTANTIALLY ALTERED, CONSTRUCTION OF SINGLE DIAGONAL RAMPS IS NOT PERMITTED.

FOR ON-SYSTEM PROJECTS SUCH AS RESTORATION, SEAL COAT AND OVERLAY PROJECTS, PLACEMENT OF CURB RAMPS SHOULD BE EVALUATED IN THE FOLLOWING ORDER OF PREFERENCE: PERPENDICULAR, PARALLEL OR COMBINATION, AND SINGLE DIAGONAL. THE MOST PREFERABLE OPTION THAT IS FEASIBLE AT EACH CORNER SHALL BE PROVIDED.

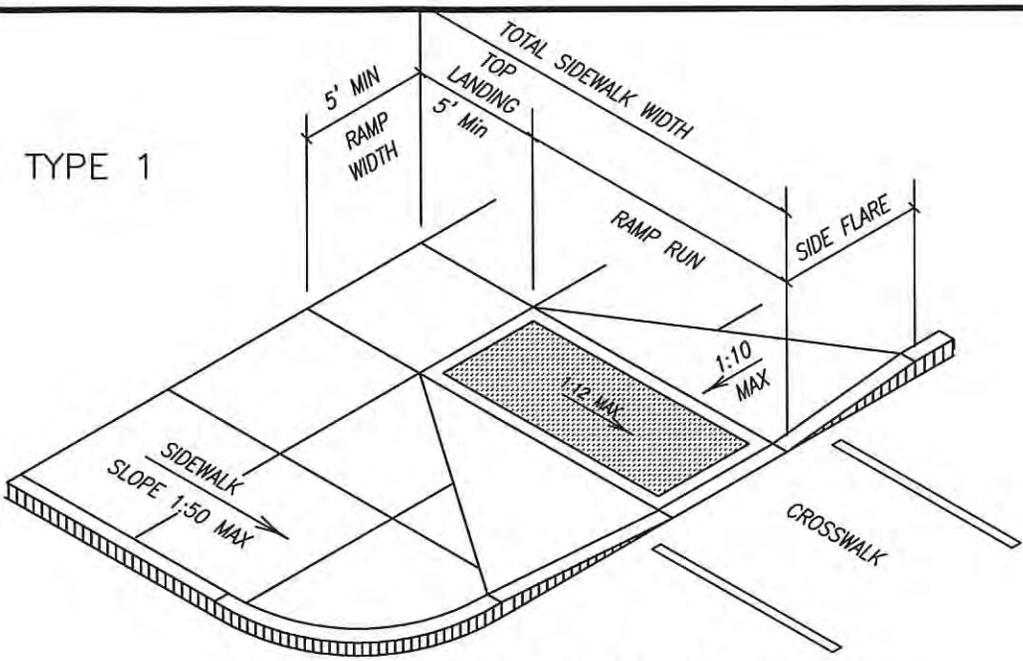


**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

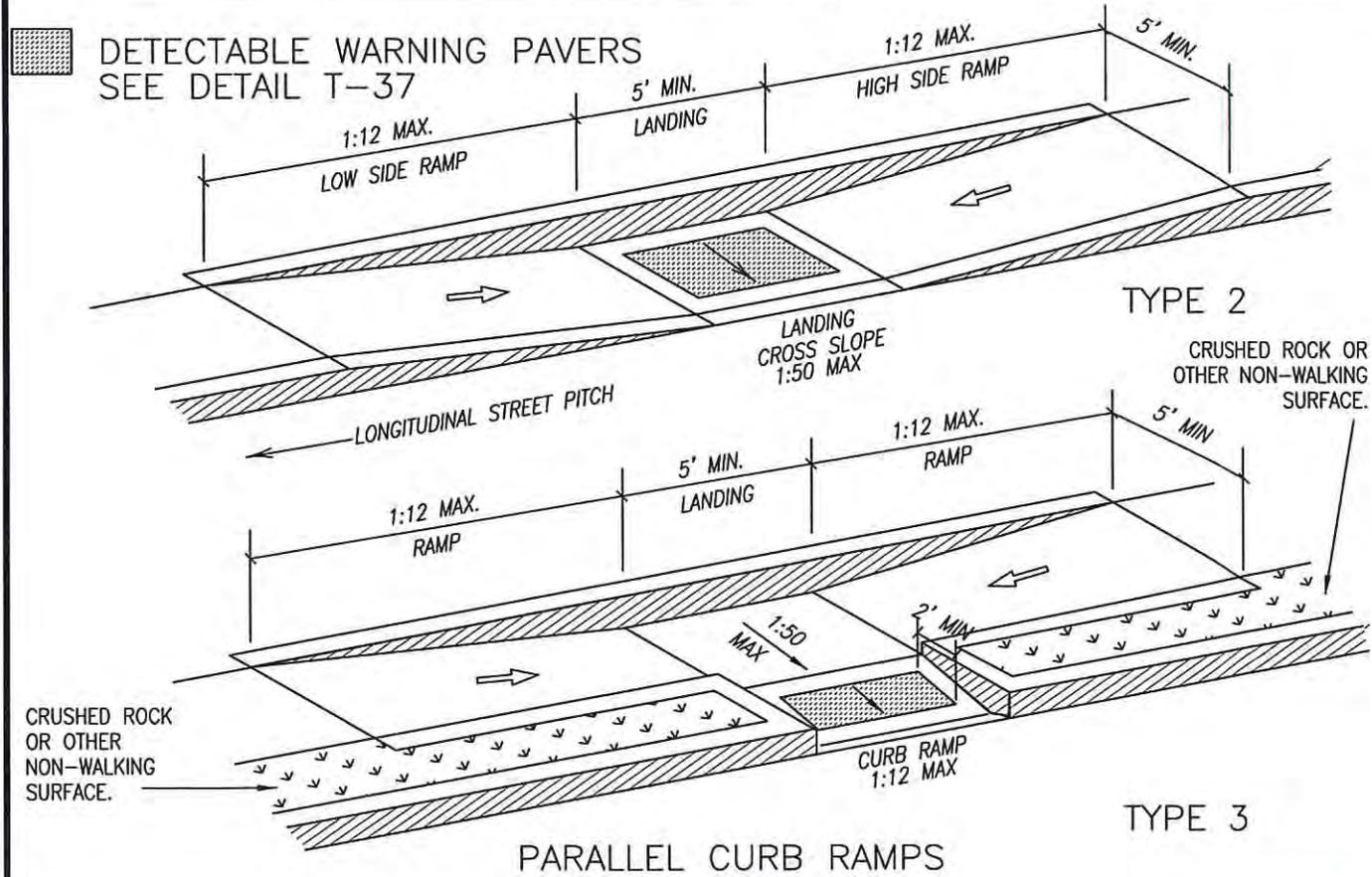
**CURB RAMPS**  
**PLACEMENTS AT INTERSECTIONS**  
CONSTRUCTION STANDARDS AND DETAILS



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SCALE: N.T.S.  
ISSUE DATE: 03-12-13



PERPENDICULAR CURB RAMPS



PARALLEL CURB RAMPS

CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

SIDEWALK RAMP DETAILS  
TYPE 1-3

CONSTRUCTION STANDARDS AND DETAILS

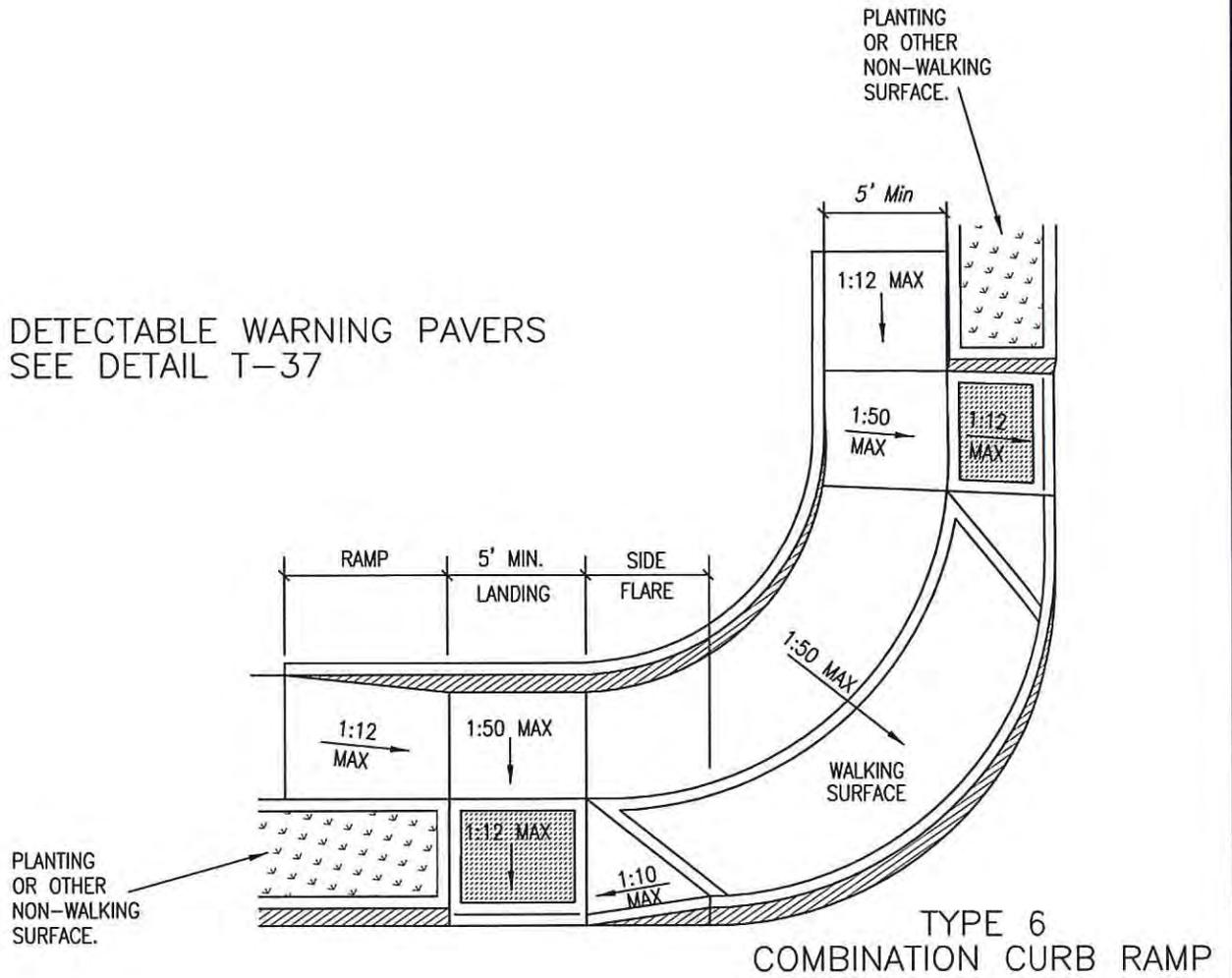


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DETECTABLE WARNING PAVERS  
SEE DETAIL T-37



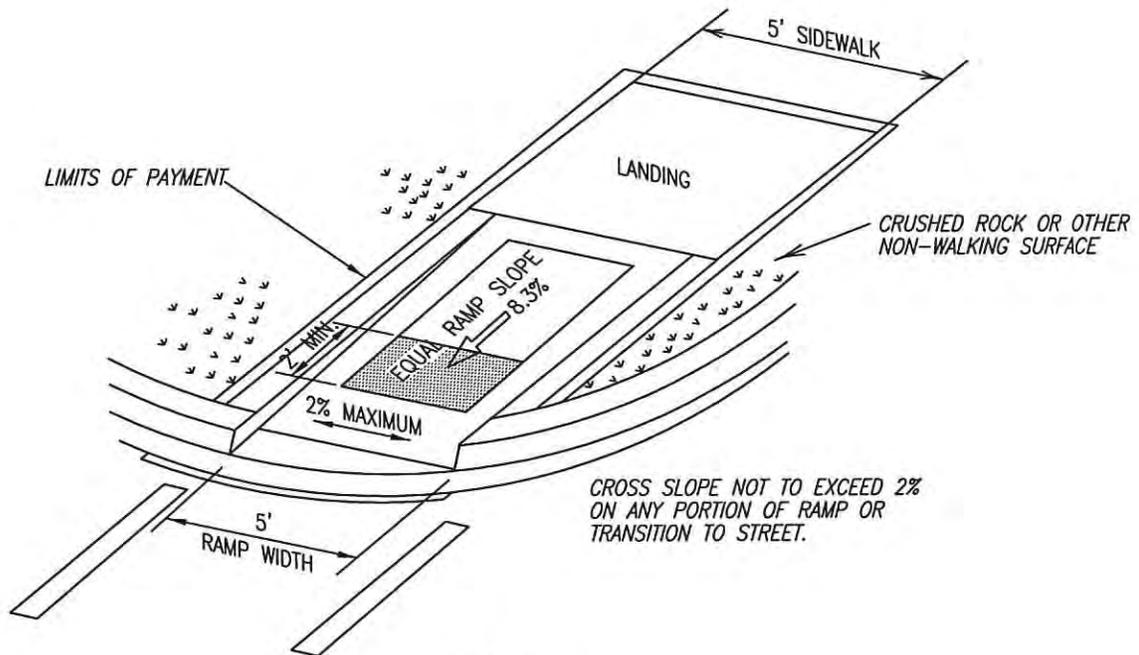
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

SIDEWALK RAMP DETAILS  
TYPE 6

CONSTRUCTION STANDARDS AND DETAILS



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SCALE: N.T.S.  
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TYPE 7

DIRECTIONAL RAMP WITHIN RADIUS

 DETECTABLE WARNING PAVERS  
SEE DETAIL T-37

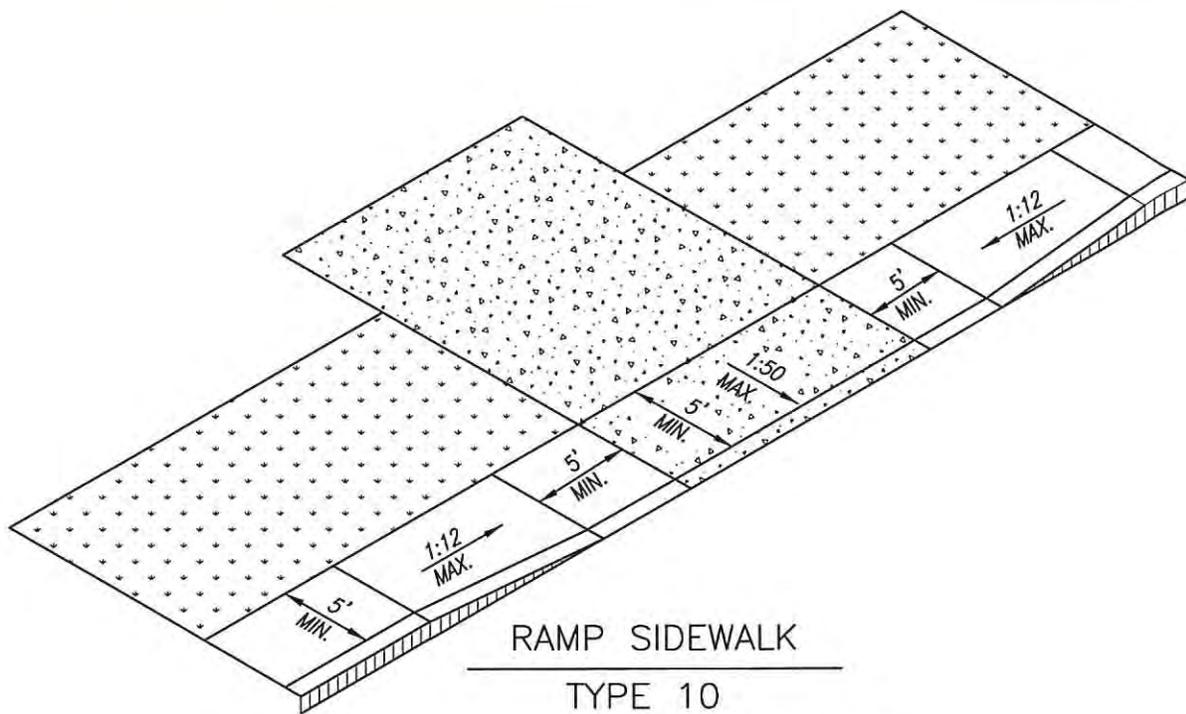
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

SIDEWALK RAMP DETAILS  
TYPE 7

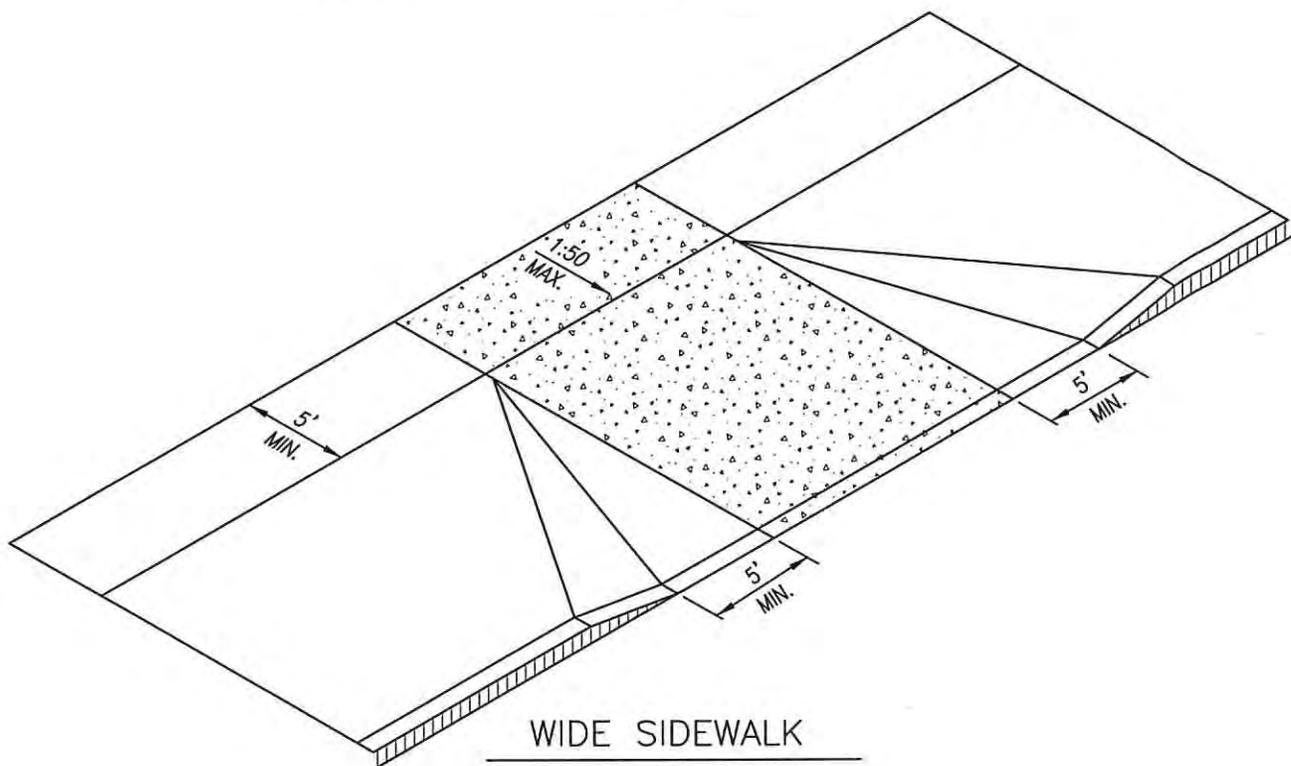
CONSTRUCTION STANDARDS AND DETAILS



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RAMP SIDEWALK  
TYPE 10



WIDE SIDEWALK

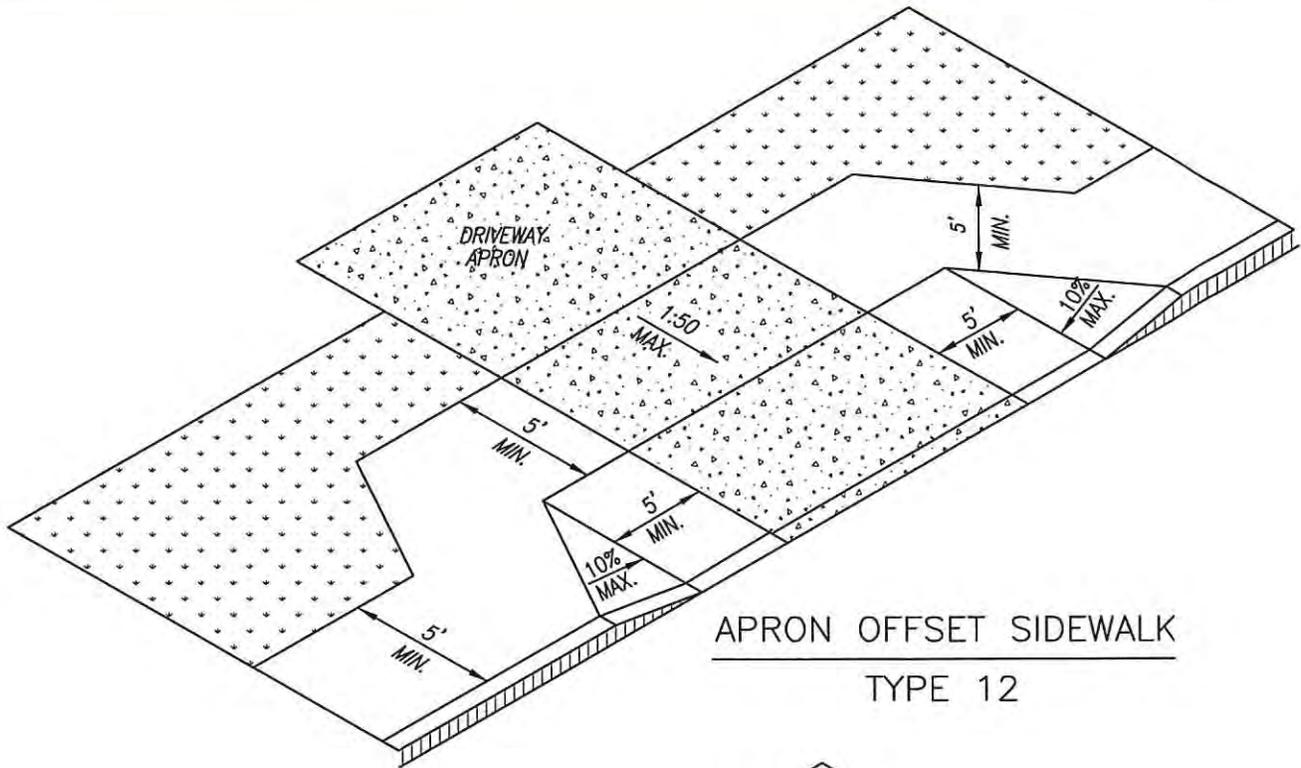
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

SIDEWALK TREATMENT  
AT DRIVEWAYS

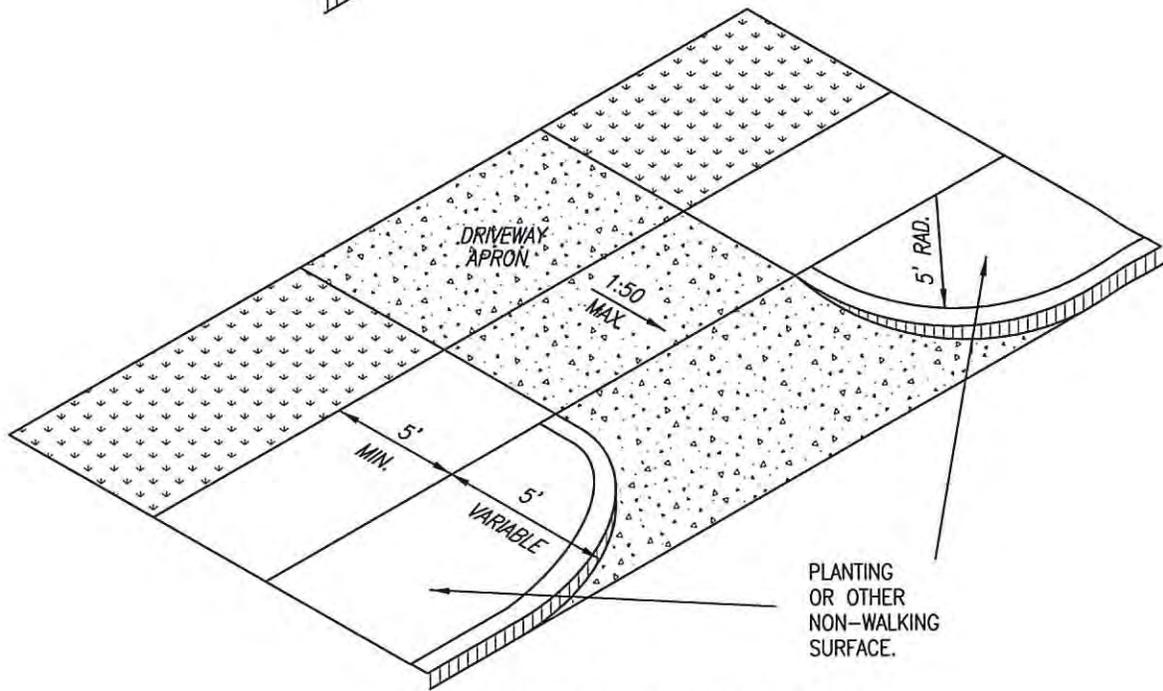
CONSTRUCTION STANDARDS AND DETAILS



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ISSUE DATE: 03-12-13



APRON OFFSET SIDEWALK  
TYPE 12



SETBACK SIDEWALK  
TYPE 13

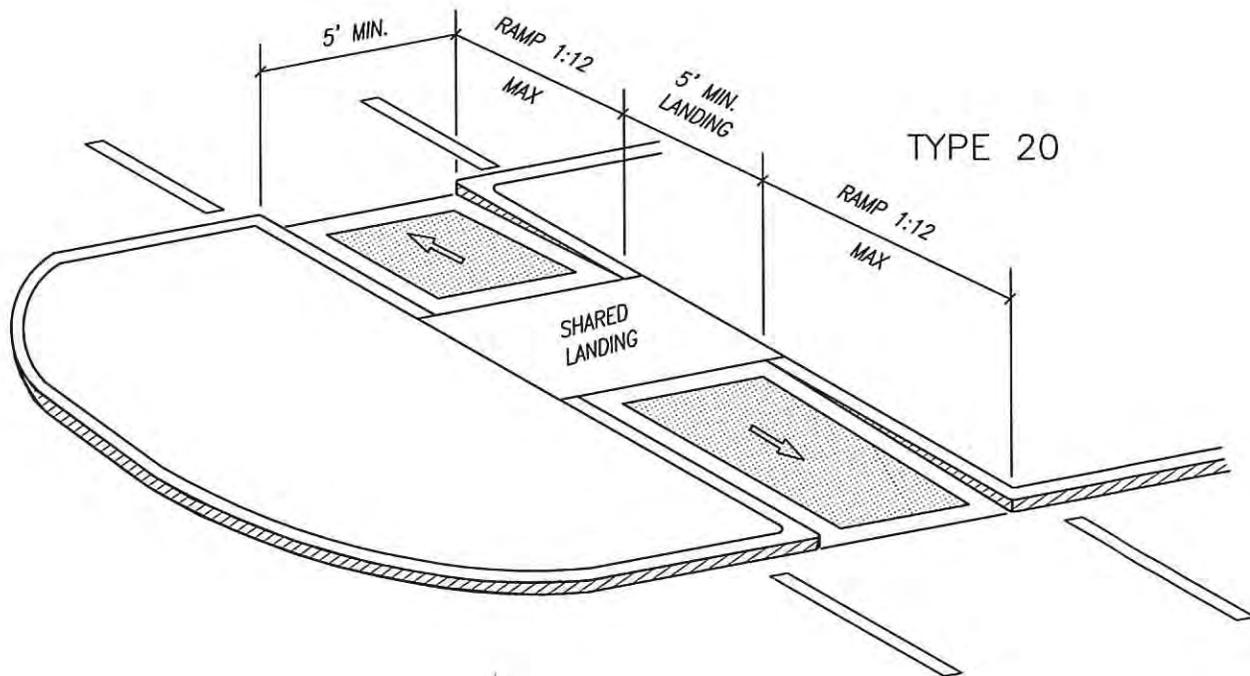
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

DRIVEWAY APRONS  
TYPE 12-13

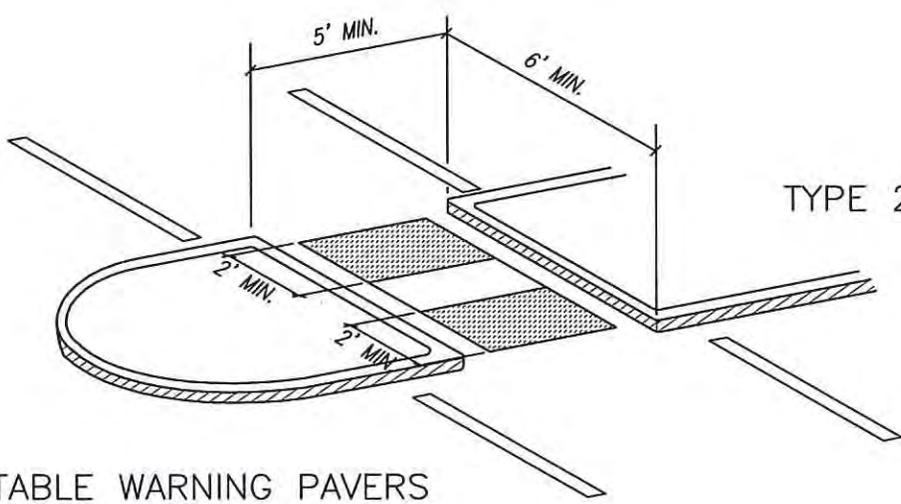
CONSTRUCTION STANDARDS AND DETAILS



T-37  
SCALE: N.T.S.  
ISSUE DATE: 03-12-13



TYPE 20



TYPE 21

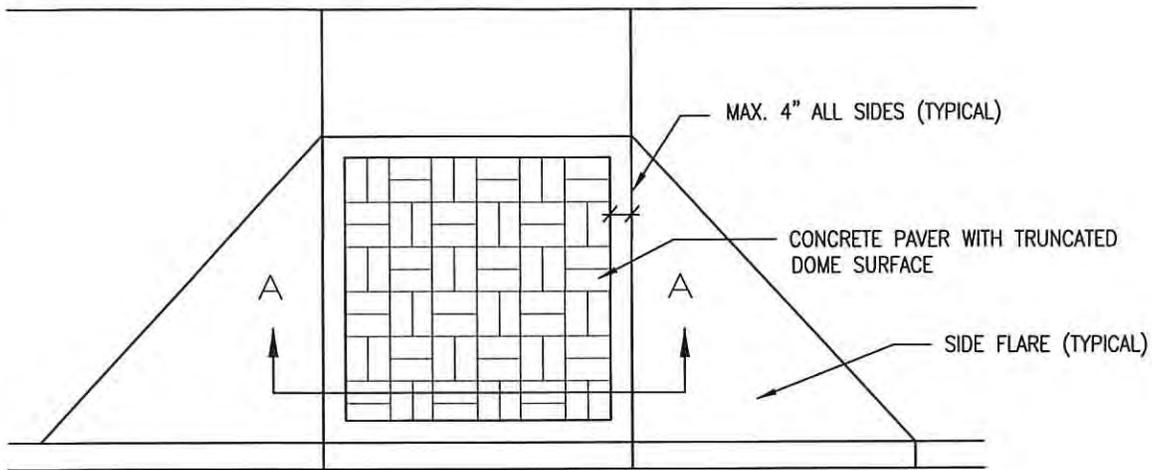
 DETECTABLE WARNING PAVERS  
SEE DETAIL T-37

**CITY OF KILLEEN**  
DEPARTMENT OF PUBLIC WORKS

CURB RAMP DETAILS AT  
MEDIAN ISLANDS TYPE 20-21  
CONSTRUCTION STANDARDS AND DETAILS



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SCALE: N.T.S.  
ISSUE DATE: 03-12-13



### TRUNCATED DOME PATTERN CURB RAMP

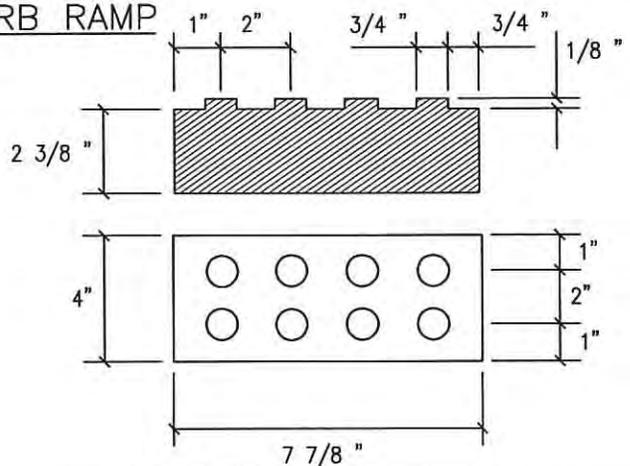
#### GENERAL NOTES

CONCRETE PAVER UNITS SHALL MEET ALL REQUIREMENTS OF ASTM C-936, C-33, AND SHALL BE LAID IN A TWO BY TWO UNIT BASKET WEAVE PATTERN, UNLESS SHOWN OTHERWISE IN THE PLANS.

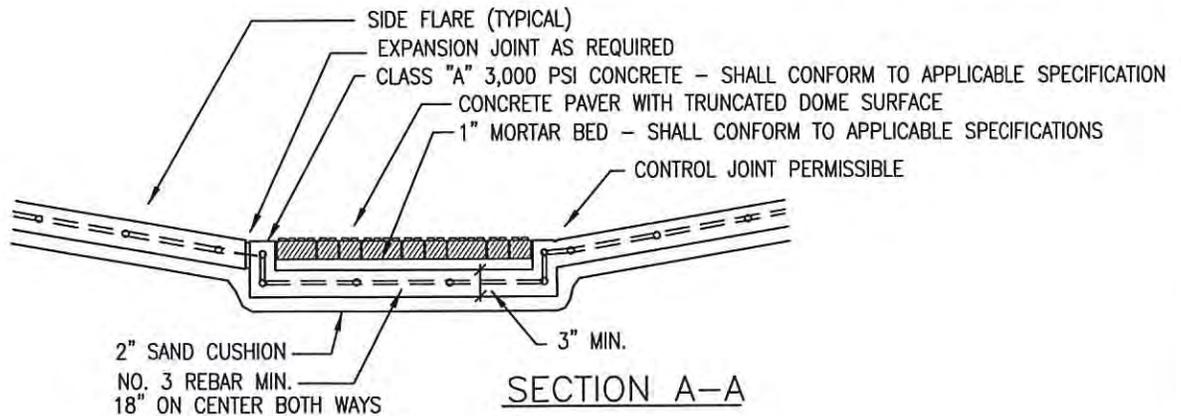
CONCRETE PAVER UNIT SHALL HAVE A TRUNCATED DOME TOP SURFACE FOR DETECTABLE WARNING TO PEDESTRIANS.

CONCRETE PAVER UNIT COLOR FOR THE RAMP SHALL BE A CONTRASTING COLOR TO THE ADJACENT SURFACES. THE COLOR OF THE CONCRETE PAVER UNITS SHALL BE SHOWN ELSEWHERE IN THE PLANS. (ADJACENT SURFACES INCLUDE SIDE FLARES).

CONCRETE PAVER UNITS SHALL BE SAW CUT ONLY AND ANY CUT UNIT SHALL BE NOT LESS THAN 25 PERCENT OF A FULL UNIT.



#### CONCRETE PAVER WITH TRUNCATED DOME SURFACE



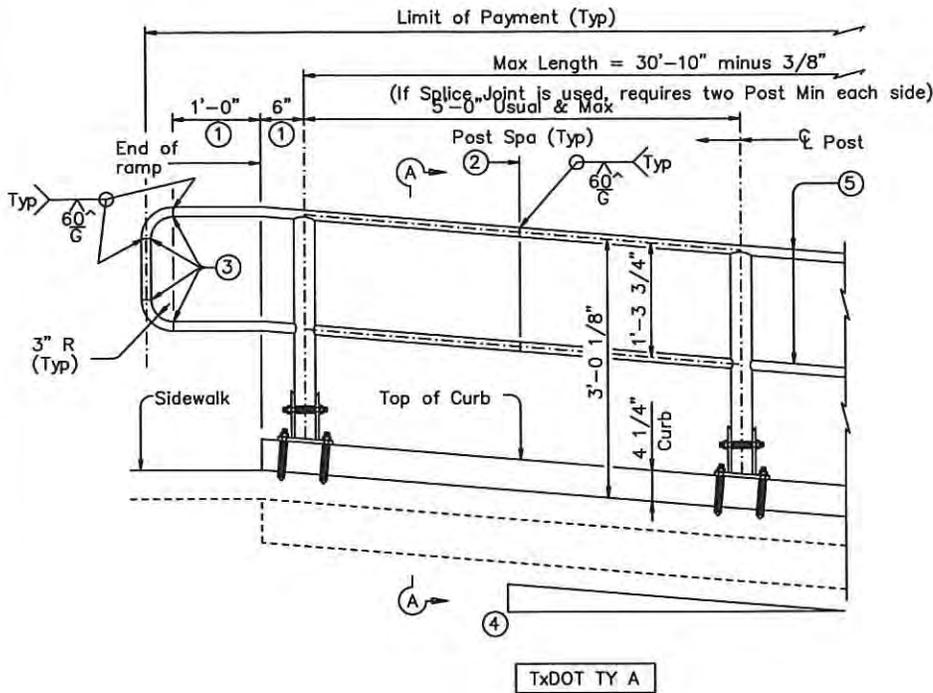
CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

CURB RAMP DETECTABLE  
WARNING PAVERS

CONSTRUCTION STANDARDS AND DETAILS



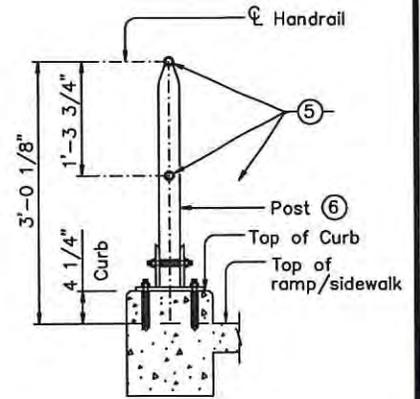
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TxDOT TY A

ELEVATION

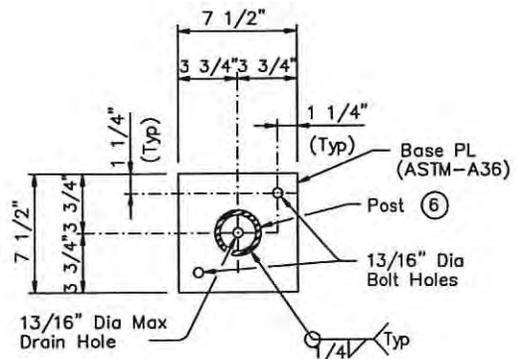
(Shop Splices and Splice Joints only shown on one Type for clarity)



SECTION A-A

(Showing Handrail Ty A)

- ① Parallel to ground.
- ② One shop splice per panel is permitted with minimum 85 percent penetration. The weld may be square groove or single vee groove. Grind smooth.
- ③ Shop splice is permitted with minimum 85 percent penetration. The weld may be square groove or single vee groove. Grind smooth.
- ④ See Ramp Details located elsewhere in plans for ramp slope and dimensions. Maximum ramp slope will not exceed 8.3 percent. Level landing required for each 30" rise if grade exceeds 5 percent.
- ⑤ 1" Dia Extra Heavy Pipe (1.315" O.D., 0.179" wall thickness). Parallel to ramp/sidewalk. Provide holes as needed in 1" Dia pipe for galvanizing drainage and venting.
- ⑥ 2" Dia Standard Pipe (2.875" O.D., 0.203" wall thickness). Plumb all posts. See "Post Mount Detail" for crimping and trimming post to fit Dia of top rail. Provide holes as needed in post for galvanizing drainage and venting.



TYPICAL POST  
BASE PLATE DETAIL

CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS

REMOVABLE  
HAND RAIL

CONSTRUCTION STANDARDS AND DETAILS



T-40

SCALE: N.T.S.

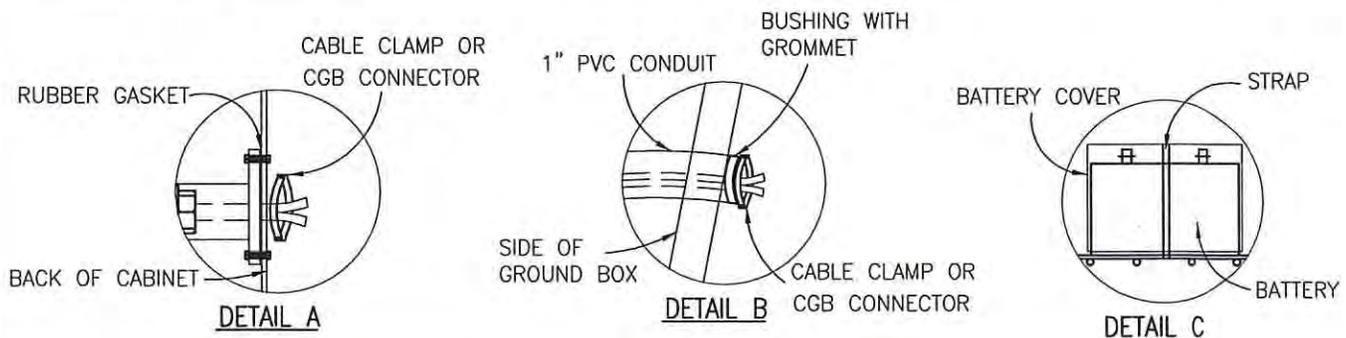
ISSUE DATE: 03-12-13

**NOTES:**

1. DETAILS SHOW A TYPICAL WARNING SIGN WITH TWO FLASHING BEACON HEADS, OTHER ARRANGEMENTS ARE POSSIBLE WHEN ONLY ONE BEACON IS REQUIRED, INSTALL THE UPPER BEACON.
2. SEE TxDOT ITEM 685, "ROADSIDE FLASHING BEACON ASSEMBLIES" FOR FURTHER REQUIREMENTS.
3. USE EITHER A SCREW-IN TYPE ANCHOR FOUNDATION OR 24" DRILL SHAFT FOUNDATION. INSTALL THE SCREW IN TYPE ANCHOR FOUNDATION AS SHOWN. ON SLOPE, INSTALL ONE EDGE AT GROUND LEVEL.
4. WHEN USED, PROVIDE ONE OF THE FOLLOWING SCREW IN TYPE ANCHOR FOUNDATION:  
A.B. CHANCE, MODEL C11242NG4VP, COMPONENT PRODUCTS INC. MODEL CPI-SLSF-5TX,  
PELCO PRODUCTS INC. MODELS PB-5359, PB-5360 OR PB 5375 O OR APPROVED EQUAL.
5. PROVIDE CLEARANCE AS SHOWN ABOVE THE SIDEWALK OR PAVEMENT GRADE AT THE EDGE OF THE ROAD. WHEN A BOTTOM BEACON IS NOT USED, MOUNT THE SIGN AT LEAST 7' ABOVE THE SIDEWALK OR PAVEMENT GRADE AT THE EDGE OF THE ROAD.
6. USE MATERIALS SPECIFICALLY DESIGNED FOR ATTACHING CABINETS, BEACON HEADS, SOLAR PANELS, ECT. TO POLES.
7. CONDUIT IN FOUNDATION AND WITHIN 6" OF FOUNDATION IS SUBSIDIARY TO THE ITEM 685, "ROADSIDE FLASHING BEACON ASSEMBLIES."
8. PER MANUFACTURER'S RECOMMENDATIONS, ENGAGE ALL THREADS ON THE PEDESTAL POLE BASE AND PIPE UNLESS THE PIPE IS FULLY SEATED INTO BASE. IN HIGH WINDS, USE A POLE AND BASE COLLAR ASSEMBLY TO ADD STRENGTH AND PREVENT LOOSENING ON CONNECTION.
9. INSTALL BEACON HEADS AS SHOWN HERE, AS SHOWN ELSEWHERE ON THE PLANS, OR AS DIRECTED. USE HARDWARE SPECIFICALLY DESIGNED FOR MOUNTING BEACON HEADS ON POLES.
10. LOCATE THE TYPE LB CONDUIT BODY ATTACHMENT IN THE BOTTOM THIRD OF THE BACK OF THE CABINET.
11. PROVIDE NON FUSED WATERTIGHT BREAKAWAY ELECTRICAL CONNECTORS FOR BREAKAWAY POLES.  
(BUSSMANN HET, LITTLEFUSE LET, FERRAZ-SHAMUT FE2BN OR APPROVED EQUAL)
12. INSTALL THE BATTERIES ON A 3/16" THICK PLASTIC SHEET AND CONNECT TOGETHER. PLACE A PLASTIC COVER (BATTERY BELL JAR) OVER THE TOP OF EACH BATTERY AND SECURE THE BATTERY BELL JAR TO THE BATTERY WITH A STRAP THE BATTERIES, BELL JARS, STRAPS AND 3/16" PLASTIC SHEET ARE SUBSIDIARY TO THE ITEM 685, "ROADSIDE FLASHING BEACON ASSEMBLIES." WHEN REQUIRED, INSTALL BATTERIES IN THE FLASHER CABINET. WIRE BATTERIES ACCORDING TO MANUFACTURES RECOMMENDATIONS.
13. UNLESS OTHERWISE RECOMMENDED BY THE MANUFACTURER, USE THE FOLLOWING TABLE TO DETERMINE THE WIRE SIZE FROM CABINET TO BEACONS.

DISTANCE FROM CABINET TO BEACONS (FT)	MINIMUM REQUIRED WIRE SIZE (AWG)
0 - 35	#14
35 - 60	#12
60 - 100	#10
> 100	#8

14. PROVIDE CLEARANCE AS SHOWN ABOVE THE SIDEWALK OR PAVEMENT GRADE AT THE EDGE OF THE ROAD. WHEN A BOTTOM BEACON IS NOT USED, MOUNT THE SIGN AT LEAST 7' ABOVE THE SIDEWALK OR PAVEMENT GRADE AT THE EDGE OF THE ROAD.
15. UNLESS OTHERWISE SHOWN ON THE PLANS, POLE SHAFT SHALL BE ONE PIECE, SCH. 40 ALUMINUM PIPE, ASTM B429 OR B221 (ALLOY 6061-T6 ONLY). ALUMINUM CONDUIT WILL NOT DEVELOP THE NECESSARY STRENGTH AND WILL NOT BE ALLOWED.



**CITY OF KILLEEN  
DEPARTMENT OF PUBLIC WORKS**

**SOLAR POWERED ROADSIDE FLASHING BEACON  
ASSEMBLY**

**CONSTRUCTION STANDARDS AND DETAILS**



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SCALE: N.T.S.

ISSUE DATE: 03-12-13



## BIDDER CHECK LIST

THE FOLLOWING DOCUMENTS MUST BE INCLUDED WHEN SUBMITTING BID PACKET.

FORM PAGE(S)	BIDDER FORM
F1	BIDDER CHECK LIST FORM
F2	RECEIPT and ACKNOWLEDGEMENT OF CONTRACT CONDITIONS
F3 – F5	BID PROPOSAL – BID FOR UNIT SUM CONTRACTS
F6	BID BOND
F7	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
Statement	F7S NOTICE TO COMPLETE FORM
F8 – F9	TEXAS WORKERS' COMPENSATION
F10	SECTION 3 EMPLOYMENT OPPORTUNITIES CLAUSE
F11- F12	SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, LABOR SURPLUS AREA FIRMS; UTILIZATION REPORT
F13 – F14	AFFIRMATIVE ACTION PLAN
F15 – F16	DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS
	<b>CONTRACTOR'S QUALIFICATION &amp; CERTIFICATION</b> Applicable to all Bidders to participate in this Federally funded project. Bidders must complete and submit the Community Development Department Contractor Qualification & Certification Application (QACP) form and supplemental documents requested, by attachment to this bid. For additional information or questions please call the Community Development Department 254.501.7845.
	Contractor Qualification & Certification Application – Community Development Department - Attached

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
 #16.04/ b-16-mc-48-0020  
 KILLEEN, TEXAS

**CLOSING TIME AND DATE:** \_\_\_\_\_

**FIRM NAME AND ADDRESS:** \_\_\_\_\_

**FIRM DUNS NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**PHONE NO.:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

# RECEIPT AND ACKNOWLEDGEMENT OF CONTRACT CONDITIONS

THE CONTRACTOR, BY HIS SIGNATURE, REPRESENTS THAT HE HAS READ, ACCEPTS, AND WILL COMPLY WITH THE FOLLOWING:

Page	Requirements and Conditions
B1 – B10	CITY OF KILLEEN BIDDING TERMS, CONDITIONS, AND REQUIREMENTS FOR FEDERALLY FUNDED COMMUNITY DEVELOPMENT DEPARTMENT PROJECTS
C1 – C5	SPECIAL CONDITIONS FOR COMMUNITY DEVELOPMENT DEPARTMENT CONTRACTS
C6 – C30	GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION – City of Killeen Community Development Department CDBG/HOME

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
#16.04/ b-16-mc-48-0020  
KILLEEN, TEXAS

\_\_\_\_\_  
*SIGNATURE* *Date:*

\_\_\_\_\_  
*PRINTED NAME & TITLE*

\_\_\_\_\_  
*FIRM*

\_\_\_\_\_  
*ADDRESS* *CITY, STATE, ZIP*

**CITY OF KILLEEN**  
**Community Development Department**  
**BID PROPOSAL FORM – LUMP SUM CONTRACT**

Date: \_\_\_\_\_

**BID NUMBER: #17-01**  
**PROJECT: STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)**  
**#16.04/ b-16-mc-48-0020**  
**KILLEEN, TEXAS**

Proposal of \_\_\_\_\_ (hereinafter called "Contractor") a  
 \_\_\_\_\_ (corporation, partnership or individual) doing business as  
 \_\_\_\_\_, as applicable.

To the City of Killeen, Texas (hereinafter called "Owner").

Gentlemen:

The Contractor, in compliance with your notice and advertisement for bids for the **STEWART NEIGHBORHOOD PROJECT-PHASE 3 (SIDEWALK RECONSTRUCTION) #16.04/b-16-mc-48-0020, KILLEEN, TEXAS** having examined the Plans/Drawings, Specifications/Scope of Work, with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed Project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the Project in accordance with the Contract Documents, within the time set forth therein, and at the price(s) stated below and agrees that claims for additional compensation or extensions of time due to contractor's failure to familiarize itself with the project document or any condition at the project site which might affect the work will not be allowed. These prices are to cover all expenses incurred in performing the work required under the Contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in written "Notice to Proceed" issued by the Owner and to complete the project within a maximum of **180** consecutive calendar days thereafter as stipulated in the specifications. Contractor further agrees to pay as liquidated damages, the sum of **\$300.00** for each consecutive calendar day thereafter as hereinafter provided in Paragraph 33 of the General Conditions.

**ADDENDA** - Bidder acknowledges receipt of the following addenda: *List Addendum number, date issued, and bidder's signature acknowledging receipt.*

Addendum #	Date Issued	Signature Acknowledging Receipt	Addendum #	Date Issued	Signature Acknowledging Receipt

Each Addendum issued must be attached to bidder's proposal and submitted with bid documents

**PROPOSAL:**

Bidder agrees to provide a bid amount for each line item and the portion(s) thereof for a total bid for the line item. The Total Bid will consist of complete successive line items, added/deducted in numerical order, computed to reach the cost of the project within the approved budget amount and all work described in the Contract Documents and shown on the drawings/plans and specifications/scope of work, complete, in place, and ready for use for the following line items:

BID #16-15 Stewart Neighborhood Project-Phase 3 (Sidewalk Reconstruction)										
Item	DESCRIPTION									Total Bid
Mob	Mobilization									\$ -
LINE ITEM	Unit Identification /General Location	Sidewalk demo/remove/replace		Driveway Approach demo/remove/replace		ADA Ramp demo/remove/replace		Tree tree & root removal 1'-0" below finish grade		Total Bid per line item
		Est. SY	Unit Price	Est. SY	Unit Price	ADA Ramp	Unit Price	Each	Unit Price	Amount
<b>1-ALEXANDER STREET</b>										
1	22-1207	67		14		N/A		0		\$ -
2	23-1205	65		15		N/A		0		\$ -
3	24-1203	97		17		N/A		0		\$ -
4	25-1201	83		0		N/A		3		\$ -
5	26-1105	82		15		N/A		1		\$ -
6	27-1103	66		15		N/A		0		\$ -
7	28-1101	67		15		N/A		0		\$ -
8	29-1009	65		15		N/A		1		\$ -
9	30-1007	67		15		N/A		0		\$ -
10	31-1005	66		0		N/A		0		\$ -
11	32-1003	66		16		N/A		1		\$ -
12	33-1001	45		16		TYPE 7		1		\$ -
13	2-15-City Park at Gray Drive	0		0		TYPE 7		0		\$ -
14	3-16-City Park at Culp Ave.	0		0		TYPE 7		0		\$ -
<b>4-GRAY DRIVE</b>										
15	1-1305	16		15		N/A		1		\$ -
16	2-1303	29		16		N/A		0		\$ -
17	3-1301	29		16		N/A		1		\$ -
18	4-1209	30		16		N/A		1		\$ -
19	5-1117	18		0		N/A		0		\$ -
20	6-1113	14		0		N/A		1		\$ -
21	7-1109	35		21		N/A		1		\$ -
22	8-1103	0		0		TYPE 7		0		\$ -
23	9-1201	45		20		TYPE 7		0		\$ -
24	10-1104	38		15		N/A		1		\$ -
25	11-1112	68		18		N/A		2		\$ -
26	12-1202	22		0		TYPE 7		0		\$ -
27	13-1206	39		23		TYPE 7		1		\$ -
28	14-Gray /Carol	50		0		TYPE 7		1		\$ -
<b>5-CULP AVENUE</b>										
29	24-1306	36		31		N/A		0		\$ -
32	23-1302	19		0		N/A		0		\$ -
33	22-1206	28		31		N/A		0		\$ -
34	17-Culp/Carol	36		0		TYPE 7		2		\$ -
35	18-Culp/Carol	65		0		TYPE 7		2		\$ -
36	22-1206	28		31		N/A		0		\$ -
37	21-1108	31		25		N/A		0		\$ -
38	20-1106	0		35		N/A		0		\$ -
39	19-1102	75		26		TYPE 7		3		\$ -
<b>6-FRANZ DRIVE</b>										
40	30-Franz/Culp	44		0		TYPE 7		0		\$ -
41	31-Franz/Culp	0		0		TYPE 7		0		\$ -
42	32-Franz to 18th	86		71		TYPE 7		1		\$ -
43	33-18th to Franz	48		0		TYPE 7		0		\$ -
44	34-1008	50		17		N/A		1		\$ -
45	35-1014	14		18		N/A		0		\$ -
46	36-1016	25		15		N/A		2		\$ -
										\$ -

Priority in accepting/deleting line items is to meet the approved budget; if the Total proposal amount exceeds the approved budget, the Owner may choose to deduct specific line items. The deducted line items accepted will be in numerical order with the inclusion of mobilization.

The above price(s) shall include all discounts, labor, materials, permitting, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the General Conditions of the Contract for Construction.

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

The Contractor agrees that this proposal shall be good and may not be withdrawn for a period of 90 calendar days after the scheduled closing time for receiving estimates.

Upon receipt of written notice of the acceptance of this proposal, Bidder will execute a formal contract provided by the City of Killeen. Within 10 days, as required by bid, Bidder shall deliver proof of Insurance and Bonds.

The bid security attached in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_),

which is equal to **5%** of the amount of the Total Bid, and is to become property of the Owner in the event the contract and bonds are not executed within the time set forth above, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted:

SEAL – If bid/quote/estimate is by corporation

\_\_\_\_\_  
*SIGNATURE* *Date:*

\_\_\_\_\_  
*PRINTED NAME & TITLE*

\_\_\_\_\_  
*FIRM*

\_\_\_\_\_  
*ADDRESS* *CITY, STATE, ZIP*



# CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

**BID NUMBER: #17-01**

**PROJECT: STEWART NEIGHBORHOOD PROJECT- PHASE 3 (SIDEWALK RECONSTRUCTION) #16.04/b-16-48-0020**

The bidder certifies that:

- (a)(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;
  
- (2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and
  
- (3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

Each signature on the bid is considered to be a certification by the signatory that the signatory-

(b)(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

Name of Person/ Principal Determining Prices in Bid	Position of Person/Principal in Organization

*[insert full name of person(s)/principals in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];*

(ii) As an authorized agent, does certify that the principals named in (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_  
*SIGNATURE* *Date:*

\_\_\_\_\_  
*PRINTED NAME & TITLE*

\_\_\_\_\_  
*FIRM*

\_\_\_\_\_  
*ADDRESS* *CITY, STATE, ZIP*

## DISCLOSURE OF INTERESTED PARTIES

Bidder is required to disclose organizational conflicts of interest associated with the nature of work to be performed under this contract relative to the bidder's organizational, financial, contractual, or other interest - which may result in an unfair competitive advantage to the bidder or impair the bidder's objectivity in performing the contract work.

Beginning January 1, 2016, Government Code 2252.908 (also known as HB 1295) requires a business entity entering into a contract with a governmental entity to submit a disclosure of interested parties (Form 1295). For the City of Killeen, the requirement is triggered when city council approval is requested for the project associated with these bidding documents. You are receiving this notice because staff will recommend the award of a contract for this project at an upcoming city council meeting.

At such time the City accepts a proposal submitted in this bidding document, the successful bidder will be required to complete the form online at the Texas Ethics Commission. A certification number will be assigned to your form and you will be provided a certification of filing. Print the form, have an authorized agent execute it before a notary. You will then send a copy to the city.

The form will ask you for an identification number used by the city to track or identify the contract. The city does not use a contract numbering system. You will use the bid number associated for the contract number.

The City must receive and acknowledge the completed form using the Texas Ethics Commission website not more than thirty (30) days after the date the contract binds all parties to the contract; the Texas Ethics Commission will post the forms to its website within seven (7) days.

For more information visit the Texas Ethics Commission web site at [www.ethics.state.tx.us/whatsnew/elf/\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf/_info_form1295.htm) .

**TEXAS WORKERS' COMPENSATION COMMISSION**  
**RULE 28 TAC § 110.110**

Article. Workers' Compensation Insurance Coverage.

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in § 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on properly reporting of classification codes and payroll amounts and filing of all coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person to whom it contracts providing services on a project, and provide to the governmental entity:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project: and
  - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 30 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any persons providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

- (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
  - (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor, which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Signature

\_\_\_\_\_  
Printed Name and Title

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
#16.04/ b-16-mc-48-0020  
KILLEEN, TEXAS







**AFFIRMATIVE ACTION PLAN**

*THIS FORM MUST BE COMPLETED AS ACCURATELY AS POSSIBLE*

I. **GENERAL INFORMATION**

A. General Contractor  
Name and Address: \_\_\_\_\_  
\_\_\_\_\_

B. Type of Contract: \_\_\_\_\_

C. Amount of Contract: \_\_\_\_\_

D. Location of Project: \_\_\_\_\_

II. INFORMATION ON EMPLOYMENT AND TRAINING OF LOWER INCOME RESIDENTS OF THE SECTION 3 PROJECT AREA.

A. List Employment Agencies, News Media, Minority Organizations, Union Halls, or other organizations to be used in recruiting employees. Completed "Preliminary Statement of Work Force Needs" will be mailed to each organization contacted.

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

B. If no recruitment or hiring is anticipated, briefly explain why.  
\_\_\_\_\_

C. Indicate the percentage of low-income residents you hope to hire in relation to total employees hired, and the time-frame involved.

1. Percentage of Total Employees: \_\_\_\_\_
2. All subcontractors are expected to be awarded by: \_\_\_\_\_

III. LIST THE NUMBER AND DOLLAR AMOUNT OF ALL SUBCONTRACTS EXPECTED TO BE AWARDED PERTAINING TO CONSTRUCTION OF THIS PROJECT.

<u>Type of Subcontract</u>	<u>Amount (\$)</u>
_____	_____
_____	_____
_____	_____

IV. STEPS TO PROMOTE ECONOMIC OPPORTUNITY FOR LOCAL SMALL BUSINESS.

A. List the Type and Dollar Amount of each Subcontract, which may be awarded to small businesses.

1. General Construction Contractors with three (3) years average gross income of less than \$12,000,000.

<u>Type of Subcontract</u>	<u>Amount (\$)</u>
_____	_____

2. Plumbing, Electrical and Structural Steel with three (3) years gross income of less than \$1,000,000.

<u>Type of Subcontract</u>	<u>Amount (\$)</u>
_____	_____

3. All other Contractors with three (3) years gross income of less than \$1,000,000.

<u>Type of Subcontract</u>	<u>Amount (\$)</u>
_____	_____

Affirmative Action Plan

- B. Identify below the names and addresses of business organizations, such as Chamber of Commerce, to be contacted to attract small businesses.

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____

- C. Identify news media to be used to advertise contracts.

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____

- D. Explain how you intend to persuade subcontractors to cooperate in employing lower income residents and/or small businesses.

\_\_\_\_\_

\_\_\_\_\_

V. GRIEVANCE PROCEDURE

Lower income residents and owners of small businesses will be informed that in the event of a grievance or complaint against the municipality or the general Contractor, they may file by mail a grievance with:

- A. Assistant Secretary for Equal Opportunity and Fair Housing  
Department of Housing and Urban Development  
Washington, D.C. 20410
- B. Fair Housing and Equal Opportunity Division  
Department of Housing and Urban Development  
Dallas Area Office  
2001 Bryan Tower  
Dallas, Texas 75201

VI. CERTIFICATIONS

- A. Subcontractors will be informed of their requirement to submit copies of their Section 3 (Affirmative Action Plan) to the municipality to determine whether established goals will accomplish the objectives of Section 3 regulations.
- B. Negotiable contracts will be negotiated with Section 3 business (small businesses) if Federal, State, and local regulations allow it.

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
 #16.04/ b-16-mc-48-0020  
 KILLEEN, TEXAS

CITY OF KILLEEN  
Community Development Department

**CERTIFICATION OF CONTRACTOR  
REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733).

---

**BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS**

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by an Federal department or agency;
  - b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Organization Name

---

Name(s) and Title(s) of Authorized Representatives

---

Signature(s)

Date

**BID NUMBER: #17-01**  
**PROJECT: STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)**  
**#16.04/ b-16-mc-48-0020**  
**KILLEEN, TEXAS**

## Instructions for Certification Regarding Debarment, Suspension, and Other Responsibility Matters

- 1) By signing and submitting this form, the prospective primary participant is providing the certification set out on the corresponding certification in accordance with these instructions.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "Primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage section of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- 7) The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instruction, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in a addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**BID NUMBER:** #17-01  
**PROJECT:** STEWART NEIGHBORHOOD PROJECT PHASE 3 (SIDEWALK RECONSTRUCTION)  
#16.04/ b-16-mc-48-0020  
KILLEEN, TEXAS

