

PROJECT MANUAL



CITY OF MERRIAM, KANSAS

STATION 46 DRIVEWAY/APRON REPLACEMENT

Merriam, Kansas
June 18, 2025

CITY OF MERRIAM, KANSAS

MAYOR
BOB PAPE

CITY COUNCIL
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WHITNEY YADRICH
AMY RIDER
BRUCE KALDAHL
CHRIS EVANS HANDS
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STACI CHIVETTA

CLERK
JULIANA PINNICK

DATE: June 18, 2025

**CITY OF MERRIAM, KANSAS
STATION 46 DRIVEWAY/APRON REPLACEMENT**

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MERRIAM, KANSAS

STATION 46 DRIVEWAY/APRON REPLACEMENT**ADVERTISEMENT FOR BID**

Sealed proposals for the **STATION 46 DRIVEWAY/APRON REPLACEMENT**, in the City of Merriam, Kansas will be received from qualified bidders by the City of Merriam, Kansas at 9001 W 62nd Street, Merriam, Kansas 66202 until **10:00 a.m., Thursday, July 3rd, 2025** at which time and place all bids will be publicly opened and read. Bids received after the designated closing time will be returned unopened. All contractors who plan to submit a proposal on the project are requested to attend.

A **mandatory pre-bid walk-through** will be held at the project site OPFD Station 46, 9001 W. 62nd Terr., Merriam, Kansas 66202 at **10 am on Wednesday, June 25th, 2025** .

All proposals shall be made on a printed proposal form included in a bound Project Manual containing the specifications for the Work and shall be submitted in sealed envelopes addressed to the City of Merriam, Kansas and marked **“STATION 46 DRIVEWAY/APRON REPLACEMENT.”**

The project is generally described to include but not limited to installation and start-up of two generators.

The Project Manual, consisting of the Bidding Documents that include the advertisement for bid, instructions to bidders, proposal (including the bid schedule proposal), statement of bidder’s qualifications, and affidavit, Contract Documents (that include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner), and the Plans may be examined at the Merriam City Hall, 9001 W 62nd Street , Merriam, Kansas 66202.

Contract documents may be purchased from the issuing office:

**Drexel Technologies
10840 West 86th Street
Lenexa, Kansas 66214
(913) 371-4430**

The Project Manual may be obtained on-line at www.drexeltech.com in their electronic plan room. Additional assistance is available at distribution@drexeltech.com. At the website, information regarding this project can be found in the “Public Jobs” link.

Each bid shall be accompanied by a certified check or cashier's check drawn on a National Bank or a bank having membership in the Federal Reserve System or a bid bond made payable to "The

City of Merriam, Kansas" in an amount of not less than five percent of the total bid, which the City may retain until a contract for the project is awarded. Bid checks or bid bonds will be returned to the unsuccessful bidders if and when their bids are rejected. An agent authorized to transact business in the State of Kansas shall write the bonds.

Upon request of the City of Merriam, Kansas, each bidder shall submit on a form furnished for such purpose, a statement of the bidder's qualifications, the bidder's experience record in the type of work embraced in this project, the bidder's organization and equipment available for the work contemplated and, when specifically requested by the City of Merriam, a detailed financial statement.

The City of Merriam shall have the right to take the steps it deems necessary to determine the ability of the bidder to perform the obligations under the Contract and the bidder shall furnish the City of Merriam all such information and data for this purpose as it may request. The right is reserved to reject any bid if an investigation of the available evidence or information does not satisfy the City of Merriam, in its sole discretion, that the bidder is qualified to carry out properly the terms of the Contract.

The bidder to whom a contract for the Work is awarded will be required to furnish performance and statutory bonds acceptable to the City of Merriam, Kansas, each in amount of 100% of the Contract, in conformity with the requirements of the proposed Contract Documents. Each bond shall be written by an agent having an established office in Kansas.

The City of Merriam, Kansas reserves the right to reject any or all bids for any reason or to waive any informalities in the bidding.

Bids may be held by the City of Merriam, Kansas for a period not to exceed 60 days from the date bids are opened to review the bids and investigate the qualifications of the bidder before awarding the Contract.

INSTRUCTIONS TO BIDDERS

1. GENERAL NOTICE

Sealed proposals for **STATION 46 DRIVEWAY/APRON REPLACEMENT** in the City of Merriam, Kansas will be received from qualified bidders by the City of Merriam, Kansas at 9001 W 62nd Street, Merriam, Kansas 66202 until **10:00 a.m., Thursday, July 3rd, 2025**, at which time and place all bids will be publicly opened and read. Bids received after the designated closing time will be returned unopened. All contractors who plan to submit a proposal on the project are requested to attend.

Contractor shall visit the project sites to acknowledge the site conditions.

2. PLANS AND SPECIFICATIONS

The Project Manual, consisting of the Bidding Documents that include the advertisement for bid, instructions to bidders, proposal (including the bid schedule proposal), statement of bidder's qualifications and affidavit, Contract Documents (that include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner), and the Plans may be examined at the Merriam City Hall, 9001 W. 62nd St., Merriam, Kansas 66202. The Project Manual may be obtained and purchased from Drexel Technologies, 10840 West 86th Street, Lenexa, Kansas 66214, telephone (913) 371-4430. Checks shall be made payable to Drexel Technologies.

3. PROPOSALS

All proposals shall be made on the forms provided in this bound copy of the Project Manual. All proposals shall be legibly written in ink or typewritten, with all prices given in figures.

No alterations in proposals or in the printed forms will be permitted by erasures, deletions, or interpolations unless each alteration is signed or initialed by the bidder. If initialed, the City of Merriam ("Owner" or "City") may require the bidder to identify the alterations so initialed. Proposals carrying riders or qualifications to the bid as submitted will be rejected as irregular.

Each bidder shall enclose the bound copy of the Project Manual containing the proposal in a sealed envelope, addressed to "The City of Merriam, Kansas," and marked "**STATION 46 DRIVEWAY/APRON REPLACEMENT**" in the City of Merriam, Kansas.

4. PROPOSAL GUARANTEE

Each proposal shall, as guarantee of good faith on the part of the bidder, be accompanied by a certified check or cashier's check, drawn on a National Bank, or on a bank having a membership in the Federal Reserve System, or a bid bond, in the amount of not less than five percent of the total bid. The proposal guarantee shall be made payable without conditions to "The City of Merriam, Kansas" and the amount of the check will be retained by, and forfeited to, the Owner as liquidated damage if such proposal is accepted and the contract is awarded, and the bidder fails to enter into a contract in the form prescribed, with legally responsible sureties, within ten days after such award is made by the Owner.

5. SIGNATURE OF BIDDER

Each proposal must be signed in ink by the bidder with the bidder's full name, business address or place of residence, and telephone number. In the case of a firm, the name and residence of each member must be inserted, and in the case the proposal is submitted by, or on behalf of, a corporation, it must be signed in the name of the corporation by an official who is authorized to bind the bidder and who shall also affix the corporate seal of such corporation.

6. ONLY ONE PROPOSAL ACCEPTED

No bidder may submit more than one proposal. Two proposals under different names will not be received from one firm or association.

7. RESPONSIBILITY OF AGENT

Any person signing a proposal as the agent of another or for others may be required to submit satisfactory evidence of the authority to do so.

8. QUALIFICATION OF BIDDERS

Upon request of the City of Merriam, Kansas, each bidder shall submit on a form furnished for such purpose, a statement of the bidder's qualifications, the bidder's experience record in the type of work embraced in this project, the bidder's organization and equipment available for the work contemplated, and, when specifically requested by the City of Merriam, a detailed financial statement. The City of Merriam shall have the right to take the steps it deems necessary to determine the ability of the bidder to perform the obligations under the Contract and the bidder shall furnish the City of Merriam all such information and data for this purpose as it may request. Each bidder shall perform at least 50% of the Work without the use of subcontractors and shall be on the most current Kansas Department of Transportation Pre-Qualified Contractor list. Computation of Subcontractors Work will be consistent with paragraph GC-35, Assignment and Subletting of Contract.

9. LOCAL CONDITIONS

Bidders shall read the Project Manual, examine the Plans, and make their own estimates of the existing facilities and the difficulties that will attend the execution of the Work called for by the proposed contract, including local conditions, weather uncertainty, and all other contingencies. Bidders shall satisfy themselves by personal examination of the location of the proposed Work, and by such means as they may choose, as to actual conditions and requirements. Information derived from the Project Manual, including the Plans, or from the Consulting Engineer, the Public Works Director, or their assistants shall not relieve the bidder of this responsibility.

10. INTERPRETATION OF CONTRACT DOCUMENTS

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Project Manual, including the Plans and Project Specifications, incorporated therein, that person may submit to the Consulting Engineer a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt and actual delivery. Any interpretation of the documents included in the Project Manual will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such Contract Documents. The Owner will not be responsible for any

other explanations or interpretations of such Contract Documents that anyone presumes to make on behalf of the Owner before expiration of the ultimate time set for the receipt of bids.

11. TIME OF COMPLETION

The time of completion of the Work is a basic consideration of the Contract. Before the Owner awards the Contract, the Bidder shall satisfy the Owner of their ability to complete the Work within the time limits stipulated in the Proposal.

12. COMPARISON OF BIDS

All bids shall be totaled for comparison by adding the amounts determined by multiplying the stipulated approximate quantity by the unit price named in the proposal for that item. In the case of alternate items, the Owner will have the ability to accept any or all alternates. If alternates are chosen by the Owner, these bid amounts shall be added to the total defined above with reductions for an "in lieu of" items as may be the case.

13. UNBALANCE OF BIDS

The unbalancing of bids will not be tolerated. Evidence of material unbalancing will be considered cause for rejection. No modification of bids already submitted will be considered unless such modifications are received prior to the hour set for opening.

14. BONDS

The contractor to whom the Work is awarded will be required to furnish the following Surety Bonds:

(a.) Performance Bond - A bond to the City of Merriam, Kansas in the amount of 100% of the amount of the Contract, and in accordance with Kansas Statutory requirements, guaranteeing faithful compliance with the terms of the Contract.

(b.) Statutory Bond - A bond to the State of Kansas, as required by statute, to guarantee the payment of labor and material bills.

All bonds shall be executed according to the sample forms hereto attached, signed by a surety company authorized to transact business in the State of Kansas, and acceptable as surety to The City of Merriam, Kansas. Each bond must be accompanied by a "Power of Attorney." The bonds shall be written by an agent authorized to transact business in the State of Kansas.

15. INSURANCE

General. The Contractor shall secure and maintain, throughout the duration of the Contract, insurance (on an occurrence basis unless otherwise agreed to in writing) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the Owner. The Owner shall be notified by receipt of written notice from the insurer or the Contractor at least 30 days prior to material modification or cancellation of any policy listed on the Certificate. Bidders are referred to paragraph GC-29 of the General Conditions for additional insurance information.

Notice of Claim. The Contractor, upon receiving notice of any claim in connection with this Contract, shall promptly notify the Owner, providing full details thereof, including an estimate of the amount of loss or liability.

Reduction of Policy Limits. The Contractor shall monitor and promptly notify the Owner of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor’s limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

Industry Ratings. The insurance carrier shall:

- (a.) Be licensed to do business in the State of Kansas;
- (b.) Carry a Best’s policyholder rating of “A-: or better; and
- (c.) Carry at least a Class VIII financial rating; or
- (d.) Be acceptable to the City.

Insurance Required. Insurance of the following kinds and minimum limits shall be required to be carried by the Contractor throughout the lifetime of the project:

Limits.

- (a.) Commercial General Liability

Each Occurrence:	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Products/Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000

Policy must name “City of Merriam” as “Additional Insured”

- (b.) Automobile Liability

Combined Single Limits, Bodily Injury and Property Damage	\$1,000,000 per accident
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Policy must name “City of Merriam” as “Additional Insured.”

- (c.) Workers’ Compensation and Employers’ Liability

Workers’ Compensation	Statutory Limits
Employers’ Liability	\$500,000 each accident
	\$500,000 disease – policy limit
	\$500,000 disease – each
- (d.) Umbrella Liability \$4,000,000

The Contractor shall secure an Umbrella or Excess Liability policy that extends limits above the Commercial General Liability, Automobile Liability, and Employers' Liability.

(e.) Owner's and Contractor's Protective Liability.

Named Insured:	City of Merriam, Kansas
Limits:	\$1,000,000 Each Occurrence
	\$1,000,000 Aggregate

(f.) Other

16. INDEMNIFICATION

The Contractor shall be required to indemnify and hold the City of Merriam, Kansas harmless according to paragraph GC-20, Indemnification.

17. RETURN OF PROPOSAL GUARANTEE

The bid checks or bonds of the three lowest and best bidders may be retained for a period of not more than 60 days pending the execution of the Contract and bonds by the successful bidder. All other bidders' checks or bonds will be returned immediately after the bids have been tabulated and the three lowest and best bids have been determined. Checks or bonds, which have been retained, will be returned when the contractor to whom the Contract has been awarded has furnished approved bonds and filed the necessary number of signed Contracts with the City of Merriam, Kansas.

18. REJECTION OF BIDS

The City of Merriam, Kansas reserves the right to reject any or all bids for any reason and to omit one or more items, or portions of items, of the proposal from the award of the Contract, in its sole discretion.

19. PAYMENTS

Payment for all Work performed under this Contract and material stored on the project site will be made as provided in paragraph GC-64.

20. BOUND COPY OF PROJECT MANUAL

None of the documents contained in the Project Manual shall be removed prior to filing same with the City of Merriam.

21. TAXES AND PERMITS

The Contractor shall secure and pay for all permits necessary for the prosecution of any and all parts of the Work from cities, county, state, or other governing bodies having jurisdiction. The Contractor shall acquaint itself with and conform to the requirements, rules, and regulations of said governing bodies.

The Contractor shall pay all taxes, except sales taxes, that may be lawfully assessed against the Owner or Contractor in the execution and performance of the Contract and Work covered thereby. The unit prices in the Proposal shall include all such taxes.

It is the Owner's intention to secure an exemption certificate for this project permitting the Contractor to purchase materials without payment of the sales or compensating tax. All bidders shall make allowance for this exemption and shall prepare their bids to reflect the exemption from sales or compensating taxes.

The Contractor must furnish each supplier with a properly executed exemption certificate for the supplier's files. All suppliers' invoices for materials to be incorporated in the Work shall include the exemption certificate number. The Contractor must furnish the Owner with a copy of all invoices. When the project is completed, the Contractor shall file with the Owner, a certified statement that all exempt purchases made were entitled to be exempt of Kansas Retailer's Sales or Compensating Tax. The Owner shall file said statement with the State of Kansas.

The Contractor to whom an exemption certificate has been issued shall assume full responsibility for its proper use of the certificate number, and shall pay all costs of any legally assessed penalties relating to its improper use of the certificate number.

22. WITHDRAWAL OF BID

No Bidder may withdraw its proposal for a period of 60 days after date and hour set for the opening herewith. A Bidder may withdraw its proposal at any time before the expiration of the period in which proposals may be submitted by written request of the Bidder, which must be signed in the same manner and by the same person who signed the proposal.

23. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall comply with the provisions in paragraph GC-19, Relations with Other Contractors.

24. COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS, AND RULES

The Contractor shall comply with the provisions in paragraph GC-75, Compliance with Equal Opportunity Laws, Regulations, and Rules.

25. KANSAS OPEN RECORDS ACT

The City of Merriam is a Kansas municipality governed by the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.* By providing a Proposal, the Bidder acknowledges that its Proposal, once opened, is presumed to be an open record under the KORA. If the Bidder submits information that it believes to be subject to an exemption to disclosure under the KORA, the Bidder must reference the particular exemption from mandatory disclosure outlined in the KORA. The words "Confidential" or "Proprietary" are not sufficient. The City of Merriam cannot guarantee the confidentiality of claimed material, however. Bidders specifically waive any claims against the City of Merriam related to the disclosure of any material if made pursuant to a public records request.

MERRIAM CITY FACILITY GENERATORS

P R O P O S A L

To: The Governing Body
City of Merriam, Kansas
9001 West 62nd Street
Merriam, Kansas 66202

Ladies and Gentlemen:

The undersigned bidder declares to have carefully examined the Project Manual, including the Bidding Documents, Contract Documents, and Plans, and to have inspected the actual location of the Work, together with the total sources of supplies. The undersigned is satisfied as to all quantities and conditions, and hereby proposes to furnish all materials, supplies, tools, equipment and plant, perform all necessary labor, and construct, install, and complete all Work stipulated in, required by, and in conformity with the Project Manual, including the Bidding Documents, Contract Documents, and Plans for and in consideration of the Bid Proposal.

The undersigned is prepared to submit a financial and experience statement upon request.

The undersigned hereby agrees to furnish the required bond and to enter into a contract within ten days from and after the acceptance of this proposal, and further agrees to complete the entire Work covered by this proposal within _____ **consecutive Calendar Days**, from the date of the Order to Commence Work thereon. In determining the number of consecutive Calendar Days necessary to complete the entire Work covered by this proposal, the undersigned expressly states to have taken into consideration and made allowance for all potential hindrances and delays incident to such Work, including, but not limited to, delays caused by adverse weather conditions. The Order to Commence Work is anticipated for **July 15th, 2025**.

The undersigned hereby agrees that liquidated damages in the amount of **\$250.00** per Calendar Day, shall be deducted from any moneys due the Contractor for each day that the Work or portion thereof shall remain uncompleted after the expiration of the Calendar Days provided above.

BID PROPOSAL FOR CONTRACT FOR
City of Merriam
STATION 46 DRIVEWAY/APRON REPLACEMENT
Merriam, Kansas

Date: _____

Submitted To: _____

Submitted By: _____

Addenda Received: _____

The undersigned, having examined the plans, project manuals and 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 labor, hereby proposes to furnish all labor, materials and supplies to do the work in accordance with the Contract Documents and terms and condition described below:

Recognizing that time will be of the essence, the undersigned proposes, upon execution of the Agreement Between Owner and Contractor or upon receipt of notice to proceed from the Owner (whichever comes first), to immediately start the Work of the Contract. The Agreement Between Owner and Contractor will be executed as soon as possible after the opening and award of bids.

Markup percentage for all changes in the work shall not exceed 10%. This shall include all overhead and profit associated with each change. See Section 01 26 00, "Contract Modification Procedures", for administrative and procedural requirements for handling and processing contract modification.

Execution of Agreement: The undersigned will, within fourteen (14) days of receipt of notice of acceptance of this proposal, enter into agreement with the Owner on the Owner's agreement form and will deliver the required Performance Bond and Statutory Bond.

BID SCHEDULE PROPOSAL

Item No.	Item Description	Unit	Quantity	Total Cost
1	Force Account (Set)	Each	1.0	\$25,000
2	Station 46 Driveway/Apron	Lump Sum	1.0	
			Total	\$

Respectfully Submitted,

(Signature)

(Company)

(Business Address)

(Telephone Number)

(Seal, if by a Corporation)

CONTRACTOR'S ACKNOWLEDGEMENT OF SITE VISITATION

I acknowledge that I visited the project locations, reviewed the existing site conditions and project limits, and understand the scope of the project before submitting the bid.

COMPANY NAME: _____

PRINT NAME: _____

TITLE: _____

SIGNATURE: _____

DATE OF SITE VISITATION: _____

LIST OF SUBCONTRACTORS

OWNER CITY OF MERRIAM, KANSAS

WORK STATION 46 DRIVEWAY/APRON REPLACEMENT

PROJECT No.

Work to be Performed	Subcontractor	Address & Phone No.	Percent of Base Bid
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

**STATION 46 DRIVEWAY/APRON REPLACEMENT
BID BOND**

Enclosed is a (Certified Check) (Cashier's Check) (Bid Bond) in the amount of _____ Dollars that the undersigned agrees will be forfeited to and become the property of the City of Merriam, Kansas as liquidated damages should this proposal be accepted and the Contract be awarded to the undersigned and the undersigned fails to enter into a contract in the form prescribed, and to furnish the required bond within ten days as above stipulated. Otherwise the proposal guarantee shall be returned to the undersigned upon the signing of the contract and delivery of the approved bonds to the City of Merriam, Kansas.

I/We acknowledge receipt of the following addenda:

Dated in _____ this _____ day of _____ 20__.

SIGNATURE OF BIDDER:

(If an Individual): _____ doing business as

(If a Partnership):

By: _____

Member of Firm _____

(If a Corporation):

By: _____

Name _____

Title _____

SEAL

Business Address of Bidder: _____

Phone: _____

Fax: _____

**CITY OF MERRIAM, KANSAS
AFFIDAVIT**

STATE OF _____)
) SS.
COUNTY OF _____)

_____ (name) of the City of _____,
County of _____ State of _____.

Being duly sworn, deposes and says:

1. That I am the _____ (title) of _____ (name of bidder) and have been authorized by said Bidder to make this affidavit on its behalf;
2. No officer, agent, official, or employee of the City of Merriam, Kansas is financially interested, directly or indirectly, in what Bidder is offering to sell or provide to the City pursuant to this bid;
3. If Bidder were awarded any contract, job, work, or service for the City of Merriam, Kansas, no officer, agent, official, or employee of the City would be pecuniarily interested in or receive any benefit from the profit or emoluments of such;
4. This bid was not prepared with any confidential information received through a city employee or official;
5. Bidder has not participated in collusion or committed any act in restraint of trade, directly or indirectly, which bears upon anyone's response or lack of response to this bid.

_____ (Name of Bidder)

_____ (Signature of Affiant)

_____ (Title of Affiant)

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

(seal)

Notary Public

My commission expires: _____

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information desired.

1. Name of Bidder.
2. Permanent main office address.
3. When organized.
4. If a corporation or limited liability company, where incorporated.
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand: (schedule these, showing amount of each contract and appropriate anticipated dates of completion.)
7. General character of work performed by your company.
8. Have you ever failed to complete or been accused of failing to complete any work awarded to you? If so, where and why?
9. Have you ever defaulted or been accused of defaulting on a contract? If so, where and why?
10. Have you been sued or sued an Owner within the past ten years? If so, provide the case number and court, including county and state.
11. Have you been involved in arbitration in connection with a construction project within the past ten years? If so, describe the project, nature of the arbitration, and outcome.
12. List the more important projects recently completed by your company, stating the approximate cost of each, and the month and year completed.
13. List your major equipment available for this contract.
14. Provide your experience in construction work similar in importance to this project.
15. Provide background and experience of the principal members of your organization, including the officers.
16. Credit available: \$_____.
17. Give bank reference.

- 18. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the City of Merriam, Kansas?
- 19. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Merriam, Kansas in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at _____ this _____ day of _____, 20__.

Name of Bidder: _____

By: _____

Title: _____

State of _____) SS
County of _____)

I, _____ being duly sworn, depose and say that I am _____ of _____ (Name of Organization) and that the answers to the foregoing questions and all statements therein contained are true and correct.

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

Notary Public

My Commission expires _____, 20__.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, of _____ as Principal, hereinafter referred to as the “Contractor,” and _____ a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, hereinafter referred to as the “Surety,” are held and firmly bound unto the City of Merriam, Kansas, hereinafter referred to as “City,” in the penal sum of \$ _____, lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, said Contractor has entered into a written Contract with the City dated _____, 20__, (the “Contract”) for furnishing in a good, substantial, and workmanlike manner all construction, labor, materials, tools, equipment, appliances, transportation, superintendence, and other facilities and accessories for the construction of certain improvements as designated, defined, and described in the Contract and the award of Contract relating to the **STATION 46 DRIVEWAY/APRON REPLACEMENT** in the City of Merriam, Kansas, all in accordance with the Project Manual, including the detailed Plans incorporated therein, on file in the Public Works office for the City of Merriam, Kansas; a copy of said Contract is or may be attached hereto and is incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of its terms and conditions, both express and implied.

NOW, THEREFORE, if the Contractor, or the subcontractor or subcontractors of said Contractor, shall and will, in all particulars, well, truly, promptly, and faithfully observe, perform, abide by, and carry out each and every covenant, condition, obligation, and part of the Contract and the conditions, specifications, Plans, and other Contract Documents thereto attached or by reference made a part thereof, according to the true intent and meaning in each case, and the Work shall be constructed so as to endure without defect and need of repair for a period of two years from and immediately following the completion of said Contract and the acceptance thereof of the City; and if the Contractor shall protect and save harmless the City from all loss, damage, and expense to the construction of said Work, or by or in consequence of any negligence, carelessness, or misconduct in guarding and protecting the same, or from any improper or defective materials used in its construction, or any act or omission of the Contractor or its agents, servants, or employees; and if the Contractor shall protect and save harmless the City from all suits and claims of infringement or alleged infringement of patent rights of processes; and if the Contractor, for and during a period of two years from and immediately following the completion of said Contract and the acceptance thereof by the City, shall pay or cause to be paid to the City, all loss, damage and expense that may occur to the City by reason of defective materials used, or by reason of defective workmanship done in the furnishing of materials for and the construction of, the said Work; and if the Contractor shall save and hold harmless the City from all loss, damage, and expense occasioned

by any failure whatsoever of the Contractor, then this obligation shall be and become null and void; otherwise it shall be and remain in full force and effect;

PROVIDED, FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Work to be performed thereunder, or the specifications, Plans, and other Contract Documents accompanying the same, shall in any way affect its obligations on this bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Contract, or to the Work, or to the specifications, Plans, and other Contract Documents;

PROVIDED, FURTHER, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term "amendment," wherever used in this bond, and whether referring to this bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that whenever the Contractor is declared by City to be in default under the Contract, the Surety may promptly remedy the default or promptly notify the City in writing as to which of the following actions it shall take, such actions to commence within 14 days from the date of default notice from the City:

1. Commence completing the Work in the Contract in accordance with its terms and conditions, either itself, or through others acting on its behalf, during which time the City shall pay the Surety only those sums that would have been due and payable to the Contractor under the Contract had the Contractor not been in default. Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or
2. With the prior written consent of the City, commence the process of obtaining a bid or bids for completing the Work of the Contract in accordance with its terms and conditions, and upon determination by the City and the Surety jointly of the lowest and best responsive, responsible bidder, arrange for a contract between such bidder and the City. The City shall pay the completing contractor from its own funds only those sums that would have been due and payable to the Contractor pursuant to the Contract had such Contractor not been in default. To the extent that the City is obligated to pay the completing contractor sums, which would not have been due and payable to the Contractor pursuant to the Contract, the Surety shall pay to the City such sums in a timely manner so that the City may utilize such sums in making timely payment to the completing contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

In addition to the duties set forth above, the Surety shall pay the City costs and expenses resulting from the Contractor's default, but in no event shall the Surety be required to pay any sum in excess of the Penal Sum set forth herein.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at _____ on this, the _____ day of _____, 20__.

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

NOTE:

1. Date of bond must not be prior to date of Contract.
2. If Contractor is a partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Fact's authority form from the surety company certified to include the date of the bond.

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Contractor and Principal, hereinafter referred to as the “Contractor,” and _____ a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, hereinafter referred to as the “Surety,” are held and firmly bound unto the State of Kansas, in the penal sum of \$_____ lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has entered into a written Contract with the City of Merriam, Kansas on the _____ day of _____, 20____, (the “Contract”), a copy of which is attached hereto and incorporated herein, for furnishing in a good, substantial, and workmanlike manner all construction, labor, materials, tools, equipment, supplies, appliances, transportation, superintendence, and other facilities and accessories for the construction of certain improvements as designated, defined, and described in the Contract relating to the STATION 46 DRIVEWAY/APRON REPLACEMENT in the City of Merriam, Kansas, all in accordance with the Project Manual and the detailed Plans incorporated therein, on file in the Public Works Office for the City of Merriam, Kansas and incorporated herein by reference.

NOW, THEREFORE, if the Contractor or its subcontractor or subcontractors shall pay all indebtedness incurred for supplies, materials, equipment, transportation, or labor furnished, used or consumed in connection with or in or about the construction or making of the public improvements described in the above-mentioned Contract, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract. The Surety further agrees that any person to whom there is due any sum for labor furnished, transportation, materials, equipment, or supplies used or consumed in connection with or in or about the construction of said improvements, or said person’s assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after six months from the completion of said public improvement.

PROVIDED, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 50%, so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term “amendment,” wherever used in this bond, and whether referring to this bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his/her hand, and the Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do, at _____ on this _____ day of _____, 20__.

(SEAL)

Contractor

By _____

Title

(SEAL)

Surety Company

By _____
Attorney-in-Fact

Countersigned:

By _____
Kansas Resident Agent

NOTE:

1. A Statutory Bond is required only in connection with a Contract exceeding \$100,000.00 in accordance with K.S.A. 60-1111, as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date of bond must not be prior to date of Contract.
4. If Contractor is a partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Fact's authority form from the surety company certified to include the date of the bond.

MERRIAM, KANSAS

**STATION 46 DRIVEWAY/APRON REPLACEMENT
CONTRACT**

This agreement for the construction of the **OPFD STATION 46 DRIVEWAY/APRON REPLACEMENT** (hereinafter referred to as the "Contract"), made and entered into this ____ day of _____, 20__ by and between the City of Merriam, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas (hereinafter referred to as the "Owner") and _____ of _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, (hereinafter referred to as the "Contractor").

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, Contract Documents, including Project Specifications and Plans, for the Work herein described and has approved and adopted these Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed proposals for furnishing materials, labor, and equipment for, and in connection with, the construction of **STATION 46 DRIVEWAY/APRON REPLACEMENT**, in the City of Merriam, Kansas, in accordance with the terms of this Contract; and

WHEREAS, the Owner in the manner prescribed by law has publicly opened, examined, and canvassed the proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for constructing said Work, and duly awarded to the said Contractor this Contract therefore for the sum or sums named in the proposal attached to, and made a part of this Contract;

NOW, THEREFORE in consideration of the compensation to be paid to the Contractor, and of the mutual covenants, promises, and agreements set forth herein, the parties hereto agree, the Owner for itself and its successors, and the Contractor for itself, its successors and assigns, or executors and administrators, as follows:

ARTICLE I. That the Contractor shall furnish at its own cost and expense all labor, tools, equipment, and materials necessary to complete the Work and shall construct and complete in good first class manner the Work as designated, described, and required by the Project Manual for the **STATION 46 DRIVEWAY/APRON REPLACEMENT**. All Work to be done under this Contract shall be under the direct supervision, and to the entire satisfaction of the Owner, and in accordance with the laws of the State of Kansas.

ARTICLE II. That the following documents, which may be attached hereto, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein: the Project Manual, consisting of the Bidding Documents [which shall include the advertisement for bid, instructions to bidders, proposal (including the bid schedule proposal), statement of bidder's qualifications, and affidavit], Contract Documents (which shall include the proposal, performance bond, statutory

bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner), and the Plans.

ARTICLE III. That the Owner shall pay to the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of \$_____, in cash or its equivalent, for all Work covered by and included in the Contract, in the manner provided in the General Conditions hereto attached.

ARTICLE IV. That the Contractor will commence work on a date to be specified in a written order form from the Owner, and will complete all Work covered by this Contract by the calendar completion date set forth in the proposal.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed and made effective the day and year first above written and the Contractor has executed four counterparts of this Contract in the prescribed form and manner.

OWNER
CITY OF MERRIAM, KANSAS

Attest:

By Bob Pape, Mayor

(SEAL)

Juliana Pinnick, City Clerk

Contract Approved as to Form:

Ryan Denk, City Attorney

CONTRACTOR

By _____
Title: _____

(SEAL)

GENERAL CONDITIONS

GC-1. SCOPE: The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements that will not be required in the performance of the Work under Contract and that therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under Contract, such stipulation or requirement will have no meaning relative to the performance of said Work.

GC-2. CONTRACT DOCUMENTS: It is expressly understood and agreed that the bound volume of Contract Documents, as defined in GC-3, and other drawings and data that may be furnished by the Contractor and approved by the Owner, and such other additional drawings that may be furnished by the Owner and/or Consulting Engineer as are necessary to make clear, and to define in greater detail, the intent of the Contract Documents, are each and all included in this Contract and the Work shall be done fully in accordance therewith.

GC-3. DEFINITIONS: Whenever any word or expression, defined in this Paragraph GC-3, or pronoun used in its stead, occurs in the Contract Documents or the Bidding Documents, it shall have and is mutually understood to have the meaning herein given.

“Bid” shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed (and the Owner reserves the right to reject any and all bids).

“Bidder” shall mean any individual, partnership, cooperation, association or other entity submitting a Bid for the Work.

“Bidding Documents” shall mean and include all documents related to the Bidder’s submitting a Bid, including, but not limited to, the advertisement for bids, if applicable, instructions to bidders, the proposal (including the bid schedule proposal), statement of bidder’s qualifications and affidavit, and any addenda issued prior to receipt of bids.

"Calendar Days" shall be defined as each day falling within a given month, including Saturday, Sunday, or Holidays.

“Change Order” is a written order issued after the Contract is executed in which the Owner and the Contractor agree to construct additional items of work, to modify the Contract Time, or to change the character and scope of Work shown on the Contract Plans, or as otherwise provided in this Contract. Change orders must be signed by the Owner and the Contractor to be binding.

“City Engineer” shall mean the City Engineer of the City of Merriam, Kansas.

"Consulting Engineer" shall mean the engineer who has been employed by the Owner to provide professional services with regard to this Work or his or her duly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

"Contract" or "Contract Documents" may be used interchangeably and shall mean and include the proposal, performance bond, statutory bond, contract, general conditions, special conditions, technical specifications, and any addenda or change orders authorized by the Owner.

"Contract Price" shall be the amount identified in the Contract between Owner and Contractor as the total amount due Contractor for total completion of the Work as per the Contract Documents. Where the Contract provides that all or part of the Work is to be Unit Price Work, the Contract Price shall initially be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item required for the Work. It is understood and agreed that estimated quantities of items for Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of actual quantities and classifications of Unit Price Work shall be made by the Owner. Each unit price shall be deemed to include Contractor's overhead and profit for each separately identified item.

"Contract Time" shall be the number of Calendar Days stated in the Contract Documents for the completion of the Work or shall be a date certain if so designated in the Contract Documents.

"Contractor" shall mean the party entering into this Contract for the performance of the Work covered by this Contract, together with its duly authorized agents or legal representatives.

"Date of Signing the Contract" or words equivalent thereto, shall mean the date upon which the Contract, executed by the Contractor, is signed by the Owner.

"Defective Work" shall mean Work that is unsatisfactory, faulty or deficient, or not in conformity with the Contract Documents. It shall also include Work damaged prior to approval of final payment unless responsibility for such damage shall have been expressly assumed by the Owner at substantial completion.

"Field Order" shall mean a written order issued by the Owner that orders minor changes in the Work but does not involve a change in the Contract Price or Contract Time.

"Final Acceptance" shall mean the date when the Merriam City Council approves the Contract at a regularly scheduled City Council meeting.

"Owner" or "City" shall mean the City of Merriam, Kansas or its designated representatives.

"Plans" or "The Plans" shall mean and include all drawings that may have been prepared by the Owner or Consulting Engineer on the Owner's behalf as a basis for bids, all drawings (other than Shop Drawings) submitted by the successful Bidder with its Bid or by the Contractor to the Owner, if and when approved by the Owner, and all drawings submitted by the Owner to the Contractor during the progress of the Work, all of which show the character and scope of the Work to be performed.

"Project Manual" shall mean the Bidding Documents and the Contract Documents.

“Project Specifications” shall mean the general conditions, special conditions, and technical specifications.

“Public Works Director” shall mean the Public Works Director of the City of Merriam, Kansas, or his or her designated representative.

“Shop Drawings” shall mean drawings, diagrams, illustrations, schedules, and other data that are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier, or distributor to illustrate some portion of the Work.

"Standard Specifications" for this Work shall be the latest edition of the KDOT Standard Specifications and Construction Manual. If any item of Work or portion thereof is not covered by the KDOT specifications then Kansas City Metropolitan Chapter American Public Works Association (KC APWA) Standard Specifications and Design Criteria latest revision will apply. If an item in the Standard Specifications calls for a bid, and a bid item is not provided for in the Contractor's proposal, such items shall be considered a subsidiary obligation of the various bid items for the Work. When reference is made to a Standard Specification, such specification shall govern as though it were repeated verbatim herein. If any conflict should arise between the Standard Specifications and the Project Specifications, the Project Specifications shall govern.

“Subcontractor” shall mean an individual, firm, or corporation having a direct contract with the Contractor or with another Subcontractor for the performance or supply of a part of the Work.

“Underground Facilities” shall mean all pipelines, conduits, ducts, cables, wires, fiber, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish services or materials including, but not limited to, electricity, gases, steam, liquid petroleum products, telephone or other communications, wireless services, cable television, sewage and drainage removal, traffic or other control systems or water.

"Work" or "Project" (used interchangeably) shall mean the work to be done necessary to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, supplies, equipment, and transportation necessary to produce such construction in accordance with the Contract Documents, unless some other meaning is indicated by the context.

Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used it shall be understood that the order, direction, requirement, permission, or allowance of the Owner is intended.

The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner.

Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties executing the Contract.

GC-4. VERBAL STATEMENTS NOT BINDING: It is understood and agreed that the written terms and provisions of this Contract shall supersede all verbal statements of any and every official or other representative of the Owner, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Contract.

GC-5. TITLES AND SUBHEADINGS: The titles or subheadings used in this Contract are understood to be only for convenience of reference, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation thereof.

GC-6. COPIES OF CONTRACT: Sufficient copies of the Contract Documents shall be prepared, each containing the Contractor's bid as submitted, the bond properly executed, and the Contract signed by both parties. These executed counterparts of the Contract Documents are to be filed with the Owner, Contractor, Consulting Engineer, and the Surety Company executing the bond. The original bid submitted by the Contractor will be retained by the Owner, in addition to the copy in the Owner's copy of the executed documents.

Unless otherwise provided in the Contract Documents, Owner will furnish to Contractor a maximum of five copies of the Contract Documents, free of charge, necessary for the execution of the Work.

Contractor shall keep, and make available to Owner at the Project site, one copy of all Contract Documents for the Work at the Project site, in good order and legibly marked to reflect actual construction. Contractor shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such Documents, samples, and Shop Drawings shall be turned over to the Owner at the completion of the Work if requested by the Owner.

Contract Documents are the property of the Owner, and none of the Contract Documents are to be used on other work by the Contractor. At the Owner's request, all Contract Documents shall be returned to the Owner with the exception of one record set for Contractor. All models and calculations are the property of the Owner.

GC-7. SCOPE, NATURE, AND INTENT OF SPECIFICATIONS AND PLANS: The Plans, which are incorporated by reference into the Contract Documents, are intended to complement, but not necessarily duplicate the other documents which comprise the Contract Documents.

Should anything be omitted from the Plans or the other documents comprising the Contract Documents that is necessary to a clear understanding of the Work, or should it appear that various provisions are in conflict, or the Plans or other documents comprising the Contract Documents are silent as to any detail, the Contractor shall secure written instructions from the Owner before proceeding with the construction affected by such omissions, discrepancies, or silence. Contractor's failure to bring such matter to the attention of the Owner shall be at the Contractor's

peril, and there shall be no compensation for extra work necessitated thereby. It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

Contractor, together with its Subcontractors, shall carefully examine the Plans and other documents comprising the Contract Documents for any interferences with the Work and clearances that may be required. Contractor shall be responsible for the proper fitting of materials and equipment without substantial alterations. Contractor shall be responsible for eliminating interferences without additional cost to Owner. If departures from the Plans or other documents comprising the other Contract Documents, are deemed necessary by Contractor, details of such departures and reasons therefore shall be submitted to Owner, with drawings (if Owner determines that drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Contractor without the prior written approval of the Owner.

GC-8. FIGURED DIMENSIONS TO GOVERN: Dimensions and elevations shown on the Plans shall be accurately followed, even though they differ from scaled measurements. No work shown on the Plans, if the dimensions are not indicated, shall be executed until the required dimensions have been obtained from the Owner.

GC-9. CONTRACTOR TO CHECK PLANS AND SCHEDULES: The Contractor shall check all dimensions, elevations, and quantities shown on the Plans and schedules given thereto by the Consulting Engineer, and shall notify the Owner and Consulting Engineer of any discrepancy between the Plans and the conditions on the ground, or any error or omission in Plans, or in the layout as given by stakes, points, or instructions, which may be discovered in the course of the Work. The Contractor will not be allowed to take advantage of any error or omission in the Contract Documents, including the Plans. Full instructions will be furnished by the Owner should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

GC-10. DRAWINGS TO BE FURNISHED BY THE CONTRACTOR: Contractor shall review, approve, and furnish, with such promptness and in such order as to cause no delay in its own Work or that of any Subcontractor or other Contractor, all shop, fabrication, assembly, foundation, and other drawings and schedules required by the Project Specifications, including but not limited to: (1) drawings of equipment and devices offered by the Contractor for approval of the Consulting Engineer in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed for consideration of the Owner, by the Contractor in lieu of the design or arrangement required by the Contract Documents, or any item of extra work thereunder; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped with the Contractor's approval and identified with the name and number of this Contract, Contractor's name, and references to applicable specification paragraphs and Contract drawings. Each submittal shall indicate the intended use of the item in the Work. Contractor's stamp of approval is representation to the Owner, that the Contractor accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that the Contractor reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract

Documents shall be identified on each submittal and shall be tabulated in the Contractor's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Contractor (including modifications to other facilities that may be a result of each deviation).

No fewer than two preliminary copies of each drawing shall be submitted to the Consulting Engineer for his or her review and approval, together with the same number of copies of each drawing required by the Consulting Engineer to be revised. On final approval, the Consulting Engineer shall be furnished with a total of no fewer than five copies, and more when required, of each drawing as finally approved, such number to include any copies of preliminary or revised drawings that are approved as submitted. After due approval in writing by the Consulting Engineer, all such drawings shall become a part of the Contract Documents and the work or equipment shown by such drawings shall be in conformity with said drawings unless otherwise required by the Owner.

No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance, or device not fabricated or manufactured by the Contractor or its Subcontractors, be purchased until the drawing or drawings thereto have been approved as stipulated, except at the Contractor's own risk and responsibility.

The Consulting Engineer's check and approval of drawings submitted by the Contractor will cover only general conformity to the Contract Documents and will not constitute a blanket approval of all dimensions, quantities, and details of the material or equipment shown, nor shall such approval relieve the Contractor of its responsibility for errors contained in such drawings.

GC-11. LINES AND GRADES: All work performed under this Contract shall be done to the lines, grades, and elevations shown on the Plans. The Contractor shall keep the Owner informed, a reasonable time in advance of the times and places it wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the Owner, and delay to the Contractor.

GC-12. WORK DONE WITHOUT LINES OR GRADES: Any work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points located, established, or checked by the Owner, may be ordered removed and replaced at the Contractor's cost and expense.

GC-13. PRESERVATION OF MONUMENTS AND STAKES: The Contractor shall carefully preserve all monuments, property corners, bench marks, reference points, and stakes, and in case of destruction of the same, will be charged with the resulting expense of repairs, and it shall be responsible for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance.

In the event that the loss of stakes causes a delay in the Work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments, property corners, or bench marks that must of necessity be removed or disturbed in the construction of the Work, the

Contractor shall carefully protect and preserve the same until they can be properly referenced for relocation. The Contractor shall furnish at its own expense such materials, surveyors, and assistance as are necessary for the proper replacement of monuments, property corners, or bench marks that have been moved or destroyed.

GC-14. LEGAL ADDRESS OF CONTRACTOR: Both the business address of the Contractor given in the bid of proposal upon which this Contract is founded, and the Contractor's office in the vicinity of the Work, are hereby designated as the places in which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivery at either of the above named addresses, or the depositing in any mail box regularly maintained by the Post Office, of any notice, letter, or other communication so addressed to the Contractor, shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing.

Such addresses may be changed at any time by an instrument in writing, executed by the Contractor and presented and delivered to the Owner. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

GC-15. CONTRACTOR'S OFFICE AT SITE OF WORK: During the performance of this Contract, the Contractor may be required to maintain a suitable office at or near the site of the Work that shall be the headquarters of a representative authorized to receive drawings, instructions, or other communications or articles from the Owner or the Owner's agents, and any such communication given to said representative, or delivered at the Contractor's office at the site of the Work in the Contractor's absence, shall be deemed to have been given to the Contractor.

GC-16. RESPONSIBILITY OF CONTRACTOR: The Contractor shall furnish all transportation, tools, equipment, machinery and plant, and all suitable appliances, requisite for the execution of this Contract and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof. The Contractor shall cover and protect its work from damage and all injury to the same, before the completion and acceptance of the Work under this Contract. The Contractor shall be solely liable for all damages to the Owner or the property of the Owner, to other contractors or other employees of the Owner, to the neighboring premises, or to any private or personal property, due to improper, illegal, or negligent conduct of the Contractor, its Subcontractors, employees, or agents in and about said Work, or in the execution of the Work covered by this Contract, or any extra work undertaken as herein provided. The Contractor shall be liable to the Owner for any damages, whether property damage or personal injury, occasioned by Contractor's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

GC-17. PATENTS: Contractor agrees to defend any claim, action, or suit that may be brought against Owner, its governing body, officers, agents, or employees for infringement or alleged infringement of any patents arising out of the performance of this Contract or out of the use or disposal by or for the account of Owner of supplies furnished or construction work performed hereunder, and also to indemnify and hold harmless the Owner, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs, and expenses recovered

against it or them or sustained by it or them on account of any such actual or alleged infringement. It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatuses, devices, or equipment used in or furnished for the Work shall be included in the Contract Price. Final payment to the Contractor by the Owner shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled. The Contractor, however, shall not be liable for the payment of any damages or other cost in connection therewith, for the infringement or alleged infringement of any patented process required by the Owner in the design of the Work to be done under this Contract.

GC-18. INDEPENDENT CONTRACTOR: The right of general administration of the Owner shall not make the Contractor an agent of the Owner, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property, the Contractor herein is an independent contractor in respect to the Work.

GC-19. RELATIONS WITH OTHER CONTRACTORS: The Contractor shall cooperate with all other contractors or workers who may be performing work on behalf of the Owner and workers who may be employed by the Owner, on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damages that may be sustained by other contractors, workers, or employees of the Owner, or their Work, because of any fault or negligence on Contractor's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict that may arise between the Contractor and other contractors, or between the Contractor and the workers of the Owner, or any other entity, in regard to their work, shall be adjusted and determined by the Owner. If the Work of the Contractor is delayed or damaged because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account; provided, however, the Owner may, in its discretion, grant an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Owner shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials, or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by the Owner to the contractor so desiring, to the extent that may be reasonably necessary.

GC-20. INDEMNIFICATION: Contractor agrees to indemnify, defend, assume all responsibility for, and hold harmless the City and its elected officials, appointed officers, employees, and agents, from and against any and all claims, losses, damages, causes of actions, suits, and liabilities of every kind, including all expenses of litigation, court costs, and attorney's fees arising out of or resulting from: (1) any failure by Contractor to perform or comply with the terms of this Contract; and (2) any injury to or death of any person or damage to or loss of

any property caused in whole or in part by a negligent or intentional act or omission of Contractor, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Contractor's services. The Contractor shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

GC-21. METHOD OF OPERATION: The Contractor shall give to the Owner full information in advance regarding its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Contractor's plant or equipment or any of its methods of executing the Work, appear to the Owner to be unsafe, inefficient, or inadequate, the Owner may order the Contractor to increase or improve its facilities or methods and the Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the Owner to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of work, and the rate of progress required by the Contract. The Contractor alone shall be responsible for the safety, adequacy, and efficiency of its plant, equipment, and methods.

The approval by the Owner of a plan, schedule, or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such approval shall not be considered as an assumption by the Owner, or an officer, agent, or employee thereof, of any risk or liability, and the Contractor shall have no claim under this Contract on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered, and shall mean that the Owner has no objection to the Contractor's use or adoption, at the Contractor's own risk and responsibility, of the plan or method so proposed by the Contractor.

GC-22. SUGGESTIONS TO CONTRACTOR ADOPTED AT ITS OWN RISK: Any plan or method of work suggested by the Owner to the Contractor, but not specified or required, if adopted or followed by the Contractor, in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Owner will assume no responsibility therefore.

GC-23. AUTHORITY AND DUTY OF THE PUBLIC WORKS DIRECTOR: It is mutually agreed by and between the parties to this Contract, that the Public Works Director shall act as the designated representative of the Owner and shall observe and inspect, as required, all Work included herein. Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Public Works Director shall in all cases determine the amount and quantities of the several kinds of Work that are to be paid for under this Contract; that the Public Works Director shall determine all questions relating to the Work including the Plans and Specifications for the Project and the construction thereof; and that the Public Works Director shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) that the Public Works Director may determine are necessary, which shall be consistent with or reasonable inferable from the overall intent of the Contract Documents. It is the intent of the Contract that there shall be no delay in the execution of the Work, and the decisions or directions of the Public Works Director as rendered shall be promptly carried out.

The Public Works Director will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents. The Public Works Director will not be responsible for the acts or omissions of Contractor or any Subcontractor or any of their agents or employees, or any other person at the site or otherwise performing any of the Work.

GC-24. WORK OBSERVATION: The Owner shall at all times have access to the Work to observe and examine the materials furnished and the Work performed under this Contract, and to see that said materials are furnished, and said Work performed, in accordance with the Contract Documents. The Contractor shall furnish all reasonable aid and assistance required by the Owner for the proper observation and examination of the Work and all parts thereof.

The Contractor shall comply with the directions and instructions of the Owner when the same are consistent with the obligations of this Contract and the Plans and Specifications thereof.

The Owner shall be free at all times to perform its duties, and any intimidation or attempted intimidation by the Contractor or an employee of the Contractor shall be sufficient reason, if the Owner so decides, to terminate the Contract under paragraph GC-36, Termination for Contractor's Default.

Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Contract Documents or modifications thereof as herein provided, and Work not so constructed shall be removed and made good by the Contractor at its own expense, and free of all expense to the Owner.

GC-25. NO WAIVER OF RIGHTS: Neither the observation by the Owner or the Owner's officials, employees, or agents, nor any order by the Owner for payment of money, nor a payment for, or acceptance of, the whole or any part of the Work by the Owner, nor any extension of time, nor any possession taken by the Owner or its employees or agents, shall operate as a waiver of any provision of this Contract, or of a power herein reserved to the Owner, or a right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of another or subsequent breach.

GC-26. SUPERINTENDENT OF WORK: The Contractor shall provide and maintain, continually on the site of Work during its progress, adequate and competent superintendents of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. All unsupervised Work shall be unacceptable and subject to removal and replacement at the Contractor's expense. The superintendent shall not be changed except with the consent of the Owner unless the superintendent proves to be unsatisfactory to the Contractor and/or ceases to be in its employ; provided, however, that the Owner retains the right to require that the Contractor replace the superintendent at any time, such right not to be arbitrarily exercised.

The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of its obligation to have a competent superintendent directly employed by the Contractor on the Work at all times.

GC-27. PROTECTION OF PROPERTY AND PUBLIC LIABILITY: The Contractor shall be solely liable for all damages to public and private property, structures, sewers, and utilities, for both above ground and Underground Facilities, along, beneath, above, across, or near the site or sites of the Work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be liable to the Owner for all accidents to persons or property resulting from or arising out of the acts of Contractor, its Subcontractors, employees, or agents. All property so damaged shall be repaired or replaced to a condition equal to its condition immediately before the time of damage, and to the satisfaction of the Owner.

The Contractor shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property or utilities.

The Contractor shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages, including but not limited to, damages due to delays in utility relocation, or extra pay on account of the postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not.

Any claim made against the Contractor, allegedly relating to the Work herein, shall be paid or submitted to Contractor's insurance carrier within ten days of the Contractor receiving notice of said claim.

GC-28. EASEMENTS AND RIGHT-OF-WAY: The Owner will provide Permanent and Temporary (construction) easements as shown on the Plans. The Contractor shall confine its operations to the easements provided and shall carefully note where buildings, structures, or other obstructions will limit its working space. In the event that easements are not available or if they have not been secured, or if entry to property is denied by court order, injunction, litigation, or any other reason, the Contractor shall cease operations in such area and confine its Work to other areas approved by the Owner. In the event of any delay arising from delays in securing easements, the Contractor shall have no claims against the Owner for damages arising from such delay except for an extension of time as provided in paragraph GC-48.

Equipment or materials shall not be stored beyond the limits of the easements and rights-of-way unless the Contractor receives express written approval from the property owner. The Contractor shall inform the Owner if the Contractor makes such an arrangement with a property owner.

GC-29. INSURANCE: The Contractor shall secure and maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in such amounts (but not less than the amounts set forth in the Instructions to Bidders) as may be necessary to protect the Contractor and the Owner and agents of the Owner against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the Owner, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the Owner before the Contractor starts construction work on this Contract. The certificates shall state that 30 days written notice will be given to the Owner before any policy covered thereby is changed or canceled. The Contractor's failure to furnish the required insurance within the time specified in the Notice of Award of the Contract by the Owner may, at the Owner's option, be the basis for the Owner's exercising its right to terminate the Contract under paragraph GC-36, Termination for Contractor's Default.

(a) Commercial General Liability: This insurance shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or Subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under paragraph GC-20, Indemnification.

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property or facilities.

The liability limits shall be as stated in the Instructions to Bidders.

(b) Comprehensive Automobile Liability: This insurance shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the Work site, and shall cover operations of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall be as stated in the Instructions to Bidders.

(c) Workers' Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees that for any reason may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" endorsement.

The liability limits shall be as stated in the Instructions to Bidders.

(d) Owner's and Contractor's Protective Liability: The Contractor shall be required to purchase an Owner's and Contractor's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the Owner as named insured. The liability limits shall be as stated in the Instructions to Bidders. The original policy shall be placed on file with the Owner and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the Owner or its employees and agents in connection with the Work.

(e) Additional Insurance: Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in the Instructions to Bidders.

(f) Subcontractor's Insurance: If a part of this Contract is to be sublet, the Contractor shall either:

- (1) Cover all Subcontractor in its insurance policies; or
- (2) Require each Subcontractor not so covered to secure insurance that will protect Subcontractor and the Owner against all applicable hazards or risks of loss as and in the minimum amounts designated for the Contractor.

GC-30. MODIFICATIONS AND ALTERATIONS: In executing the Contract, the Contractor agrees that the Owner shall have the right to make such modifications, changes, and alterations as the Owner may see fit, in the line, grade, form, arrangement, dimensions, extent or plan of the Work agreed to be done, or any part thereof, or in the materials to be used, either before or after the beginning of the construction, without affecting the validity of the Contract and the performance bond thereunder.

Where such modifications, changes, or alterations reduce the quantity of work to be done, they shall not constitute a basis for a claim for damages or for anticipated profits on the work involved in such reduction. Where the amount of work required by the modifications, changes, or alterations increase the quantity of work to be performed, and is within the scope of the Specifications under a fair interpretation thereof, such increase shall be paid for, according to the quantity of work actually done, at the unit price or prices therefore where such unit prices are included in the Contract, otherwise such additional work shall be paid for as hereinafter provided for extra work.

In case the Owner shall make any modifications, changes, or alterations that would replace or otherwise make useless any work already done under the terms of the Contract, the Owner shall reimburse the Contractor for any material used or labor performed in connection therewith, and for any actual loss occasioned thereby due to actual expenses incurred in preparation for the Work as originally planned, as determined by the Owner.

All orders for modifications, changes, or alterations in the Work as herein provided shall be in writing by the Owner.

GC-31. EXTRA WORK: The term "extra work," as used in this Contract, shall be understood to mean and to include all work that may be required by the Owner to be performed by the Contractor

to accomplish any change or alteration in, or addition to, the Work shown by the Plans, or required or reasonably implied by the Project Specifications, which is not covered by the proposal and not otherwise provided under "Modifications and Alterations."

It is agreed that the Contractor shall perform all extra work under the direction of the Owner, when and as so ordered in writing by the Owner, and it is further agreed that the compensation to be paid the Contractor for performing extra work shall be determined by one or more of the following methods:

Method "A" by agreed unit prices; or

Method "B" by agreed lump sum; or

Method "C" If neither Method "A" nor "B" are agreed upon before the extra work is started, then the Contractor shall be paid the actual field cost of the work plus an amount not to exceed 15%, which shall include any subcontractor markup.

When extra work is performed under Method "C," the term "actual field cost" of such extra work is hereby defined to be and shall include (a) the cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed or used in the performance of the said extra work; (b) any transportation charges necessarily incurred in connection with any equipment authorized by the Owner for use on said work and similar operating expenses; (c) all incidental expenses incurred as a direct result of such extra work, including payroll taxes and ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, workers' compensation, and other insurance required by the Contract. The Owner may direct the form in which accounts of the actual field cost shall be kept and may also specify in writing, before the extra work begins, the method of doing the extra work and the type and kind of machinery and equipment, if required, the Contractor shall use to perform the extra work under "Method C." If machinery and heavy construction equipment are required, the authorization and basis of payment for its use shall be stipulated in the written extra work order.

The 15% of the actual field cost to be paid to the Contractor shall cover, and be full compensation for, the Contractor's profit, overhead, general superintendents, and field office expense, and all other elements of cost not embraced within the "actual field cost" as herein defined.

No claim for extra work of any kind will be allowed unless ordered in writing by the Owner. If an order or instructions, either oral or written, appear to the Contractor to involve extra work for which it should receive compensation, the Contractor shall make a written request to the Owner for a written order authorizing the extra work. Should opinions differ as to what constitutes extra work, or the payment of extra work, and the Owner insists on its performance, the Contractor shall proceed with the extra work after making a written request for a written extra work order and it shall keep an accurate account of the actual field cost as provided for in Method "C" in the foregoing paragraph. The Contractor will thereby preserve the right to submit the matter of payment to dispute resolution as hereinafter provided.

GC-32. EXTRA WORK A PART OF CONTRACT: If extra work orders are given in accordance with the provision of this Contract, such extra work shall be considered a part hereof and subject to each and all of the Contract's terms and requirements.

GC-33. DISPUTES: The Owner and Contractor agree that disputes relative to the Work or this Contract should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis of the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, the Contractor shall proceed with its services under this Contract as though no dispute exists unless otherwise agreed to by the Owner; and provided further, that no arbitration proceedings shall be initiated by the Contractor without the prior written consent of the Owner.

It is understood and agreed by the parties that no requirement or statement herein shall be interpreted as curtailing the power of the Public Works Director to determine the amount, quality, and acceptability of work and materials.

GC-34. PROVISION FOR EMERGENCIES: In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor without special instruction or authorization from the Owner, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss. The Contractor shall give Owner prompt written notice of significant changes in the Work or deviations from the Contract Documents caused thereby. A Change Order shall thereupon be issued covering the changes and deviations involved. If Contractor believes that additional work performed in an emergency that arose from causes beyond the Contractor's control entitles it to an increase in the Contract Price and an extension of the Contract Time, the Contractor may make a claim as provided in GC-30, "Modifications and Alterations;" GC-31, "Extra Work;" and GC-48, "Extensions of Time."

Whenever, in the Owner's opinion, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property that may be injured by process of construction, and whenever, in the Owner's opinion, an emergency shall arise and immediate action shall be considered necessary to protect property interests and to avoid personal injury or death, then the Owner, with or without notice to the Contractor, shall provide suitable protection to said interests by causing such Work to be done and materials to be furnished at places as the Owner may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work shall in no way relieve the Contractor of responsibility for damages that may occur during or after such precaution has been duly taken.

GC-35. ASSIGNMENT AND SUBLETTING OF CONTRACT: The Contractor shall not assign or sublet the Work, or any part thereof, without the previous written consent of the Owner, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like consent of the Owner to be signified in like manner. In case the Contractor assigns all, or any part of the moneys due or to become due under this Contract, the

instrument of assignment shall contain a clause substantially to the effect that it is agreed the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and that no money shall be paid to assignee on behalf of the Contractor by the Owner until such time as the Contractor has discharged its obligations to the Owner under the Contract. It is expressly understood and agreed that no assignment shall be effective as against the Owner unless it complies with the foregoing.

Before the Owner approves the Contract Bid, the successful Bidder shall submit to the Owner a list of names of all Subcontractors proposed for each portion of the Work and shall designate the entirety of Work each Subcontractor will perform. Compliance with the percentage of Work to be performed, as set forth in the Instructions to Bidders, will be determined by the Owner by assessing whether the Contractor or a Subcontractor will be performing the major item of Work associated with each line item in the proposal. Bid items in which the Contractor will perform the major item of Work will be totaled and compared to the bid total to verify compliance with this provision. (Example: If a Subcontractor is going to be placing curb and gutter, the total line item amount for curb and gutter will be credited to the Subcontractor portion of the Work even if subsidiary efforts are performed by the Contractor).

Before approving the Contract Bid, the Owner shall notify the successful Bidder, in writing, if the Owner, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the Owner at no additional cost to the Owner or shall be allowed to withdraw its Bid, and the Owner shall either rebid the Project or accept the next best lowest and responsible Bidder. The failure of the Owner to object to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the Owner to reject Defective Work, material, or equipment not in conformance with the requirements of the Contract Documents.

The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the Owner determines that there is a good cause for doing so. The Owner's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the Contract Price or a claim for delay damages.

Upon Notice from the Owner, the Contractor shall immediately terminate a Subcontractor's subcontract, if the Subcontractor fails to perform the Work in a satisfactory manner. The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Contractor the same power to terminate any subcontract as the Owner has to terminate the Contractor under any provisions of the Contract Documents.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner, nor shall anything contained in the Contract Documents create any obligation on the part of the Owner to pay to or to see to the payment of any sums due any Subcontractor.

GC-36. TERMINATION FOR CONTRACTOR'S DEFAULT: If the Work to be done under this Contract shall be abandoned by the Contractor, or if this Contract shall be assigned otherwise than as herein provided, or if the Contractor should be judged as bankrupt, or if a general assignment of its assets should be made for the benefit of its creditors, or if a receiver should be appointed for the Contractor or any of its property, or if at any time the performance of the Work under this Contract is being unnecessarily delayed, or the Contractor is violating any of the conditions or covenants of this Contract, or it is executing the same in bad faith or otherwise not in accordance with the terms of said Contract, or if the Work is not completed within the time named for its completion or within the time to which such completion date may be extended, then in addition to other rights the Owner may choose to exercise, the Owner may, at its option, serve written notice upon the Contractor and its surety of said Owner's intention to terminate this Contract and, unless within five days after the serving of such notice upon the Contractor, a satisfactory arrangement is made for the continuance thereof, the Contractor shall cease and terminate. If such termination occurs, the Owner shall immediately serve notice upon the surety and the Contractor, and the surety shall have the right to take over and complete the Work, provided however, that if the surety does not begin performance thereof within 30 days from the notice of termination date, the Owner may take over the Work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Contractor, and the Contractor and its surety shall be liable to the Owner for any and all excess cost sustained by the Owner by reason of such prosecution and completion, and in such event the Owner may take possession of, and utilize in completing the Work, all such materials, equipment, tools, and plant as may be on the site of the Work and necessary therefore. When Contractor's services have been so terminated, such termination shall not affect any rights or remedies of Owner against Contractor then existing or which may later accrue. Similarly, any retention or payment of moneys due Contractor shall not release Contractor from liability.

If the Contract is terminated as provided in this section, the insurance, indemnification, warranty, and any other obligations that continue after termination shall continue to apply.

GC-37. TERMINATION FOR CONVENIENCE: Owner reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Contractor, to terminate the Contract by providing written notice of such termination to Contractor. Upon receipt of such notice from Owner, Contractor shall: (1) immediately cease all Work; or (2) meet with Owner and, subject to Owner's approval, determine what Work shall be required of Contractor to bring the Project to a reasonable termination in accordance with the Owner's request. If Owner shall terminate for its convenience as herein provided, Owner shall: (1) compensate Contractor for all purchased materials and actual cost of Work completed to date of termination; and (2) release and indemnify Contractor against any liability Contractor may have to any third parties as the result of any contracts, commitments, purchase orders, or any other such liabilities Contractor may have incurred as a result of its obligations under the provisions of the Contract. Contractor agrees that

it shall minimize such potential liabilities by, where practical, informing third parties of Owner's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

Any termination of the Contract for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the Owner.

If the Contract is terminated as provided in this section, the insurance, indemnification, warranty, and any other obligations that continue after termination shall continue to apply.

GC-38. WAIVER OF CONSEQUENTIAL DAMAGES AND ANTICIPATORY PROFIT: Contractor hereby waives any claim against Owner for consequential damages arising out of or relating to this Contract or the Work, or profit on Work not performed for any reason. This waiver includes damages incurred for principal office expenses including compensation of personnel stationed there, loss of financing, business and reputation, and loss of profit.

GC-39. SUSPENSION OF WORK ON NOTICE: The Contractor shall delay or suspend the progress of the Work or any part thereof, whenever a delay or suspension is required by written order of the Owner, and for such periods of time as the Owner requires; provided, that in the event of a delay or delays or of such suspension or suspensions, the total days allowed for the Work shall be extended for a period equivalent to the time lost by reason of the delay or suspension, but such order of the Owner shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the Work shall be stopped by order of the Owner any expense which, in the opinion and judgment of the Owner, is caused thereby shall be paid by the Owner to the Contractor.

The Owner reserves the right and may delay Work on certain portions of Work until weather or utility relocations will allow proper progress on major items of Work. The Owner may direct the Contractor to clear the right-of-way before utility relocations, if, in the opinion of the Consulting Engineer, such clearing would expedite utility relocation. Also, the Owner may direct the Contractor to work on certain items of Work after partial relocations have been made. There shall be no charge made by the Owner or the Contractor for delays arising from the issuance of such delayed Work direction other than provided for in GC-48, Extensions of Time.

GC-40. LOSSES FROM NATURAL CAUSES: All loss or damage arising out of the nature of work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, that may be encountered in the prosecution of the Work shall be sustained and borne by the Contractor at its own cost and expense.

GC-41. LAWS AND ORDINANCES: Contractor shall comply with local, state, and federal ordinances, statutes, laws, codes, rules, resolutions, and regulations affecting Contractor's performance of the obligations contained in this Contract, regardless of whether such requirements are specifically referred to in this Contract. Contractor shall defend, indemnify, and hold harmless the Owner, its elected officials, officers, employees, and agents against any claim or liability arising from or based on any violation of the same.

GC-42. SANITARY REGULATIONS AND WATER: The Contractor's operations shall conform with all of the rules and regulations of boards and bodies having jurisdiction over sanitation. The Contractor shall supply safe and sufficient drinking water to all of its employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of the same.

All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system.

GC-43. CONTRACTOR'S EMPLOYEES: Contractor shall employ only workers who are competent to perform the work assigned to them, and in the case of skilled labor, adequately trained and experienced in their respective trades and who do satisfactory work. If directed by the Owner, the Contractor shall remove any person the Contractor employs in connection with the Work.

Contractor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours, and benefits for workers employed to carry out the Work.

GC-44. SUNDAY, HOLIDAY AND NIGHT WORK: No work shall be done between the hours of 6 P.M. and 7A.M., or on weekends or City holidays, without the written approval or permission of the Owner in each case, except such work as may be necessary for the proper care, maintenance, and protection of work already done or of equipment, or in the case of an emergency.

Night work may be established by the Contractor, as a regular procedure, with the Owner's written permission; such permission, however, may be revoked at any time.

GC-45. UNFAVORABLE CONSTRUCTION CONDITIONS: During unfavorable weather, or other unfavorable conditions for construction operations, the Contractor shall pursue only such portions of the Work that will not be damaged. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the Owner, the Contractor shall be able to perform the Work in a proper and satisfactory manner.

GC-46. BEGINNING, PROGRESS AND TIME OF COMPLETION OF WORK: The Contractor shall, within ten days of the date specified in a written notice from the Owner, begin the Work to be done under this Contract; and the rate of progress shall be such that the Work shall be completed in accordance with the terms of the Contract on or before the termination of the construction period named in the proposal, subject to any extension or extensions of time made as hereinafter provided. The Contractor shall furnish the Owner with a tentative schedule setting forth in detail the sequences it proposes to follow, and giving the dates in which it expects to start and complete separate portions of the Work. If at any time, in the Owner's opinion, proper progress is not being maintained, changes shall be made in the schedule of operations as the Owner shall direct or approve.

GC-47. HINDRANCES AND DELAYS: In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it

has taken into consideration and made allowances for all hindrances and delays incident to such Work, including, but not limited to, delays caused by adverse weather conditions, delays in securing materials or workers, or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract, except as provided in GC-39, Suspension of Work on Notice, and no extension of time shall be granted to the Contractor for hindrances or delays from any cause, except as set forth in GC-48, Extensions of Time.

GC-48. EXTENSIONS OF TIME: Except as provided in GC-47, Hindrances and Delays, the right of the Contractor to proceed shall not be terminated, nor will the Contractor be charged with liquidated damages for delays in the completion of the Work if the Contractor has notified the Owner, in writing, within seven Calendar Days of the cause of the delay, and the delay arises out of one or more of the following acts, events, or causes beyond the control of, and through no fault or negligence of, the Contractor: acts or delays of the Owner or Consulting Engineer, or of any employee of either; acts of any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; intergalactic invasions, employee strikes or lock-outs; extraordinary adverse weather events not reasonably anticipatable; acts of the public enemy; or any cause that the Owner determines would justify the delay. Neither adverse weather conditions nor the inability to timely obtain materials or workers (including Subcontractors) shall be considered beyond the control of the Contractor.

In the event one of the aforementioned acts or events causes the Contractor to be delayed in the final completion of the Work, an extension of time sufficient to compensate for such delay in the final completion of the Work shall be granted by the Owner, the amount of such extension to be determined by the Owner, in the Owner's sole discretion. Each extension of time shall be evidenced by a Change Order for the period of time caused by such delay.

GC-49. LIQUIDATED DAMAGES: It is mutually understood and agreed by and between the parties that time is of the essence and if the Contractor fails to perform the Work specified and required within the time period stipulated in the Contract, after due allowance for any extensions of time that may be granted under the provisions of GC-48 Extensions of Time, the Contractor shall pay the Owner, as stipulated liquidated damages and not as a penalty, the sum stipulated in the Special Conditions, Proposal, or other Contract Documents for each and every day that the Contractor is in default.

In case of joint responsibility for any delay in the final completion of the Work covered by this Contract, in which two or more separate contracts are in force at the same time and cover work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such contracts, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the Owner by reason of such delay in completion of the Work, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delay as determined by, and in the judgment of, the Owner.

The Owner shall have the right to deduct said damages from any moneys in its hands, otherwise due or to come due, to said Contractor, or to sue for and recover compensation for damages for non-performance of this Contract at the time stipulated herein and provided for.

GC-50. TEST OF MATERIALS OFFERED BY CONTRACTOR: All specified and required tests for approval of source of material shall be made at the expense of the Contractor by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Owner. Approval of materials based on acceptable tests will apply only while such material as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation, or manufacture of such materials will require new tests and approval. Reports of all tests shall be furnished to the Owner in as many certified counterparts as the Owner requires. Failure of such tests shall be deemed evidence of Defective Work and such work shall be replaced or repaired until satisfactory tests have been secured. All special tests required by law, ordinance, statute, or regulations of any public body having jurisdiction shall be performed by and at the expense of the Contractor.

GC-51. WORK IN OR ACROSS STREET OR HIGHWAY RIGHT-OF-WAY: All Work performed and all operations preparations of the Contractor or its employees and Subcontractors, if any, within the limits of street or highway rights-of-way shall be in conformity with the requirements, and be under the control, through the Owner, of the street or highway authority owning or having jurisdiction and control over such rights-of-way in each case. Any costs incurred to comply with such requirements are the Contractor's responsibility.

GC-52. MAINTENANCE OF TRAFFIC: Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted when necessary and with the prior permission of the Owner. Streets may be closed for short periods of time under authority of a proper permit issued by the city or authority having jurisdiction. However, the Contractor shall conduct its work so as to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets. The Contractor, before closing any public thoroughfare, shall give a minimum of 72 hours' notice to county and city police and fire units.

Where construction operations require the closing of private driveways, the Contractor shall give a minimum of 72 hours' notice to the owner(s) thereof and, where necessary, shall provide temporary access to private property.

GC-53. BARRICADES AND LIGHTS: All streets, roads, highways, and other public thoroughfares that are closed to traffic, under the authority of a proper permit, shall be protected at Contractor's expense by effective barricades that contain acceptable warning signs; the barricades shall be located at the nearest intersecting public highway or street on each side of the blocked section of the public thoroughfare.

All open trenches and other excavations shall have suitable barriers, signs, and lights at Contractor's expense to provide adequate protection to the public from an accident occurring because of the open construction. Obstructions, such as material piles and equipment, shall have similar warning lights and signs.

All barricades and obstructions shall be illuminated at Contractor's expense by amber lights at night from sunset to sunrise. Materials stored upon or alongside public streets and highways shall be so placed, and the Work at all times shall be conducted, to cause minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights, and other protective devices in public rights-of-way shall be installed and maintained in conformity with applicable statutory requirements and as required by the Manual on Uniform Control Devices, as amended, or any other applicable statutes or ordinances.

GC-54. BORROW AND WASTE AREAS: All borrow material shall be obtained by the Contractor at its own cost and expense. The borrow area and materials shall be approved by the Owner, and shall be friable material suitable for compaction.

All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the Contractor's sole responsibility. All waste disposal shall comply with federal, state, and local laws, ordinances, and regulations.

GC-55. PARKING AREAS, DRIVES, AND WALKS: All existing parking areas, drives, and walks, within the Project limits, shall be adjusted to conform to the lines and grades shown on the Plans. Any of the above structures that are removed or damaged during construction shall be reconstructed at Contractor's expense of materials that will create a quality equal to or better than the condition existing before construction.

GC-56. STREET SIGNS AND TRAFFIC AIDS: All existing street signs and traffic aids, within the Project limits, shall be carefully removed, stored, and as soon as practicable, reset in concrete as directed by the Owner, at the Contractor's own cost and expense, except that when traffic, local or through, is to be carried during construction, all stop signs shall be temporarily located at the Contractor's own cost and expense. All temporary and permanent traffic control devices supplied by the Contractor shall comply with and be installed in accordance with the Manual on Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

GC-57. PERMITS:

The Contractor shall obtain and pay for all permits and licenses required in the prosecution of the Work, including a city occupational license.

GC-58. TESTING OF COMPLETED WORK: Before Final Acceptance, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor. All tests of such completed work required under this Contract shall be made in the presence of the Owner. All unsatisfactory Work, all faulty or Defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof, or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All Defective Work, whether or not in place may be rejected or corrected at the Contractor's expense.

GC-59. REMOVAL OF REJECTED MATERIALS AND STRUCTURES: At the Contractor's expense, the Contractor shall remove from the site of the Work, without delay, all rejected and condemned materials or structures of any kind brought to or incorporated in the Work, and upon the Contractor's failure to do so, or to make satisfactory progress in so doing, within 48 hours after the service of a written notice from the Owner ordering such removal, the rejected material or structures may be removed by the Owner and the cost of such removal be taken out of the money that may be due or may become due to the Contractor on account of or by virtue of this Contract. No such rejected or condemned material shall again be offered for use by the Contractor under this or any other contract under this Project.

GC-60. PLACING WORK IN SERVICE: If desired by the Owner, portions of the Work may be placed in service when completed and the Contractor shall give proper access to the Work for this purpose; but such use and operation shall not constitute an acceptance of the Work, and the Contractor shall be liable for defects because of faulty construction until the entire Work under this Contract is finally accepted and for a period of two years or longer thereafter, as stipulated in paragraph GC-62, Defective Workmanship and Materials, or as stipulated in the Special Conditions.

GC-61. DISPOSAL OF TRASH AND DEBRIS: The Contractor shall not allow the site of the Work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The Owner shall have the right to determine what is or is not trash or waste material. In case of dispute, the Owner may remove the trash or waste material and charge the cost to the Contractor.

On or before the completion of the Work, the Contractor shall, without charge, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by the Contractor, and shall remove all equipment, debris, and rubbish of every kind from the tracts or grounds that it has occupied and shall leave them in first-class condition as determined by the Owner.

GC-62. DEFECTIVE WORKMANSHIP AND MATERIALS: If, within two years, or longer if stipulated in the Special Conditions or prescribed by applicable law, from and after the date of the Owner's Final Acceptance, any of the Work embraced by this Contract is found to be defective or not in accordance with the requirements of the Contract Documents then, at Owner's request, Contractor shall, at Contractor's expense, promptly remove from the premises all Work determined by the Owner to be defective or not in accordance with the Contract Documents; and Contractor shall, at Contractor's expense, promptly replace and re-execute all Work in accordance therewith and, at Contractor's expense, restore all Subcontractors' Work and Work of other Contractors and Subcontractors damaged as a result of such removal, replacement, and re-execution. Owner shall with reasonable promptness give notice of any Work condemned by Owner as defective or not in accordance with Contract Documents. If, within ten days after the mailing of such notice, the Contractor fails to make, or undertake to make with due diligence any required repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense, provided, however, that in case of an emergency in which, in the Owner's judgment, delay would cause serious loss, hazard, or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

GC-63. EQUIPMENT GUARANTY: All mechanical and electrical equipment and devices, and every part thereof, which are furnished by the Contractor under the terms of this Contract shall be guaranteed by the Contractor and its surety against defective workmanship, faulty design, mechanical and physical defects, leakage, breakage, and other damages or failure, under normal operation of the equipment and devices under specified conditions, for a period of two years from and after the date of Owner's Final Acceptance, and each item of equipment or part thereof, thus proving to be defective within the specified period shall be promptly replaced by and at the expense of the Contractor, when notified by the Owner.

GC-64. MONTHLY ESTIMATES/FINAL PAYMENT: The Contractor will, on the 25th day of each month, make an estimate in writing of the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent to be retained until after completion of the entire Work to the satisfaction of the Owner, except that no amount less than \$500.00 will be so submitted unless the total amount of the Contract remaining unpaid is less than \$500.00. The Contractor shall submit with Contractor's written estimate, lien waivers for Work performed up to and including 30 days before the estimate date.

Deductions will be made from partial payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed on the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.

The final estimate will be paid within 30 days after the completion of and the Final Acceptance of the construction by the Merriam City Council at a regularly scheduled City Council meeting, upon receipt of final lien waivers, and upon satisfaction of the terms of this Contract.

The Contractor has, per the Instructions to Bidders, bid this job net of all sales and compensation taxes. No application for payment shall include any amount for reimbursement of such taxes paid by Contractor resulting from Contractor's failure to use Owner's tax exemption certificate for any purchase in connection with the Work.

GC-65. PAYMENTS WITHHELD: The Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any application for payment to the extent necessary to protect Owner from loss on account of:

- (a) Incomplete Work or Defective Work not remedied;
- (b) A reasonable doubt that the Work can be completed for the balance of the Contract Price then unpaid;
- (c) Damage to City; or
- (d) A breach of this Contract.

GC-66. COMPLETION FINAL PUNCH LIST: Upon receipt of the final punch list from the Owner, the Contractor shall complete all items listed within 30 Calendar Days.

GC-67. PHRASEOLOGY: In this Contract, the singular includes the plural, the plural includes the singular, and any gender includes the other gender.

GC-68. CAPITALIZATION: Some terms are capitalized throughout the Contract, but use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

GC-69. WAIVER: The failure of either party to insist upon the strict performance of any of the terms or conditions of this Contract or to exercise any option, right, or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

GC-70. AMENDMENTS: This Contract may not be amended unless such amendment is in writing and signed by both parties.

GC-71. INVALIDITY: If any provision in this Contract is adjudicated invalid under applicable laws, the invalid provision shall automatically be considered reformed and amended to conform to all applicable legal requirements, or, if the invalidity cannot be cured by reformation or amendment, the invalid provision shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions be affected.

GC-72. LEGAL ACTION: The parties agree that the appropriate venues for any legal actions arising out of this Contract are the District Court of Johnson County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

GC-73. GOVERNING LAW: This Contract, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

GC-74. CASH BASIS AND BUDGET LAWS: The right of the Owner to enter into this Contract is subject to the provisions of the Cash Basis Law (K.S.A. 10-1101 *et seq.*), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Contract shall be construed and interpreted to ensure the Owner conforms with these laws at all times. The Owner reserves the right to unilaterally sever, modify, or terminate this Contract at any time if, in the opinion of the Owner's legal counsel, the Contract may be deemed to violate the terms of any laws of the State of Kansas.

GC-75. COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS, AND RULES:

- (a) Contractor agrees to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and shall not discriminate against any person in the performance of work under this Contract because of race, religion, color, sex, disability, national origin or ancestry, or age.

- (b) In all solicitations or advertisements for employees, Contractor shall include the phrase “equal opportunity employer” or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- (c) Contractor shall be deemed to have breached this Contract and it may be cancelled, terminated, or suspended in whole or in part by the Owner, if the Contractor:
 - 1. fails to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or
 - 2. is found guilty of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission that has become final.
- (d) Contractor shall include the provisions of GC-75 (a)-(c) in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- (e) The provisions of GC-75 (a)-(d) are recommended but not enforceable against Contractor if:
 - 1. Contractor employs fewer than four employees at all times during the term of this Contract; or
 - 2. All of Contractor’s contracts with the Owner cumulatively total \$5,000 or less during the fiscal year of the Owner pursuant to K.S.A. 44-1030(c).
- (f) Contractor agrees to comply with the American with Disabilities Act of 1990 (“ADA”), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this Project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.
- (g) Contractor agrees to comply with Chapter 35, Article III of the Merriam Code, which prohibits discrimination in employment, housing, and public accommodations on the basis of an individual’s sexual orientation or gender identity.

SPECIAL CONDITIONS

SC-1 GENERAL

1. Station 46 Driveway and Apron must remain open to 3 of 6 bays for the duration of the project. Contractor shall not remove more than ½ of the entire apron at a time to allow access for vehicles to access bays.
2. The Contractor shall be required to submit pre-construction photos or videos to the Owner before beginning work. The pre-construction photos or videos shall show existing features of each property within the limits of the Project and the surrounding area, and shall identify the date the photo or video was taken, the property address, and approximate station (if applicable). Photos shall be minimum 4"x6" in dimension. Videos shall clearly and accurately depict existing conditions. This work shall be considered subsidiary to the Contract, therefore no direct payment shall be made for this work.
3. The Contractor shall be held responsible for all damage to roads, highways, shoulders, ditches, embankments, bridges, culverts, and other property caused by the Contractor or any of its Subcontractors in hauling or otherwise transporting materials to or from the several sites of the Work, regardless of the location of such damage. The Contractor shall make all arrangements for the payment for such damage or for the repair or replacement of such damage or damaged surfaces or structures. Said arrangement shall be satisfactory and acceptable to the owner or owners of the damaged surfaces or structures, or to their legally responsible officers, agents, or other representatives, and said payment shall be at the Contractor's own cost and expense, unless otherwise provided by the Contract.
4. Some existing utility lines have been plotted on the Plans from available records, but other installations may be present. The relationship between proposed work and existing facilities, structures, and utilities must be considered approximate, and it is the Contractor's responsibility to determine their exact location and existence. Any and all utility lines, both above ground and underground, shall be protected from damage during the process of the Work. If the Contractor damages existing facilities, structures or utility line, it shall immediately report the damage to the Owner.
5. The Contractor shall confine its construction operations within the Project area. Equipment and materials shall not be stored beyond the immediate working area without the written approval of the owner of such property. The Owner shall be supplied a copy of any such arrangement signed by both parties.
6. The Contractor shall review each plan sheet thoroughly to understand the proposed Work. All work not listed as a pay item shall be considered subsidiary to the Contract Documents, therefore, no additional payment will be made.
7. The Contractor shall provide the Owner with a proposed work schedule including the days of the week and hours of each day of expected construction operations. The work schedule must be approved before beginning any work on the site. All required material reports must be submitted with the proposed work schedule.

8. Upon award of the Contract, the Contractor shall immediately prepare and submit for approval by the Owner, a construction phasing schedule that will ensure completion of the Project within the Contract Time. The schedule shall be submitted prior to issuance of the notice to proceed. No work on this Contract shall begin until said schedule is approved. The Owner reserves the right to adjust the Contractor's schedule to coordinate with other projects.

9. Changes in the Work:

Quantity Variations: Where changes in the Work involve a change in the quantity of any Bid item, the Contract Price shall be revised by extension of the quantities and unit price of all Bid items so changed subject to the Owner's written approval.

Field Orders: The Owner may order minor changes in the Work through Field Orders, which in no specific, concrete, or substantial way increase or decrease the Work; and such minor changes in the Work shall not involve an addition to or deduction from the Contract Price.

Clarifications, Modifications, or Corrections: From time to time the Owner may also issue written orders to Contractor for needed clarifications, modifications, or corrections. Should a difference of opinion arise as to whether the order constitutes extra work in which additional compensation is due, and the Owner insists on its performance, the Contractor shall proceed with the Work after making a written request for a Change Order, and it shall keep an accurate account of the actual field cost thereof as provided for in GC-31, "Extra Work." The Contractor will thereby preserve the right to submit a claim.

Additional Time: No change in the Work shall entail additional time unless the Owner determines that additional time is required and specifically so provides in the Change Order. No change in the Work shall entitle the Contractor to delay damages.

Notification to Sureties of Modifications to the Contract: Contractor shall be responsible for notifying its surety(ies) of any modifications to the Contract Price or time, and said surety(ies) shall not seek discharge as a result of any failure on Contractor's part to notify surety(ies).

Substantial Changes to the Work: In the event unit prices are provided for in the Contract Documents as to all or part of the Work, if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed is substantially inequitable to either the Owner or the Contractor, the unit prices shall be re-evaluated and adjusted in accordance with the following:

- a) If the total cost of a particular item of unit price work amounts to 20% or more of the Contract Price and the variation in the quantity of that particular item of unit price work performed by Contractor differs by more than 33% from the estimated quantity of such item indicated in the Contract; and
- b) If there is no corresponding adjustment with respect to any other item of work; and
- c) If Owner believes that the quantity variation entitles it to an adjustment in the unit price and, the parties are unable to agree as to effect of any such variations in the quantity of

unit price work performed;

then either Owner or Contractor may request the Consulting Architects and Engineers to review and make an adjustment in the Contract Price.

TECHNICAL SPECIFICATIONS

1-FORCE ACCOUNT

1.1 MEASUREMENT AND PAYMENT

This work shall cover miscellaneous extra work required during the course of construction.

1.2 MEASUREMENT AND PAYMENT

If extra work is requested by the Owner, the Contractor shall submit a proposed price for approval by the Engineer, and shall have received the written approval of the Engineer prior to commencing the proposed extra work.

Payment for each Force Account item will be in accordance with the pre-approved proposed price.

Payment for Force Account (SET) shall be paid for on an extra work basis not to exceed the contract set price.

2 – Station 46 Driveway/Apron

This work shall cover all work associated with the Station 46 Driveway/Apron Replacement as shown in the attached drawings.

2.1 MEASUREMENT AND PAYMENT

Payment for “Station 46 Driveway/Apron Replacement ” at the contract lump sum price bid is full compensation for the specified work