

RESOLUTION NO. R2023-52

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH GRECO CONSTRUCTION, INC., FOR THE HILL COUNTRY CHILDREN'S ADVOCACY CENTER BUILDING AS A COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT

Whereas, the Hill Country Children's Advocacy Center provides vital social services to abused children in the community and their non-offending family members; and

Whereas, the Hill Country Children's Advocacy Center requires new facilities to adequately provide service to those in need; and

Whereas, funding became available for the construction of a new advocacy center building through a Community Development Block Grant administered by the Texas Department of Housing and Community Affairs; and

Whereas, pursuant to the terms of the Community Development Block Grant program requirements the City serves as the government agency sponsor of the Hill Country Children's Advocacy Center Building Project.

NOW THEREFORE BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Project Approval. The Hill Country Children's Advocacy Center Building Project, as shown on the attachment hereto, is hereby approved.

Section two. Contractor. Greco Construction, Inc., was selected as general contractor for the Hill Country Children's Advocacy Center Building Project by prior resolution.

Section three. Contract Amount Approval. The contract amount not to exceed \$ 3,053,000.00, is hereby approved.

Section four. Authorization. The city manager is hereby authorized and directed to execute a construction contract for the Project described in section one, with the general contractor named in section two, and for an amount not to exceed the contract amount stated in section three, on such contract form approve, or provided by, the Texas Department of Housing and Community Affairs. The authorization to bind the City by contract granted in this section shall not require further Council action provided the terms and conditions of the contract comply with the provision of this resolution and are approved by the City Attorney. Additionally, the city manager is authorized to execute such ancillary instruments and take such additional action reasonably necessary to facilitate the purpose of this resolution.

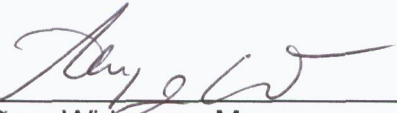
Section five. Findings. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this resolution for all purposes and are adopted as a part of the judgment and findings of City Council.

Section six. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Section seven. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.


PASSED AND APPROVED this the 27th day of June 2023.

CITY OF BURNET



Gary Wideman, Mayor

ATTEST:



Kelly Dix, City Secretary



GRECO CONSTRUCTION, INC.

1229 Safari St.
San Antonio, TX 78216

210-496-2420 Office
210-494-1218 Fax

E-Mail Address: greco@grecoconstruction.net

TRANSMITTAL

Date: August 11, 2023

TO: City of Burnet

Attn: Adrienne Feild

Transmittal(s):

(1) Original Contract

(1) Performance and Payment Bond

Thank You,

Darrell Greco

Construction Contract

DISCLAIMER: This document was developed for TX-CDBG grant projects and may not include all applicable provisions. This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification to ensure that it is in compliance with any appropriate local, state and federal laws applicable.

THIS AGREEMENT made this the 14th day of August, 2023, by and between Greco Construction, Inc. hereinafter called the "Contractor", and City of Burnet/Hill Country Children's Advocacy Center hereinafter called the "City," or "county," or "OWNER".

WITNESSETH, that the Contractor and the City for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete all work required for the construction of the Improvements embraced in the Project; namely, Hill Country Advocacy Center for the 70800001002 Community Development Block Grant (CDBG) project, all in strict accordance with the contract documents including all addenda thereto, numbered Addendum No. 01, dated May 9, 2023, all as prepared by GLS acting and in these contract documents preparation, referred to as the "Engineer/Architect".

ARTICLE 2. The Contract Price. The City will pay the Contractor for the performance of the Contract in current funds, for the total quantities of work performed at the *unit prices* stipulated in the Bid for the several respective items of work completed subject to additions and deductions as provided in the Bid Schedule, hereof.

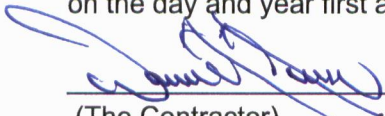
ARTICLE 3. The Contract. The executed contract documents shall consist of the following components:

- This Construction Agreement
- EXHIBIT A: General Conditions for Construction
- EXHIBIT B: Invitation for Bids
- EXHIBIT C: Instructions to Bidders
- EXHIBIT D: Signed Copy of Bid and Bid Schedule
- EXHIBIT E: General Conditions
- EXHIBIT F: Special Conditions
- EXHIBIT G: Technical Specifications
- EXHIBIT H: Drawings (as listed in the Schedule of Drawings)
- EXHIBIT I: [Add any additional applicable documents]

ARTICLE 4. Performance. Work, in accordance with the Contract dated August 16, 2023, shall commence no later than 14 days after the Notice to Proceed is issued, and Contractor shall complete the WORK within 365 consecutive calendar days after the issuance of the Notice to Proceed.

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

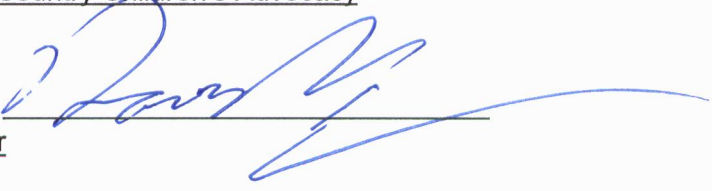
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in single original copies on the day and year first above written.



(The Contractor)

By Greco Construction, Inc.
Title: CEO / President
Name Printed: Darrell Greco

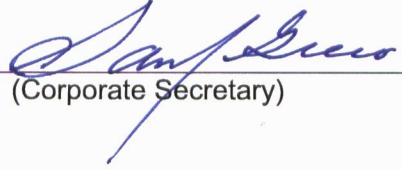
City of Burnet/Hill Country Children's Advocacy
(City)

By David Vaughn: 
Title: City Manager

Corporate Certifications

I, Sam J. Greco, certify that I am the Secretary of the corporation named as Contractor herein; that Darrell Greco who signed this Agreement on behalf of the Contractor, was then CEO / President of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal



(Corporate Secretary)



General Conditions for Construction Contract

1. Contract and Contract Documents

(a) The project to be constructed pursuant to this contract will be financed with assistance from the Texas Department of Housing and Community Affairs through a Community Development Block Grant (CDBG) and is subject to all applicable Federal and State laws and regulations.

(b) The Plans, Specifications and Addenda shall form part of this contract and the provisions thereof shall be binding upon the parties as if they were herein fully set forth.

(c) The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

2. Definitions

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

(a) The term "Contract" means the Contract executed between the City of Burnet, hereinafter called the "City/County/Owner" and Greco Construction, Inc., hereinafter called "Contractor", of which these GENERAL CONDITIONS, form a part.

(b) The term "Project Area" means the area within the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.

(c) The term "Engineer" or "Architect" means Goodwin, Lasiter, & Strong (dba. GLS), the representative Professional Engineer or Architect in charge, serving the City/County with architectural or engineering services, his successor, or any other person or persons, employed by the City/County for the purpose of directing or having in charge the work embraced in this Contract.

(d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

(e) The term "inspector" means a designated employee of GLS (or City subconsultant) responsible for performing day-to-day inspections of the project. Such inspector will be designated by the City or GLS and made known to all contracted parties.

3. Supervision by Contractor

(a) Except where the Contractor is an individual and personally supervises the work, the Contractor shall provide a competent superintendent, satisfactory to the Engineer or Architect, on the work at all times during working hours with full authority to act as Contractor's agent. The Contractor shall also provide adequate staff for the proper coordination and expediting of his work.

(b) The Contractor shall be responsible for all work executed under the Contract. Contractor shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

(c) The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof

and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

(d) The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

(e) Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

(f) The CONTRACTOR shall cooperate with the Engineer, other Contractors, and utility and railroad companies. All work associated with fulfilling this requirement is subsidiary to the various Items of the Contract and no direct compensation will be made. Provide all information necessary to administer the Contract. Maintain at least one copy of the Contract at the work locations at all times.

(g) CONTRACTOR shall designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized representative and to act for the Contractor. The Engineer may suspend work if a Superintendent is not available or does not meet the above criteria.

(h) Cooperating with Inspectors: Inspectors are authorized representatives of the OWNER. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors shall inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection or lack of inspection will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract. Contractor shall:

a. Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection.

b. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense.

c. Remove or uncover portions of finished but not inspected work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for by the CONTRACTOR. If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed. If the previously inspected and approved construction is modified or uncovered, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Item for Changes in the Work.

(i) Workmanship: If the OWNER notifies the CONTRACTOR in writing of defective work, the CONTRACTOR shall correct the deficiencies within fourteen (14) calendar days of the Notice at no additional cost to the OWNER. If the defective work is not corrected within fourteen (14) calendar days, or the CONTRACTOR is not making satisfactory progress (in the opinion of the

OWNER) to correct the deficiencies, the OWNER may withhold future payments for All Work until the defective work has been corrected to the satisfaction of the OWNER.

4. Subcontracts

The CONTRACTOR shall, as soon as practicable after signing the CONTRACT, submit a separate written notice to the OWNER identifying each proposed SUBCONTRACTOR. Upon request of the OWNER, the CONTRACTOR shall promptly furnish additional information tending to establish that any proposed SUBCONTRACTOR has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this CONTRACT.

(a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until Contractor has verified the subcontractor is eligible to participate in federally funded contracts.

(b) No proposed subcontractor shall be disapproved by the City/County except for cause.

(c) The Contractor shall be as fully responsible to the City/County for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them. The CONTRACTOR must also submit to the OWNER a revised Schedule of Work and SUBCONTRACTOR/SUPPLIER Payment form anytime there is a change in the SUBCONTRACTOR/SUPPLIER participation on the CONTRACT.

(d) Nothing contained in the Contract Documents shall create any contractual relation between Owner and any Subcontractor or supplier or any party with whom Owner or any of its Subcontractors or suppliers contracts.

(e) Approval of Subcontractor: The CONTRACTOR must submit, with the request for approval of a SUBCONTRACTOR, the location, within the Highland Lakes area, of at least three contracts where the SUBCONTRACTOR has performed construction similar to the construction outlined in the CONTRACT. If required by the OWNER, the SUBCONTRACTOR'S representative will accompany the OWNER'S representative on examination of the referenced work. The CONTRACTOR must also submit to the OWNER a revised Schedule of Work and SUBCONTRACTOR/SUPPLIER Payment form anytime there is a change in the SUBCONTRACTOR/SUPPLIER participation on the CONTRACT.

(f) Subcontractor Replacement: If the OWNER determines that any proposed SUBCONTRACTOR is unacceptable, it shall so notify the CONTRACTOR, who may thereupon submit another proposed SUBCONTRACTOR unless the CONTRACTOR decides to do the work itself. Disapproval by the OWNER of any proposed SUBCONTRACTOR shall not provide a basis for any time extension claim or additional compensation of any nature, including but not limited to anticipated profit, overhead, or delay, by the CONTRACTOR. If an approved SUBCONTRACTOR fails to perform properly the work undertaken, it shall be removed from the job upon request of the OWNER, following notification to the CONTRACTOR in writing of the request for removal and the reasons therefore. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence, or defaults of its SUBCONTRACTORS and of such SUBCONTRACTOR'S officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the CONTRACTOR to the extent of its subcontract.

(g) Sub-Contractual Relations: The CONTRACTOR is solely responsible for making payments properly to his SUBCONTRACTORS and SUPPLIERS on the Project. During construction of the Project, the CONTRACTOR shall submit each month a CONTRACTOR'S Report of SUBCONTRACTOR/SUPPLIER Payment (the "Report"). The Report shall show all payments made to date by the CONTRACTOR (plus existing retainage) to each SUBCONTRACTOR and SUPPLIER involved in the Project. The OWNER reserves the right in its sole discretion to withhold payment to the CONTRACTOR should it appear from the Report or other information furnished to the OWNER that the Report has not been properly completed.

(h) Sub-Contractual Claims: When approving this contract, the CONTRACTOR thereby assigns to the City any and all claims for overcharges associated with this contract or any subcontracts directly or indirectly related to the work, which overcharges may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1, et seq (1973). The CONTRACTOR shall include in all his subcontracts a clause that requires his SUBCONTRACTORS to assign to the City all claims for overcharges on purchases and supplies, which may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1 et seq (1973). The CONTRACTOR shall require his SUBCONTRACTORS to execute a notarized assignment on or before the date of the City's approval of the respective SUBCONTRACTORS for the work, which assignment shall become a part of the prime contract and made a part hereof for all purposes.

The CONTRACTOR agrees to thoroughly review and analyze any claim for additional time, additional compensation, or other damages filed by a SUBCONTRACTOR, in good faith, as to its merits and amount. CONTRACTOR also agrees that it will not present or pass the claim through to the OWNER as if it were the CONTRACTOR'S claim, if the claim is subject to any valid legal or equitable defenses available to either OWNER or CONTRACTOR under the CONTRACT documents, the terms of the Subcontract, or applicable statutory or case law, which defenses include, but are not limited to, any and all notice and claim defenses arising under the Subcontract or the CONTRACT documents. If the SUBCONTRACTOR'S claim is subject to any valid legal or equitable defense under the CONTRACT documents, the Subcontract, or applicable statutory or case law, CONTRACTOR shall, as a condition precedent to the filing of any claim against the OWNER by virtue or any derivative liability of the OWNER under the CONTRACT documents or applicable law, defend against the invalid SUBCONTRACTOR claim in a court of competent jurisdiction, at CONTRACTOR'S sole cost and expense. Failure of CONTRACTOR to defend against invalid SUBCONTRACTOR claims as required in this paragraph shall constitute a complete and unequivocal waiver of any right of CONTRACTOR to seek reimbursement from OWNER. Further, if the CONTRACTOR fails to provide the defense required above, CONTRACTOR shall be obligated to indemnify and reimburse OWNER for all expenses and costs, including but not limited to attorney's fees and expert witness costs, incurred by OWNER in defending any lawsuit based upon a SUBCONTRACTOR claim, in which lawsuit a valid legal or equitable defense was available under the CONTRACT documents, the Subcontract or applicable statutory or case law.

5. Fitting and Coordination of Work

(a) The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

(b) Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design.

(c) The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

(d) If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

6. Payments to Contractor

(a) Partial Payments

1) The Contractor shall prepare the requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment, and (2) the amount of all previous

payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.

2) Monthly or partial payments made by the City/County to the Contractor are advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the City/County. Such payments shall not constitute a waiver of the right of the City/County to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the City/County in all details.

3) The CONTRACTOR for itself or any of its SUBCONTRACTORS shall pay all indebtedness, which may become due to any person, firm, or corporation having furnished labor, material, or both in the performance of this CONTRACT. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this CONTRACT, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any SUBCONTRACTOR shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

4) Payment for Extra Work: Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item and Subsection 7. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other subcontractors and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final.

(b) Final Payment

1) After final inspection and the acceptance by the City/County of all work under the Contract, the Contractor shall prepare the requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Contract. The total amount of the final payment due the Contractor under this Contract shall be the amount computed as described above less all previous payments.

2) Before paying the final estimate, City/County shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor. The City/County may make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.

3) Any amount due the City/County under Liquidated Damages shall be deducted from the final payment due the contractor.

4) The contract will be considered fulfilled, save as provided in any maintenance stipulations, bond, or by law, when all the work has been completed, the final inspection, and final acceptance made by the OWNER, and final payment made by the OWNER.

(c) Payments Subject to Submission of Certificates

Each payment to the Contractor by the City/County shall be made subject to submission by the Contractor of all written certifications required of it and its subcontractors.

(d) Withholding Payments

The City/County may withhold any payment due the Contractor as deemed necessary to protect the City/County, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the City/County and will not require the City/County to determine or adjust any claims or disputes between the Contractor and its subcontractors or material dealers, or to withhold any moneys for their protection unless the City/County elects to do so. The failure or refusal of the City/County to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

7. Changes in the Work

(a) The City/County may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any obligations under the Contract or any guarantee given pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by CDBG prior to execution of same.

(b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the City/County authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(c) If applicable unit prices are contained in the Contract, the City/County may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).

(d) Each change order shall include in its final form:

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

(e) Owner and Contractor may at any time, without notice to or approval of the Surety, by written Change Order hereto, make changes in the Work, the Contract Amount, the Contract Time, or otherwise modify the Contract. If applicable unit prices are contained in the Agreement, the Owner may require the Contractor to proceed with the desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original total amount by eighteen percent (18%). Any provision in the Contract Documents to the contrary notwithstanding, in the event Contractor receives an order, directive, instructions, or other communication regarding the Work from Owner or Engineers that Contractor believes will result in a change in the scope of Work, the Contract Time and/or the Contract Amount, Contractor shall promptly notify the person making the request, and the OWNER that the requested change will result in an increase in the Contract Time and/or Contract Amount before undertaking the Work.

(f) All Change Orders made through the Owner will be reviewed and approved by the Owner's (or GLS) representative Professional Engineer or Architect in charge. Change orders directed by the owner shall first be reviewed and approved by the Professional in charge prior to being presented to the Contractor. The Change order requests issued by the contractor must first be presented for approval to the Professional Engineer or Architect in charge prior to being presented to the Owner for final approval. Owner may present Change Orders to a board or City Council for approval.

8. Claims for Extra Cost

Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

(a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within fourteen days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the City/County, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.

(b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.

(c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the City/County and work shall not proceed except at the Contractor's risk, until written instructions have been received from the City/County.

(d) If, on the basis of the available evidence, the City/County determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed. The Contractor and Subcontractor will be allowed mark-up percentages for overhead and profit for changes in the Work as described below, unless the Agreement sets forth different provisions for determining overhead and profit. In the event of a conflict, the provisions of the Agreement shall control. The maximum allowable mark-up percentage of the actual cost of the Work will be 15% on the first \$20,000 and 10% on the balance over \$20,000.

If subcontracted work is involved, the Contractor will include with Contractor's cost proposal a detailed breakdown for the Subcontractor in accordance with the above requirements for the Contractor. The Subcontractor will be allowed the same mark-up percentages as provided above for the Contractor. The Contractor will be allowed the following mark-up on subcontracted work: a maximum of 8% on the first \$30,000, and 5% on the balance over \$30,000. Under no circumstances will the OWNER be obligated to accept any change orders requested by the contractor.

9. Termination, Delays, and Liquidated Damages

1) Right of the City/County to Terminate Contract for Convenience

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

- a. The performance of the work under this Contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by serving a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.
- b. Upon such termination, Firm shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement plus (2) such other costs actually incurred by Firm as are permitted by the prime contract and approved by City/County. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Firm prior to the date of the termination of this Agreement. Firm shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.
- c. Contractor Action: After receipt of a notice of termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:
 - i. Stop Work: Stop work under the CONTRACT on the date and to the extent specified in the notice of termination.
 - ii. No Further Orders: Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion the work under the CONTRACT as is not terminated.
 - iii. Deliver and Assign to OWNER: At the OWNER'S written request, deliver and assign to OWNER, or any person or entity acting on the OWNER'S behalf, any or all subcontracts, purchase orders and options

made by CONTRACTOR in the performance of the work, and deliver to the OWNER true and correct originals and copies of such CONTRACT Documents.

- iv. Transfer Title to OWNER: Transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
 - 1. Deliver Fabricated or Un-fabricated Parts: The fabricated or un-fabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
 - 2. Deliver Completed or Partially Completed Plans: The completed or partially completed plans, drawings, information, and other property which, if the CONTRACT had been completed, would have been required to be furnished to the OWNER.
 - v. Complete Performance: Complete performance of such part of the work as shall not have been terminated by the notice of termination.
 - vi. Protect and Preserve Property: Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to its CONTRACT which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.
 - vii. At a time not later than thirty (30) Calendar Days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the OWNER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the OWNER. Not later than fifteen (15) Calendar Days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the OWNER upon removal of the items, or, if the items are stored, within forty-five (45) Calendar Days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.
- d. Claim Venue: The parties herein agree that this Contract shall be performed in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the Contract documents shall be construed in accordance with the laws and court decisions of the State of Texas. The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Burnet County, Texas. If any provision or part of the Contract Documents is held to be void or unenforceable under any Law or Regulation, all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees and court costs. Reference is made to Section 271.159 of the Texas Local Government Code in connection with the recovery of attorney's fees. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages. The parties agree to mediate any dispute in good faith prior to filing suit for relief other than injunctive relief.

2) Right of the City/County to Terminate Contract for Cause

In the event that any of the provisions of this contract are violated by the Contractor, or by any subcontractors, the City/County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall

contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the City/County shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the City/County may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the City/County for any excess cost incurred. In such event the City/County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

3) Liquidated Damages for Delays.

If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the City/County as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$500.00 for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to the City/County for the amount thereof. The CONTRACTOR may be entitled to an extension of working time under this CONTRACT only when all details supporting the claims for such extension are submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension.

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this Contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or its surety shall pay any additional amounts due. In the event that the actual damages incurred by the OWNER exceed the amount of liquidated damages, OWNER shall be entitled to recover its actual damages.

(a) Excusable Delays.

- a. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- b. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- c. Any acts of the City/County;
- d. Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with the City/County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.

b) Provided, however, that the Contractor promptly notifies the City/County within the time as written in subsection above in writing of the cause of the delay. Upon receipt of such notification, the City/County shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the

City/County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay. In adjusting the CONTRACT time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely made and materials are not available from other sources, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, ozone alerts as determined by the National Weather Bureau or other authorized agency, or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

(c) If the satisfactory execution and completion of the CONTRACT should require work and materials in greater amounts or quantities than those set forth in the CONTRACT, requiring more time for completion than the anticipated time, then the CONTRACT time may be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

4) **TEMPORARY WORK SUSPENSION:** The OWNER shall have the right by written order to suspend the work temporarily, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required.

- a. Because it is in the interest of the OWNER generally;
- b. Due to government or judicial controls or orders which make performance of this CONTRACT temporarily impossible or illegal;
- c. To coordinate the work of separate contractors at the job site;
- d. To expedite the completion of a separate contract even though the completion of this particular CONTRACT may be thereby delayed;
- e. Because of weather conditions unsuitable for performance of the work, including of designated ozone alerts as determined by the National Weather Bureau or other authorized agency; or
- f. Because the CONTRACTOR is proceeding contrary to CONTRACT provisions or has failed to correct conditions considered unsafe for workers.
- g. Because of certain events and activities occurring in proximity to the construction where it would be in the best interest of the public and the CONTRACTOR for such work to be suspended.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the provision of suitable drainage about the work and the erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written order from the OWNER and shall proceed with the work promptly when notified by the OWNER to resume operations.

No additional compensation shall be paid to the CONTRACTOR for any suspension under Item for Reasons for Suspension, above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, or as a result of a designated Ozone Alert Period, it shall be entitled to:

- a. an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and
- b. the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the CONTRACT requirements, such costs, if any, to be determined on the basis set forth in Item for Payment for Extra Work, herein; and

- c. where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item of Payment for Extra Work; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.
- d. Where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

5) Emergency Contract Termination Clause: Whenever, because of a national emergency, so declared by the President of the United States, or other lawful authority, it shall be impossible for the CONTRACTOR to obtain all labor, materials, and equipment necessary for the prosecution of the work with reasonable continuity, the CONTRACTOR shall notify the OWNER. If the OWNER cannot, after a reasonable time, help obtain priorities for the materials and equipment within a reasonable effort, then the Contract shall be considered as terminated, and the CONTRACTOR shall be entitled to payment for work performed that is acceptable to OWNER based upon unit prices contained in the bid or, if the Contract is lump sum, then based upon the schedule of values submitted by the CONTRACTOR. CONTRACTOR shall not be entitled to any compensation for anticipated profit, overhead, delay damages or any other compensation for work that has not been performed.

10. Assignment or Novation

The Contractor shall not assign nor transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the City/County. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, Contractors, or corporations rendering such labor or services or supplying such materials, tools, or equipment. The CONTRACTOR shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this Contract or its claim thereto without the prior written consent of the Surety company and the written approval of the OWNER. Nothing in this paragraph is intended to conflict with Texas Business and Commerce Code. If the CONTRACTOR does, without the consent of the OWNER, assign, transfer, convey, or otherwise dispose of the contract or of the CONTRACTOR'S right, title or interest therein, or any part thereof to any person or persons, partnership, company, firm or corporation, or by bankruptcy, voluntary or involuntary, or by assignment under the insolvency laws of any state, attempt to dispose of the contract or make default in or abandon said contract, then the contract may, at the option of the OWNER, be revoked and annulled, unless the sureties shall successfully complete said contract, and any monies due or to become due under this contract shall be retained by the OWNER as liquidated damages for the reason that it would be Impracticable and difficult to fix the actual damage.

11. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the City/County for review. Contractor shall be liable for any issues or expenses in the event the discrepancy is not submitted to the City/County.

12. Shop Drawings

(a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in 2 hard copies or 1 electronic copy for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at Contractor's own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.

(b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.

(c) If a shop drawing is in accordance with the contract or involves only minor adjustment in the interest of the City/County not involving a change in contract price or time, the engineer may approve the drawing. The approval shall not relieve the Contractor from responsibility to adhere to the contract or for any error in the drawing.

13. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the City/County for any additional information which should be furnished by the City/County under the terms of this Contract, and which is required in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

14. Materials and Workmanship

(a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.

(b) The Contractor shall furnish to the City/County for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.

(c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.

(d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.

(e) The City/County may require the Contractor to dismiss from the work such employee or employees as the City/County or the Engineer may deem unqualified.

(f) Domestic Preferences - As appropriate and to the extent consistent with law and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(g) Material Substitution: No substitutions will be permitted until the CONTRACTOR has received written permission of the Engineer to make a substitution for the material that has been specified. The Owner reserves the right to refuse to accept substitutions of materials or equipment. Requests for substitution shall be made prior to the date of the preconstruction conference. Where the term "or equal," or "or approved equal" is used, it is understood that if a material, product, or piece of equipment bearing the name so used is furnished it will be approvable, as the particular trade name was used for the purpose of establishing a standard of quality acceptable to the OWNER. If a product of any other name is proposed for use, the Engineer's approval thereof must be obtained before the CONTRACTOR procures the proposed substitute.

Where the term "or equal," or "or approved equal" is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, as the representative of the OWNER, shall be the sole judge of the acceptability of substitutions. The provisions of this sub-section as related to "Substitutions" shall be applicable to all sections of these specifications.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the Engineer shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the Engineer.

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the Contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR's sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

No lead based paint and no materials containing asbestos shall be incorporated into the Project. Coal tar sealants shall not be used on the Project. Contractor, subcontractors, and suppliers may be required to certify that these materials were not provided or installed as part of this Contract.

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

15. Samples, Certificates and Tests

(a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

(b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

(c) Approval of any materials shall be general only and shall not constitute a waiver of the City/County's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.

(d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:

- 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
- 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
- 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
- 4) The City/County will pay all other expenses.

16. Permits and Codes

(a) The Contractor shall give all notices required by and comply with all applicable federal and state laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the City/County. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the City/County will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.

(b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the City/County.

(c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.

(d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.

(e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.

(f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the City/County, shall moisten the surrounding area to prevent a dusty condition.

17. Care of Work

(a) The Contractor shall be responsible for all damages to person or property that occur as a result of its fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

(b) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the City/County is authorized to act to prevent such threatened loss or injury. Contractor shall follow all instructions of City/County.

(c) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and shall be responsible for completely repairing any damage thereto caused by the operations.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the City/County from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the City/County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

18. Accident Prevention

(a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Department of Labor.

(b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.

(c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the City/County with reports concerning these matters.

(d) The Contractor shall indemnify and hold harmless the City/County from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.

(e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.

(f) The contractor shall at all time conduct work in such a manner as to ensure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the City/County, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the City/County at the expense of the Contractor.

19. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for laborers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

20. Use of Premises

(a) The Contractor shall confine equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the City/County, and shall not unreasonably encumber the site or public rights of way with materials and construction equipment.

(b) The Contractor shall comply with all reasonable instructions of the City/County and all existing federal, state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

(c) During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

21. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, CONTRACTOR shall remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition. This work will not be paid for directly but will be

considered subsidiary to Items of the Contract. Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction.

Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. Contractor's construction of the Work shall include removal of spatters and spills from materials and landscaping shall be neat and plants and grass installed as part of the Project shall be healthy and in good condition, and exterior surfaces shall be clean, neat, and free of debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

The aforementioned site cleanup shall be done regardless whether there is a pending claim against the OWNER. The OWNER reserves the right to withhold a minimum payment of 10 (ten) percent of total contract price up to a maximum of 25 (twenty five) percent of total contract price from the contractor if OWNER has deemed the site improperly clean, safe, or fully finished per design drawings, general specifications, and special condition specifications.

22. Inspection

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

Inspections shall be requested through the appropriate appointed contract, a minimum of 24 hours prior to the need for inspection. The CONTRACTOR shall assure that the OWNER is aware of any work being performed on the project prior to the work taking place, and the CONTRACTOR should obtain written verification from the OWNER if an inspection is not needed before proceeding with any particular item of work.

(b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the City/County will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.

(c) The Contractor shall notify the City/County sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the City/County, the Contractor shall uncover for inspection and recover such facilities at Contractor's expense, when so requested by the City/County.

(d) Should it be considered necessary or advisable by the City/County at any time before final acceptance of the entire work to make an examination of work already completed, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily

involved in the examination and replacement, shall be reimbursable and if completion of the work of the entire Contract has been delayed, a suitable extension of time will be approved.

(e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards to: (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.

(f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the City/County or its agents shall relieve the Contractor or its sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

(g) Removal of Defective or Unauthorized Work: All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the CONTRACTOR's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR's risk and shall be considered unauthorized and at the option of the owner may not be measured and paid for and may be ordered removed at the CONTRACTOR's expense. Upon failure of the CONTRACTOR to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized or condemned work or materials immediately after receiving notice from the owner, the owner shall, after giving written notice to the CONTRACTOR, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the CONTRACTOR. Alternatively, the owner may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the Contract.

(h) Owner Site Visits: OWNER, ENGINEER, or its representative, will make visits to the site at intervals appropriate to the various stages of construction as OWNER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

23. Review by City/County

The City/County and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the City/County through its authorized representatives or agents.

24. Final Inspection

Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the improvement is ready for final inspection. If the work is not

acceptable to the OWNER at the time of such inspection, OWNER shall inform CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made. The OWNER shall make final inspection of all work included in the Contract as soon as practicable after remedies have been made and the work is ready for acceptance.

Unless otherwise specified in the technical section of these specifications, the CONTRACTOR shall, after test and acceptance, and for a period of one year from date of final written acceptance by the OWNER or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the contract documents, rebuild, repair, or replace any and all items which have proven defective due to unsatisfactory material and / or workmanship. Upon written notice from the OWNER, the CONTRACTOR shall immediately make any repairs that may be ordered, or such repairs will be made by the City of Burnet at the expense of the CONTRACTOR or the CONTRACTOR'S Surety. In case of an emergency where delay would cause serious loss or damage, the City of Burnet may undertake to have the defects repaired without previous notice. The expense of all repairs, including all emergency repairs, shall be borne by the CONTRACTOR or the CONTRACTOR'S Surety, at no cost to the OWNER. This obligation shall survive termination of the contract.

25. Deduction for Uncorrected Work

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

In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

- a) All unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Contract.
- (b) Any claim which the OWNER may have against the CONTRACTOR in connection with this Contract.
- (c) The agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

26. Insurance and Bonds

The Contractor shall not commence work under this contract until all required insurance under this paragraph has been secured and approved by the City/County.

- (a) Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the Burnet City Manager, which shall be clearly labeled "City of Burnet Hill Country Advocacy Center Building Project" in the Description of Operation block of the Certificate. The original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the Burnet City Manager, and no officer or employee, other than the City Council, shall have authority to waive this requirement.
- (b) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent, but in no instance will City allow modifications whereupon City may incur increased risk.

- (c) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and submitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

| | |
|---|--|
| <p>1. Workers' Compensation Employers Liability</p> | <p>Statutory \$1,000,000/\$1,000,000/\$1,000,000</p> |
| <p>2. Commercial General (Public) Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises/operations b. Independent contractors* c. Products/completed operations d. Contractual liability e. Explosion, collapse, underground* f. Broad form property damage, to include fire legal liability* | <p><u>For Bodily Injury and Property Damage of</u> \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> |
| <p>3. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles | <p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p> |
| <p>4. Professional Liability (Claims Made Form)</p> | <p>\$1,000,000 per claim to pay on behalf of the insured all sums which insured shall become legally obligated to pay as damages by reason of an act, malpractice, error or omission in professional services.</p> |

| | |
|-----------------|--|
| * If Applicable | |
|-----------------|--|

(d) Worker's Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.

(e) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts: (See table Above).

(f) Proof of Insurance: The Contractor shall furnish the City/County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the City/County." The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City, at the address provided in herein and within the time specified above, of the requested change. Contractor shall pay any costs incurred resulting from said change.

(g) Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officers, employees, volunteers, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
2. Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and
3. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

(h) When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days' notice after the change, if the Contractor did not know of the change in advance. Such notice shall be given to the City at the following address:

City of Burnet
Attn: City Manager
P.O. Box 1369
1001 Buchanan Drive
Suite 4
Burnet, Texas 78023

(i) If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsements. In addition to any other remedies the City may have upon the Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

(j) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.

(k) It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Contract.

(l) PERFORMANCE AND PAYMENT BONDS

1. Contractor shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in this Article, the surety bonds described in Instructions to Bidders and Bond Forms herein, with said surety bonds. Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of this Section and approved by City. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:
 - a. PERFORMANCE BOND. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of City.
 - b. PAYMENT BOND. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.
2. No surety will be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on forms approved by City and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to City. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Travis, Williamson, or Burnet County, Texas. Each surety shall designate an agent resident in Travis, Williamson, or Burnet County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.
3. Additional Bonds: If at any time the OWNER is, or becomes, dissatisfied with any surety on a performance, or payment bond, the CONTRACTOR shall, within five days after notice from the OWNER, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum as requested, and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds have been furnished to and accepted by the OWNER.

(m) **INDEMNIFICATION.** Contractor shall indemnify, defend and hold harmless the City of Burnet and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with: (i) the performance or non-performance of Services contemplated by this Contract but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Contractor or Contractor's agent, consultant under contract, or another entity over which Contractor exercises control (whether active or passive) of Contractor or its employees, agents or sub-contractors; (ii) the failure of Contractor, or its employees, agents or sub-contractors, to comply with any of the paragraphs herein or the failure of Contractor to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Contract. Contractor expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Contractor, or any of its sub-contractors, as provided above, for which Contractor's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Contractor to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Contract shall survive the expiration of this Contract and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Contract but thereafter so long as any liability could be asserted in regard to any acts or omissions of Contractor, or its employees, agents or sub-contractors, in performing Services under this Contract.

27. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same, together with all improvements and appurtenances constructed or placed by Contractor, to the City/County free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

28. Warranty of Workmanship and Materials

Unless otherwise expressly provided in the Contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR's compliance with these requirements.

CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or normal wear and tear under normal usage.

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the City/County or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or

workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of 12 months from the date of final acceptance of the work.

If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract documents, any of the work is found to be defective or not in accordance with the Contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

The CONTRACTOR shall remove from the site all portions of the work which are defective or nonconforming and which have not been corrected unless removal is waived in writing by the OWNER.

All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the Engineer, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

Any work repaired or replaced, pursuant to this section, shall be subject to the provisions of this section to the same extent as work originally performed.

29. Job Offices

(a) The Contractor and its subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The City/County shall be consulted with regard to locations.

(b) Upon completion of the improvements, or as directed by the City/County, the Contractor shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

30. Partial Use of Site Improvements

The City/County may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

(a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.

(b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.

31. Local Program Liaison

For purposes of this Agreement, the [e.g. City Manager/Asst. City Manager/or designee] or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

32. Access to Information

(a) The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Housing and Community Affairs (TDHCA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the CDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's/County's CDBG contract with TDHCA.

(b) Contractor shall include the substance of this clause in all subcontracts it awards.

33. Records Retention

(a) The Contractor shall retain all required records for three years after the City/County makes its final payment and all pending matters are closed.

(b) Contractor shall include the substance of this clause in all subcontracts it awards.

(c) By execution of the Contract, CONTRACTOR grants the OWNER the right to audit, at City's election, all of CONTRACTOR'S records and billings relating to the performance of the Work under the Contract. CONTRACTOR agrees to retain such records for a minimum of three (3) years following completion of the Work under this Contract. OWNER agrees that it will exercise the right to audit only at reasonable hours.

34. Resolution of Program Non-Compliance and Disallowed Costs

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or CDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

35. Compliance with Davis-Bacon Act

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached as Attachment ___ and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the City/County for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics,

subject to the provisions of Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Contractor and its subcontractors shall not, by any means, induce any person employed in the construction, completion, or repair of public work, give up any part of the compensation to which he or she is otherwise entitled. The City/County must report all suspected or reported violations to TDHCA.

36. Conflicts of interest.

(a) Governing Body. No member of the governing body of the City/County and no other officer, employee, or agent of the City/County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of CDBG award between TDHCA and the City / County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.

(b) Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the CDBG award between TDHCA and the City/County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.

(c) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the CDBG award between TDHCA and the City/County or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the CDBG award between TDHCA and the City/County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

37. Debarment and Suspension (Executive Orders 12549 and 12689)

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

38. [For Contracts that exceed \$100,000] Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

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

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

39. [For Contracts > \$100K] Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

40. [For Contracts > \$150K] Clean Air Act and the Federal Water Pollution Control Act

The Contractor or subcontractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

41. Equal Opportunity Clause [applicable to contracts and subcontracts over \$10,000].

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

- (a.) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b.) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c.) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d.) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers'

representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (e.) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f.) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g.) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h.) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

42. Section 109 of the Housing and Community Development Act of 1974.

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

43. Section 504 Rehabilitation Act of 1973, as amended.

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

44. Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

45. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

The Contractor will certify that any vacant employment positions, including training positions, that are filled after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the Project Implementation Manual.

Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

46. Contract Documents and Drawings

The City/County will furnish the Contractor without charge one (1) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

47. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the City/County in the Notice to Proceed, and shall be fully completed within the timeframe of article 4 of this contract.

48. Liquidated Damages

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the City/County the sum of as dictated under section for Liquidated damages, as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

49. Gender Neutral - Gender References

When necessary, unless the context clearly requires otherwise, any gender-specific or gender-neutral term in this Contract (for example, he, she, it, etc.) is to be read as referring to any other gender or to no gender.

50. RECOMMENDED CONDITION

- Payment under this contract must be processed through the Texas Department of Housing and Community Affairs. Receipt of payment from the Grant Recipient may take at least 45 to 60 days from the time of pay estimate approval by the project engineer.

Section 504 Certification

POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

The Greco Construction, Inc. does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

(Name) Darrell Greco

(Address) 1229 Safari

| | | |
|--------------------|-----------|--------------|
| <u>San Antonio</u> | <u>TX</u> | <u>78216</u> |
| City | State | Zip |

Telephone Number (210) 496 - 2420 Voice
() _____ - _____ TDD

Gilberto Garza has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8. dated June 2, 1988).

Grant Recipient:  Contract No.: _____ Change Order No.: _____

This form required as of September 1, 2020.

Certification of No Boycott

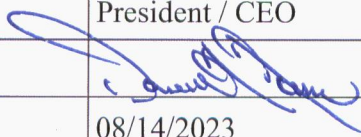
No Discrimination against Firearm and Ammunition Industries

If Contractor/Vendor is a "Company", as that term is defined in Section 2274.001 of the Texas Government Code and is not a sole proprietorship, then Contractor/Vendor certifies and verifies that it: (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (ii) will not discriminate against a firearm entity or firearm trade association during the term of the Purchase Order or Contract this Certification is attached to and incorporated into; or (iii) that it meets the requirements of an exception listed below.

Form requirements:

- **This certification is required by Texas Government Code § 2274.002**
- This form is required to be attached to and is incorporated into all Purchase Orders (goods) and Contracts (services) with a value of \$100,000 or more that is paid in whole or in part with state funds with a company with 10 or more full time employees. The campus department making the purchase of goods or contracting for services is responsible for obtaining the form from the Vendor or Contractor.

Texas Government Code §2274.001(3) states that " discriminate against a firearm entity or firearm trade association " means "with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association". Furthermore, Texas Government Code §2274.001(2) states that the term "Company" means a "a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship."

| | |
|---|---|
| Vendor/Contractor Name or Company Name | Greco Construction, Inc. |
| Street Address | 1229 Safari St. |
| City | San Antonio |
| State | Texas |
| Zip Code | 78216 |
| Phone Number | (210) 496-2420 |
| Printed Name of Authorized Representative | Darrell Greco |
| Title of Authorized Representative | President / CEO |
| Signature of Authorized Representative |  |
| Date | 08/14/2023 |

ONLY COMPLETE THIS SECTION IF YOU BELIEVE YOU ARE NOT REQUIRED TO PROVIDE THE CERTIFICATION –No Discrimination against Firearm and Ammunition Industries- FOR THE REASONS CITED BELOW

My business is not required to provide the certification listed above because (select one):

- My business is not a for-profit "Company" as defined above, pursuant to Texas Government Code §2274.001(2).
- My Company has less than 10 full-time employees
- This is not an agreement for goods or services to be provided to the University.

Name

Signature

Date

Certification of No Boycott

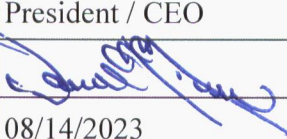
No Boycott Israel

If Contractor/Vendor is a "Company", as that term is defined in Section 808.001 of the Texas Government Code and is not a sole proprietorship, then Contractor/Vendor certifies and verifies that it: (i) does not boycott Israel and (ii) will not boycott Israel during the term of the Purchase Order or Contract this Certification is attached to and incorporated into; or (iii) that it meets the requirements of an exception listed below.

Form requirements:

- **This certification is required by Texas Government Code § 2271.002.**
- This form is required to be attached to and is incorporated into all Purchase Orders (goods) and Contracts (services) with a value of \$100,000 or more that is paid in whole or in part with state funds with a company with 10 or more full time employees. The campus department making the purchase of goods or contracting for services is responsible for obtaining the form from the Vendor or Contractor.

Texas Government Code §808.001 states that "Boycott Israel" means "refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes". Furthermore, Texas Government Code §808.001 states that the term "Company" means a "for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit", provided however that Texas Government Code §2271.001(2) excludes sole proprietorships from this definition of "Company".

| | |
|---|---|
| Vendor/Contractor Name or Company Name | Greco Construction, Inc. |
| Street Address | 1229 Safari St. |
| City | San Antonio |
| State | Texas |
| Zip Code | 78216 |
| Phone Number | (210) 496-2420 |
| Printed Name of Authorized Representative | Darrell Greco |
| Title of Authorized Representative | President / CEO |
| Signature of Authorized Representative |  |
| Date | 08/14/2023 |

ONLY COMPLETE THIS SECTION IF YOU BELIEVE YOU ARE NOT REQUIRED TO PROVIDE THE CERTIFICATION - No Boycott Israel - FOR THE REASONS CITED BELOW

My business is not required to provide the certification listed above because (select one):

- My business is not a for-profit "Company" as defined above, pursuant to Texas Government Code §808.001 and §2271.001.
- My Company has less than 10 full-time employees
- This is not an agreement for goods or services to be provided to the University.

Name

Signature

Date

Certification of No Boycott


No Boycott Energy Company

If Contractor/Vendor is a "Company", as that term is defined in Section 809.001 of the Texas Government Code and is not a sole proprietorship, then Contractor/Vendor certifies and verifies that it: (i) does not boycott energy companies and (ii) will not boycott energy companies during the term of Purchase Order or Contract this Certification is attached to and incorporated into; or (iii) that it meets the requirements of an exception listed below.

Form requirements:

- **This certification is required by Texas Government Code § 2274.002.**
- This form is required to be attached to and is incorporated into all Purchase Orders (goods) and Contracts (services) with a value of \$100,000 or more that is paid in whole or in part with state funds with a company with 10 or more full time employees. The campus department making the purchase of goods or contracting for services is responsible for obtaining the form from the Vendor or Contractor.

Texas Government Code §809.001(1) states that "Boycott energy company" means "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)". Furthermore, Texas Government Code §809.001(2) states that the term "Company" means a "for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit", provided however that Texas Government Code §2274.001(2) excludes sole proprietorships from this definition of "Company".

| | |
|---|---|
| Vendor/Contractor Name or Company Name | Greco Construction, Inc. |
| Street Address | 1229 Safari St. |
| City | San Antonio |
| State | Texas |
| Zip Code | 78216 |
| Phone Number | (210) 496-2420 |
| Printed Name of Authorized Representative | Darrell Greco |
| Title of Authorized Representative | President / CEO |
| Signature of Authorized Representative |  |
| Date | 08/14/2023 |

ONLY COMPLETE THIS SECTION IF YOU BELIEVE YOU ARE NOT REQUIRED TO PROVIDE THE CERTIFICATION – No Boycott Energy Company - FOR THE REASONS CITED BELOW

My business is not required to provide the certification listed above because (select one):

- My business is not a for-profit "Company" as defined above, pursuant to Texas Government Code §809.001(2) and §2274.001(2).
- My Company has less than 10 full-time employees
- This is not an agreement for goods or services to be provided to the University.

Name

Signature

Date

TEXAS STATUTORY PERFORMANCE BOND (PUBLIC WORKS)
BOND NO. EACX4002656

KNOW ALL MEN BY THESE PRESENTS:

THAT, Greco Construction, Inc., (hereinafter called the Principal), as Principal, and **Endurance Assurance Corporation,** a corporation organized and existing under the laws of the State of **Delaware,** licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto **City of Burnet,** (hereinafter called the Obligee), in the amount of **Three Million Fifty-three Thousand & 00/100 Dollars ((\$3,053,000.00))** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with the Obligee, dated the 14th day of August 2023, for Hill County Children's Advocacy Center, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be null and void; otherwise to remain in full force and effect;


PROVIDED. HOWEVER, That this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 14th day of July, 2023.

PRINCIPAL: Greco Construction, Inc.

BY:  _____

SURETY: Endurance Assurance Corporation

BY:  _____
Elizabeth Ortiz, Attorney-In-Fact

TEXAS STATUTORY PAYMENT BOND (PUBLIC WORKS)
BOND NO. EACX4002656

KNOW ALL MEN BY THESE PRESENTS:

THAT, Greco Construction, Inc., (hereinafter called the Principal), as Principal, and **Endurance Assurance Corporation**, a corporation organized and existing under the laws of the State of **Delaware**, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto **City of Burnet**, (hereinafter called the Obligee), in the amount of **Three Million Fifty-three Thousand & 00/100 Dollars (\$3,053,000.00)** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with the Obligee, dated the 14th day of ~~August~~ 2023, for **Hill County Children's Advocacy Center**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise to remain in full force and effect;

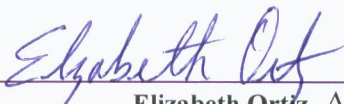
PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 14th day of July, 2023.

PRINCIPAL: Greco Construction, Inc.

BY:  _____

SURETY: Endurance Assurance Corporation

BY:  _____
Elizabeth Ortiz, Attorney-In-Fact

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation ("EAC"), **Endurance American Insurance Company**, a Delaware corporation ("EAIC"), **Lexon Insurance Company**, a Texas corporation ("LIC"), and/or **Bond Safeguard Insurance Company**, a South Dakota corporation ("BSIC"), each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Andrew Addison, Michael D. Hendrickson, Bryan K. Moore, Betty J. Reeh, Elizabeth Ortiz, Ana Owens, Patrick Coyle** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **One Hundred Million Dollars (\$100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 25th day of May, 2023.

Endurance Assurance Corporation
By: *Richard M Appel*
Richard Appel: SVP & Senior Counsel



Endurance American Insurance Company
By: *Richard M Appel*
Richard Appel: SVP & Senior Counsel



Lexon Insurance Company
By: *Richard M Appel*
Richard Appel: SVP & Senior Counsel



Bond Safeguard Insurance Company
By: *Richard M Appel*
Richard Appel: SVP & Senior Counsel



ACKNOWLEDGEMENT

On this 25th day of May, 2023, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/she is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: *Amy Taylor*
Amy Taylor, Notary Public - My Commission Expires 3/9/27



CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the board of directors of each Company by unanimous written consent effective 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, MATTHEW E. CURRAN, MARGARET HYLAND, SHARON L. SIMS, CHRISTOPHER L. SPARRO, and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 14th day of July, 2023.

By: *Daniel S. Lurie*
Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <https://www.treasury.gov/resource-center/sanctions/SDN-List>.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com

Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

Policyholder Notice

TEXAS - IMPORTANT NOTICE

To obtain information or make a complaint:
You may call the company's telephone number for
information or to make a complaint at:

1-877-676-7575

You may write the Company at:

**Endurance Assurance Corporation
Attention: Surety
1221 Avenue of the Americas, 18th Floor
New York, NY 10020**

You may contact the Texas Department of
Insurance to obtain information on companies,
coverages, rights or complaints at:

1-800-252-3439

You may write the

Texas Department of Insurance
PO Box 149104
Austin, TX 78714-9104
FAX# (512) 490-1007

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES: Should you have a
dispute concerning your premium or about a claim
you should contact the company first. If the dispute
is not resolved, you may contact the Texas
Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice
is for information only and does not become a part
or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una
queja:
Usted puede llamar al numero de telefono de la
compania para informacion o para someter una
queja al:

1-877-676-7575

Usted tambien puede escribir a:

**Endurance Assurance Corporation
Attention: Surety
1221 Avenue of the Americas, 18th Floor
New York, NY 10020**

Puede comunicarse con el Departamento de
Seguros de Texas para obtener informacion acerca
de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al

Departamento de Seguros de Texas
PO Box 149104
Austin, TX 78714-9104
FAX# (512) 475-1771

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene
una disputa concerniente a su prima o a un
reclamo, debe comunicarse con la compania
primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo
para proposito de informacion y no se convierte en
parte o condicion del documento adjunto.