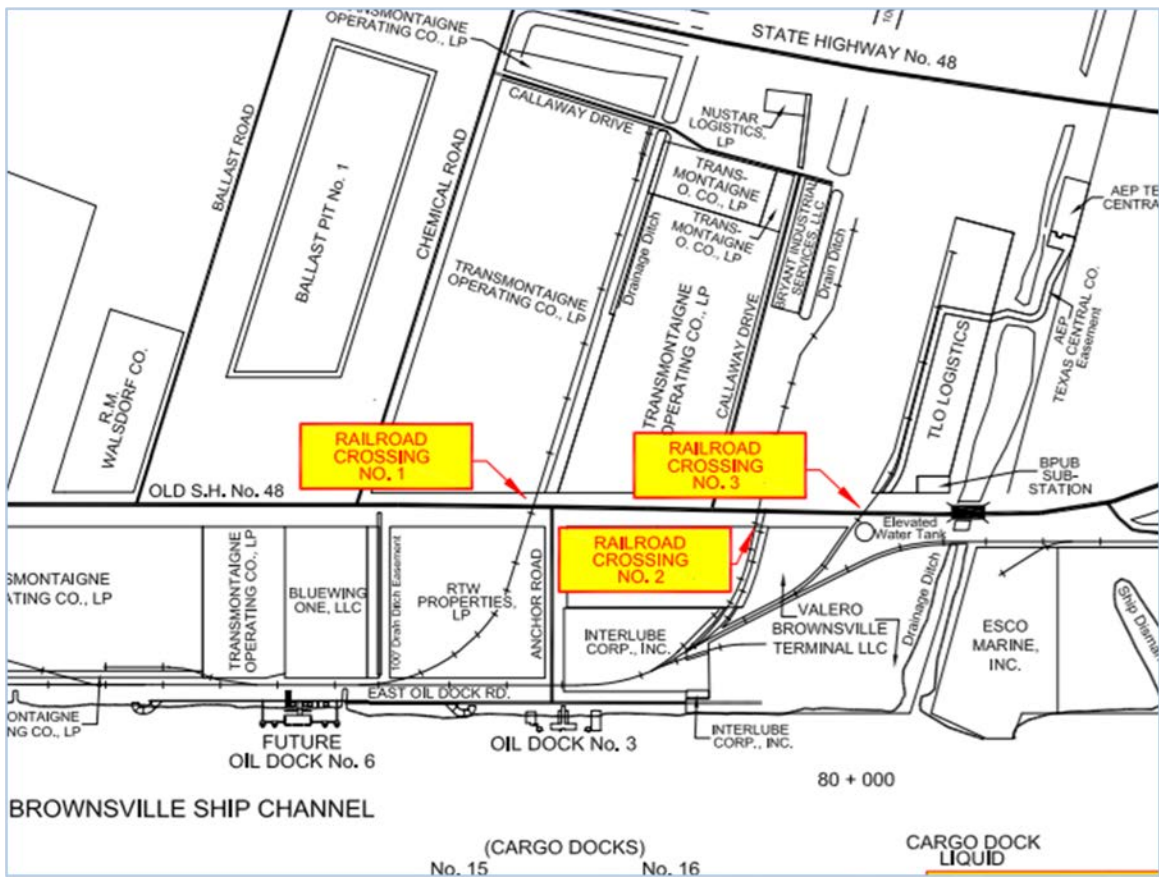


BROWNSVILLE NAVIGATION DISTRICT

CONTRACT DOCUMENTS  
AND  
SPECIFICATIONS FOR

# OLD S.H. 48 RAILROAD CROSSING INSTALLATION



SEPTEMBER 2018



# Table of Contents

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

<b>SECTION</b>	<b>PAGE NO(S).</b>
ADVERTISEMENT FOR BIDS	AFB-1
INSTRUCTIONS TO BIDDERS	ITB-1 – ITB-9
BIDDING DOCUMENTS	
BID FORM	BF-1 - BF-3
BID BOND	BB-1
STATEMENT OF NON-COLLUSION	NC-1
DISCLOSURE OF INTERESTS	DI-1 – DI-2
CERTIFICATE & DEFINITIONS	C&D-1
CONTRACTOR'S PRE-BID DISCLOSURE STATEMENT	CPBD-1 – CPBD-3
SUBCONTRACTOR'S PRE-BID DISCLOSURE STATEMENT	SPBD-1 – SPBD-3
CONTRACT DOCUMENTS	
AGREEMENT	AG-1 – AG-5
PERFORMANCE BOND	PEB-1 – PEB-3
PAYMENT BOND	PYB-1 – PYB-3
CERTIFICATES OF INSURANCE	CI-1
GENERAL CONDITIONS	GC-1 – GC-44
SUPPLEMENTARY GENERAL CONDITIONS	SGC-1 – SGC-14
TECHNICAL SPECIFICATIONS	56 PAGES
RAILROAD CROSSING SPECIFICATIONS	RRCS-1 – RRCS-56
CONSTRUCTION DRAWINGS	1 SHEET
NOTICE OF AWARD & ACCEPTANCE OF NOTICE	NOA - 1
NOTICE TO PROCEED & ACCEPTANCE OF NOTICE	NTP - 1

# **Advertisement for Bids**

---

## **OLD S.H. 48 RAILROAD CROSSING INSTALLATION**

### **Notice to Bidders**

Notice is hereby given that bids will be received by the Brownsville Navigation District (“BND”) of Cameron County, Texas, to provide labor and equipment for the “**OLD S.H. 48 RAILROAD CROSSING INSTALLATION**”, delivered to the BND Maintenance Yard in the Port of Brownsville, Cameron County, Texas.

All bids must be sealed and delivered to the BND at 1000 Foust Road, Brownsville, Texas 78521 by **11:00 A.M. C.D.T. on Tuesday, October 2, 2018**. Bids will be calculated on a Lump Sum basis. Bids must comply with the requirements set out in the “Specifications for Bid” which may be obtained from the Director of Engineering Services of the District; phone: (956) 831-4592; email: [achavez@portofbrownsville.com](mailto:achavez@portofbrownsville.com), or from [www.portofbrownsville.com](http://www.portofbrownsville.com), the BND website. Bid security in the amount of 5% of the Base Bid amount will be required as specified in the bid documents. A **mandatory** Pre-Bid Conference will be held at **2:00 P.M. C.D.T. on Tuesday, September 25, 2018** at the BND Administrative Office.

The BND Board of Commissioners **HEREBY RESERVES THE RIGHT** to reject any and all bids, and to select the bid deemed most advantageous to the BND.

**9/17/2018, 9/24/2018**

# Instructions to Bidders

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

### 1. RECEIPT AND OPENING OF BIDS:

The Brownsville Navigation District, Texas, (hereinafter called OWNER), invites bids on the form attached hereto, all blanks of which must be appropriately filled in, in ink.

The OWNER may consider informal and non-responsive, any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No BIDDER may withdraw a bid within at least ninety (90) days after the actual date of the opening thereof.

### 2. INSPECTION OF SITE:

Each BIDDER shall visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor, and shall fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The BIDDER should thoroughly examine and familiarize himself with the Drawings, Technical Specifications, and all other Contract Documents. The Contractor, by the execution of the Contract, shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument, or to visit the site and acquaint himself with the conditions there existing and the OWNER will be justified in rejecting any claim for extra time, or compensation, or both, based on facts regarding which Contractor should have been on notice as a result thereof.

### 3. PREPARATION OF BID AND USE BID FORMS:

These contract documents include a complete set of bidding documents. The BIDDER shall copy all documents listed in the table of contents under the heading BIDDING DOCUMENTS and shall submit his bid on these forms. A bid shall be comprised of the BIDDING DOCUMENTS completed by the BIDDER plus supplemental information required by the specifications and documents or deemed necessary by the BIDDER to fully describe his offering.

If any of the information submitted as part of the bid is considered to be proprietary by the BIDDER, he shall identify such in his bid.

- a) Preparation. Each bid shall be carefully prepared using the proposal and proposal data forms included as a part of the bidding documents. Entries on the proposal and proposal data forms shall be typed, using dark black ribbon, or legibly written in black ink. All prices shall be stated in words and figures except where the forms provide for figures only. In case of discrepancy, the amount shown in words will govern.

The BIDDER shall acknowledge, in the space provided in the proposal form, receipt of each addendum issued for the specifications and documents during the bidding period.

The BIDDER shall assemble all drawings, catalog data, and other supplementary information necessary to thoroughly describe materials and equipment covered by the proposal, and shall attach such supplemental information to the copies of the specifications and documents submitted.

- b) Signatures. Each BIDDER shall sign the proposal with his usual signature and shall give his full business address. The BIDDER's name stated on the proposal shall be the exact legal name of the firm. The names of all persons signing should also be typed or printed below the signature.

Proposals by partnerships shall be signed with the partnership name followed by the signature and designation of one of the partners or other authorized representative. A complete list of the partners shall be included with the proposal.

Proposals by a corporation shall be signed in the official corporate name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation.

A proposal by a person who affixes his signature the word "president," "secretary," "agent," or other designation, without disclosing his principal, will be rejected. Satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished. Bidding corporations shall designate the state in which they are incorporated and the address of their principal office.

- c) Submittal. The original proposal (and its accompanying copy) shall be transmitted to arrive at the designated address not later than the date and time stipulated in the Legal Notice and Invitation to Bid.

Submit the original proposal and one signed copy of the proposal to:

Chairman, Board of Commissioners  
Brownsville Navigation District, Texas  
c/o Ariel Chávez II, P.E./R.P.L.S.  
1000 Foust Road  
Brownsville, Texas 78521

Each bid must be submitted in a sealed envelope bearing on the outside the name of the BIDDER, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

#### 4. METHOD OF BIDDING: UNIT PRICE.

Prices shall be firm, not subject to qualification, condition or adjustment. Prices shall be in United States dollars. Prices shall be lump sum except where unit prices are requested by the bid forms. If unit price items are required by the proposal, the unit prices for each of the several items in the proposal of each BIDDER shall include its pro-rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents

the total bid. Any bid not conforming to the requirement may be rejected as informal and non-responsive. The special attention of all BIDDERS is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work pursuant to public competitive bidding statutes (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five (25%) percent. A proposed decrease only that exceeds twenty-five (25%) percent of the original contract price must be agreed to in advance by the Contractor.

5. DISCLOSURE BY BIDDER:

Each BIDDER shall submit with the bid documents, on the form furnished for that purpose, his Pre-Bid Disclosure Statement showing his experience record in performing the type of work embraced in the contract, his organization and equipment available for the work contemplated, and, when specifically requested by the OWNER, a detailed financial statement. The OWNER shall have the right to take such steps as it deems necessary to determine the ability and responsibility of the BIDDER to perform his obligations under the Contract and the BIDDER shall be responsive in furnishing the OWNER all such information and data for this purpose as it may request. OWNER reserves the right to reject any bid where an investigation of the available evidence or information does not satisfy the OWNER that the BIDDER is responsible to carry out properly the terms of the Contract. This shall also apply to any proposed subcontractor(s).

6. SUBCONTRACTS:

The BIDDER is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this contract must be acceptable to the OWNER, and that a Pre-Bid Disclosure Statement for each proposed subcontractor must also be submitted with the bid documents.

7. BID SECURITY:

Each bid must be accompanied by cash, certified or cashier's check, or a bid bond prepared on the form of the bid bond attached hereto, duly executed by the BIDDER as principal and having as surety therein a surety company approved by the OWNER, authorized to do business in the State of Texas in the amount of not less than five (5%) percent of the bid. Such cash, checks, or bid bonds will be returned to all except the three lowest BIDDERS within fifteen (15) days after the opening of bids, and the remaining cash, checks, or bid bonds will be returned promptly after the OWNER and the accepted BIDDER have executed the contract or if no award has been made, within thirty (30) days after the date of the opening of bids. The bid security will be returned upon demand of the BIDDER at any time thereafter, so long as he has not been notified of the acceptance of his bid.

8. ADDENDA AND INTERPRETATIONS:

No oral interpretations by OWNER and its representatives shall be binding upon OWNER as to the meaning of the plans, specifications, contract documents, or other pre-bid documents.

Every request for such interpretation should be made in writing, addressed to the Engineering Services Department of the Brownsville Navigation District, and must be received at least ten (10) days prior to the date fixed for the opening of bids in order to be considered. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be on file at the Department mentioned above no later than five (5) days prior to the date fixed for opening of bids, and will be mailed by certified mail with return receipt requested to all prospective BIDDERS (at the respective addresses furnished for such purposes), not later than three (3) days prior to said date. It will be the BIDDER's responsibility to inquire as to any addenda issued and failure of any BIDDER to receive any such addenda or interpretation shall not relieve such BIDDER from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

#### 9. TELEGRAPHIC MODIFICATION:

Any BIDDER may modify his bid by telegraphic and/or telefax communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic or telefax communication is received by the OWNER prior to the closing time, and provided further, the OWNER is satisfied that a written confirmation of the telegraphic or telefax modification over the signature of the BIDDER was also mailed prior to the closing time. The telegraphic or telefax communication should not reveal the total bid price, but should provide the addition or subtraction, or other modification, so that the final prices or terms will not be known by the OWNER until the original sealed bid is opened.

Revised bids submitted before the opening of bids, whether forwarded by mail, telegram, or telefax if representing an increase in excess of two percent (2%) of the original bid, must have the bid security adjusted accordingly; otherwise the bid will not be considered responsive.

If written confirmation is not received within two (2) days from the closing time, no consideration will be given to the telegraphic or telefax modification.

#### 10. TIME FOR RECEIVING BIDS:

Bids received prior to the advertised hour of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is shown to the satisfaction of the OWNER that the non-arrival on time was due solely to delay in the mails for which the BIDDER was not responsible, such bid will be received and considered.

BIDDERS are cautioned that, while telegraphic or telefax modifications of bids may be received as provided above, such modifications, if not explicit and if in any sense subject to misinterpretation, shall make the bid so modified or amended, subject to rejection for non-responsiveness.

#### 11. OPENING OF BIDS:

At the time and place fixed for the opening of bids, the OWNER will cause to be opened and publicly read aloud every bid received within the time set for receiving bids, irrespective of any

irregularities therein. BIDDERS and other persons properly interested may be present, in person or by representative.

12. WITHDRAWAL OF BIDS:

Bids may be withdrawn on written, telegraphic, or telefax request dispatched by the BIDDER in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the BIDDER is placed in the mail and postmarked prior to the time set for bid opening. The bid security of any BIDDER withdrawing his bid in accordance with the foregoing conditions will be returned promptly.

13. AWARD OF CONTRACT: REJECTION OF BIDS:

The contract will be awarded to the responsive and responsible BIDDER submitting the lowest bid complying with the conditions of the Legal Notice and Invitation for Bids. The BIDDER to whom the award is made will be notified at the earliest possible date. The OWNER, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in its interest.

The OWNER reserves the right to consider as not responsible any BIDDER who does not habitually perform with his own forces the major portions of the work involved in construction of the improvements embraced in this contract.

14. EXECUTION OF AGREEMENT: PERFORMANCE AND PAYMENT BOND:

Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful BIDDER shall execute and deliver to the OWNER an agreement in the form included in the contract documents in such number of copies as the OWNER may require.

Having satisfied all conditions of award as set forth elsewhere in these documents, the successful BIDDER shall, within the period specified in the preceding paragraph, furnish a Performance Bond and Payment Bond, each in a penal sum not less than the full amount of the contract as awarded, as security for the faithful performance of the contract, and for the payment of all persons, firms or corporations to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including utility and transportation services, employed or used by him in performing the work. Such bonds shall be in the same form as that included in the contract documents and shall bear the same date as, or a date subsequent to that of the agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bonds. These bonds shall be signed by a guaranty or surety company legally authorized to do business in the State of Texas.

The failure of the successful BIDDER to execute such agreement and to supply the required bonds and insurance certificates within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the OWNER may grant in writing, based upon reasons determined sufficient by the OWNER, shall constitute a default, and the OWNER may either award the contract to the next lowest responsive and responsible BIDDER or readvertise for bids, and may charge against the defaulting BIDDER the difference between the amount of



the defaulted bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by readvertising, the defaulting BIDDER shall have no claim against the OWNER for a refund.

15. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:

The successful BIDDER, upon his failure or refusal to execute and deliver the contract, bonds and insurance certificates required within ten (10) days after he has received notice of the acceptance of his bid, shall forfeit to the OWNER, as liquidated damages (and not as a penalty) for such failure or refusal, the security deposited with his bid.

16. TIME OF COMPLETION AND LIQUIDATED DAMAGES:

BIDDER must agree to commence work on or before a date to be specified in a written "Notice to Proceed" issued by the OWNER and to fully complete the project within the contract time, as provided in Article 3 of the Agreement.

BIDDER must agree also to pay as mutually agreed to liquidated damages, and not as a penalty, the sum of five hundred (\$500.00) per day for each consecutive calendar day thereafter, as provided in said Article 3.

17. NOTICE OF SPECIAL CONDITIONS:

Attention is particularly called to those parts of the contract documents and specifications which deal with the following:

- A. Inspection and testing of materials.
- B. Insurance requirements.
- C. Wage and Hour Provisions.
- D. State Sales and Use Tax Exemption Provisions

18. LAWS AND REGULATIONS:

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

19. EQUAL EMPLOYMENT OPPORTUNITY:

Attention of BIDDERS is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, handicap, or national origin.

20. PRE-BID CONFERENCE:

A pre-bid meeting between the OWNER, prospective bidders, suppliers, etc., will be held to answer any questions concerning the work. No addenda will be issued at this meeting. Subsequent thereto, if necessary to clear up any written questions, a written addendum will be issued by the OWNER to all pre-bid conference attendees. The pre-bid meeting will be held at the place, time and date indicated in the Invitation to Bid, unless re-scheduled by Addendum. Interested parties are invited to attend.

21. SUBMITTAL OF TRENCH SAFETY DESIGN:

If project includes open trench excavation deeper than 5 feet, contractor shall submit a trench safety system to Engineer for review and approval prior to beginning of construction.

22. INFORMATION TO BE SUBMITTED WITH PROPOSAL:

Each BIDDER shall submit with his proposal pertinent information concerning proposed equipment and materials and proposed construction organization.

- a) Equipment and Materials. In addition to the information submitted on the proposal and proposal data forms, each BIDDER shall submit all specifications, preliminary drawings, and similar descriptive information necessary to describe completely the equipment and materials he proposes to furnish, if applicable.

The proposal shall be based on new equipment and materials which comply with specifications and documents in every respect, unless the BIDDER takes specific exception as provided herein before. If alternate or "equal" equipment and materials are indicated in the proposal, it shall be understood that the OWNER will have the option of selecting any one of the alternates so indicated and such selection shall not be a cause for extra compensation or extension of time.

- b) Contractor's Field Organization. Each BIDDER shall submit with his proposal an organization chart showing the names of field management, supervisory, and technical personnel, and the details of the management, supervisory, and technical organization which he proposes to use for this project. The successful BIDDER's organizational concept will be subject to the review and acceptance of the OWNER. The experience record of the Contractor's field superintendent shall be submitted with the proposal.

23. PREFERENCE LAW:

Proposal evaluation will take into consideration any Preference Laws of the Statutes of Texas.

24. SUBSURFACE CONDITIONS:

Each BIDDER shall be responsible for determining prior to bidding, the types of subsurface materials which will be found. If test borings have been made on the site, the locations and logs of the test borings are included in the plans.

It is to be expressly understood and acknowledged by the BIDDER, that any information on subsurface materials made available by OWNER for BIDDER'S convenience shall not be a part of the contract documents and there is no expressed or implied guarantee of the data given, nor of the interpretation thereof.

All excavation for this project will be unclassified and the BIDDER shall be responsible for investigating and satisfying himself of subsurface conditions (including the presence or likelihood of encountering rock or rock-like materials and debris) prior to submitting his bid, which shall include any and all costs BIDDER associates with avoiding, managing or removing said subsurface conditions without claim for extra compensation against OWNER.

**25. DISPOSAL OF EXCESS MATERIALS:**

After backfilling and compacting any temporary trenches backfill or removing temporary earthen material, there may be in some instances an excess of soil material over that required to bring the backfill up to the original grade. In such cases where there is an excess of material, BIDDER shall load and haul it away from the job site and dispose of it in a legal manner so as not to trespass, adversely impact any protected wetlands, adversely impact the 100 year flood plain, adversely impact any endangered species, or otherwise create drainage diversions or impoundments. No extra remuneration for this work will be allowed.

**26. EROSION AND SEDIMENT CONTROL MEASURES:**

The BIDDER is expected to conduct his work in such a manner as to minimize any soil erosion or sediment runoff from the construction site. Earth cuts and fills shall have smooth, flat sideslopes, as generally indicated on the PLANS, to preclude erosion of the soil. Such operations should be timed consistent with the actual need for doing the work and only to leave raw, unprotected surfaces for a minimum of time.

Existing lawns are to remain intact as far as practical. Such areas as are disturbed shall be duly restored by the BIDDER to as good or better than original condition using the same type of grass, shrubs, or cover as the original. The BIDDER shall be responsible for correcting any erosion that occurs at his sole cost without claim for extra compensation.

As construction progresses, and in accordance with current federal legislation regulating storm water runoff and management from construction sites greater than five acres in size, if applicable, (See: Section 405 of the Water Quality Act of 1987, Section 402(P) as amended), and at locations where erosion with sediment runoff occurs or is likely to occur, the BIDDER shall construct temporary ditches, retainage levees, drains, inlets, or other works to correct the condition. Upon completion of the work, such facilities shall be removed.

During construction, the BIDDER shall take the necessary precautions to see that erosion is controlled and sediment runoff is prevented so as to protect the quality of any neighboring water bodies.

**27. SAFETY PROVISIONS:**

BIDDER shall provide barricades, flares, warning signs, and/or flagmen so as to eliminate danger

and inconvenience to the public, railroad and job site personnel. In addition to any other requirements of the Contract Documents, the BIDDER shall be responsible for familiarity and compliance with all Federal (OSHA), State, Railroad and local safety rules, laws and requirements with particular attention to be given to excavation and trench safety requirements.

28. PROTECTION OF PROPERTY AND EXISTING UTILITIES:

Within developed areas, all public and private property along and adjacent to the BIDDER'S operations, including lawns, yards, shrubs, drainage gradients and trees, shall be adequately protected, and when damages occur, they shall be repaired, replaced, or renewed or otherwise put in a condition equal to or better than that which existed before the BIDDER caused the damage or removal.

An attempt has been made to show all known existing utilities on the PLANS, but the possibility remains strong that some underground utilities may exist that have not been shown. The BIDDER, through mandatory contact with local utility owners, shall keep himself informed and take such precautions as necessary to avoid damage.

29. WAGES AND HOURS:

The most recent wage rate determination from the U.S. Department of Labor for Cameron County as locally adopted by the BND is a part of these specifications and controls minimum wage, hour and any fringe benefits.

A copy of the wage rate schedule must be posted at the job site in both English and Spanish and kept posted in a conspicuous place on the site of the project at all times during construction. The BIDDER shall familiarize himself with the included General Conditions Section entitled "Wage and Labor Standard Provisions - 100% Locally Funded Construction." Copies of the wage rate schedule are included herein, but the responsibility for posting and keeping posted rests upon the BIDDER.

30. GUARANTEE:

The BIDDER shall guarantee the work for a period of one (1) year after date of acceptance in writing by the OWNER. During this period, the BIDDER shall make any repairs and/or replacements of defective materials and corrections due to poor workmanship, all as may be required for full compliance with the Specifications. This guarantee shall apply to all matters reported by the OWNER in writing within said one (1) year period and this guarantee shall be included in the coverage period set forth in the Performance Bond.

31. SECURITY GRANT CONTRACT PROVISIONS:

The successful BIDDER shall comply with the Security Grant Contract Provisions as outlined in the next section of these contract documents. In the event these Provisions differ from any other similar requirement in these documents, these provisions shall govern. The successful BIDDER shall, upon request by the OWNER or the OWNER's representative, provide proof of compliance with each such provision, as applicable and as required.

# Bid Form

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

Place: Board of Commissioners - Brownsville Navigation District  
1000 Foust Road  
Brownsville, Texas 78521

Due Date: Before **11:00 P.M. C.D.T.; Tuesday, October 2, 2018.**

Proposal of \_\_\_\_\_ hereinafter called BIDDER, a corporation organized and existing under the laws of the State of \_\_\_\_\_, or a partnership or an individual doing business as \_\_\_\_\_.

To: The Brownsville Navigation District, Texas, hereinafter called OWNER.

Gentlemen:

The BIDDER, in compliance with your invitation for bids for the "**OLD S.H. 48 RAILROAD CROSSING INSTALLATION**" project, having examined the drawings and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project, including the availability of materials and labor, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the contract documents, within the time set forth herein, and at the attached unit prices. These price(s) are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part. These price(s) are firm and shall not be subject to adjustment provided this Proposal is accepted within ninety (90) days after the time set for receipt of proposals.

BIDDER hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" to be issued by the OWNER and to fully complete the project within 30 (thirty) calendar days, as defined in the specifications. BIDDER further agrees to pay as liquidated damages, the sum of five hundred (\$500.00) dollars for each consecutive calendar day thereafter as hereinafter provided in Article 3 of the Agreement.

BIDDER agrees to perform all work for which he contracts as described in the specifications and as shown on the plans, for the attached unit prices:

**SUBCONTRACTORS.** BIDDER proposes that he will perform the majority of the work at the project site with his own forces and that specific portions of the work not performed by the BIDDER will be subcontracted and performed by the following subcontractors.

Subcontracted Work	Name of Subcontractor
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**OLD S.H. 48 RAILROAD CROSSING INSTALLATION**

BIDDER Agrees to perform all the work described in the Contract Documents for the following Unit Prices (which include any and all applicable taxes and fees):

October 2, 2018

**Installation of Railroad Crossings:**

#	Bid Item	Est. Qty.	Unit Cost	Total
1	Installation of Railroad Crossing 1 STA 106+20	1 LS	\$	\$
2	Installation of Railroad Crossing 2 STA 115+90	1 LS	\$	\$
3	Installation of Railroad Crossing 3 STA 120+50	1 LS	\$	\$
4	Furnish, Handle and Distribute Ballast	150 Ton	\$	\$
<b>Total Bid for Installation of Railroad Crossings:</b>				\$

BIDDER Acknowledges receipt of the following addenda:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In case of discrepancy, the unit price amount shall govern.

The above included prices shall include all labor, materials, excavation, bailing, shoring, removal, backfill, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

BIDDER understands that the OWNER reserves the right to reject any or all bids and to waive any informalities in the bidding.

BIDDER agrees that this Bid shall be good and may not be withdrawn for a period of ninety (90) days after the scheduled closing time for receiving bids.

The undersigned hereby declares that only the persons or firms interested in the proposal as principal or principals are named herein, and that no other persons or firms than are herein mentioned have any interest in this Proposal or in the contract to be entered into; that this Proposal is made without connection with any other person, company, or parties likewise submitting a Bid or proposal; and that it is in all respects for and in good faith, without collusion or fraud.

Upon receipt of written notice of the acceptance of this Bid, BIDDER will execute the formal contract attached within ten (10) days and deliver the Performance and Payment Bonds and Insurance Certificates as required under the GENERAL CONDITIONS. The Bid security attached in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) is to become the property of the OWNER in the event the contract, bonds, and insurance certificates are not executed or delivered within the time above set forth, as mutually agreed to liquidated damages and not as a penalty for the delay and additional administrative expense to the OWNER caused thereby; otherwise the Bid security will be returned upon the signing of the contract and delivering the approved bonds and insurance certificates.

Respectfully submitted,

By: \_\_\_\_\_

Seal affixed here  
if BID is by a  
Corporation

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

Attest: \_\_\_\_\_

\_\_\_\_\_

# Bid Bond

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF CAMERON   §

THAT WE, the undersigned, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto the BROWNSVILLE NAVIGATION DISTRICT, TEXAS, as OWNER in the penal sum of \_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Condition of the above obligation is such that whereas the Principal has submitted to the OWNER a certain BID attached hereto and hereby made a part hereof to enter into a contract in writing, for construction of the **“OLD S.H. 48 RAILROAD CROSSING INSTALLATION”** project.

NOW, THEREFORE,

(a) If said BID shall be rejected, or  
(b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the form of Agreement attached hereto (properly completed in accordance with said BID) and shall furnish payment and performance bonds for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall furnish insurance certificates, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void. Otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penalty amount of this obligation as herein stated.

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By: \_\_\_\_\_



# Statement of Non-Collusion

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

The undersigned hereby certifies that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this BID in collusion with any other Bidder, and that the contents of this BID as to prices, terms or conditions of said BID have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this BID.

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Bidder: \_\_\_\_\_  
(Signature)

Bidder: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_  
(Print Title)

Signature of Company  
Officer Authorizing this  
Bid: \_\_\_\_\_

Company  
Officer: \_\_\_\_\_  
(Print Name)

Officer's Title: \_\_\_\_\_  
(Print Title)

**Note:** This form must be filled out and submitted with the sealed bid.

# Disclosure of Interests

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

The Brownsville Navigation District requires all persons or firms seeking to do business with the District to provide the following information. Every question must be answered. If the question is not applicable, answer with "N/A". Corporations whose shares are publicly traded and listed on national or regional stock exchanges or over-the-counter markets may file a current Securities and Exchange Commission Form 10-K with the District in lieu of answering the questions below. See Definitions.

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Firm is:  Corporation     Partnership     Sole Owner  
 Association     Other \_\_\_\_\_

### DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side or attach separate sheet (s).

1. State the name of each "employee" of the Brownsville Navigation District having any "ownership interests" constituting 10% or more of the voting stock or shares of the business entity or ownership of \$2,500 or more of the fair market value for the business entity or employed by the above "firm".

Name	Title	Department
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. State the name of each "official" of the Brownsville Navigation District having any "ownership interests" constituting 10% or more of the ownership in the above named "firm", or employed by the above named "firm".

Name	Title	Department
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. State the names of each "Board Member" of the Brownsville Navigation District having any "ownership interests" constituting 10% or more of the ownership in the above named "firm", or employed by the above named "firm".

Name	Title	Department
------	-------	------------

---

---

---

**Note:** This form must be filled out and submitted with the sealed bid.

# Certificate and Definitions

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

### CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the Brownsville Navigation District as changes occur.

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

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

Signature: \_\_\_\_\_

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

### DEFINITIONS

The following definitions of terms should be used in answering the questions set forth below:

- A. "Board Member" – An elected member of any board, commission, or committee appointed by the Brownsville Navigation District of Brownsville, Texas.
- B. "Employee" – Any person employed by the Brownsville Navigation District either on a full time or part-time basis, but not as an independent contractor.
- C. "Firm" – Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- D. "Official" – The Chairman, members of the Brownsville Navigation District, General Manager, CEO, Deputy Port Director, Department and Division Heads.
- E. "Ownership Interest" – Legal or equitable interest, whether actually or constructive held, in a firm, including when such interest is held through the agent, trust, estate or holding entity. "Consecutively held" refers to holding or control established through voting trusts, proxies, or special terms of venture of partnership agreements.

Please Complete and Submit to:

Chairman of the Board  
Brownsville Navigation District  
c/o Ariel Chávez II, P.E./ R.P.L.S.  
Director of Engineering Services  
1000 Foust Road  
Brownsville, Texas 78521

# Contractor's Pre-Bid Disclosure Statement

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

1. This Pre-Bid Disclosure Statement is submitted to the Brownsville Navigation District by:  
 a Corporation,  a Co- partnership, or  an individual.

Address: \_\_\_\_\_ Contractor's #: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

2. Year's in business under present business name: \_\_\_\_\_
3. Years of experience in construction work of the type called for in this contract as:  
 a General Contractor  a Sub-Contractor

4. What projects has your organization completed? List most recent **FIRST**.

Contract Amount	Type of Work	Date Completed	Owner's Name and Address
-----------------	--------------	----------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. What projects does your organization have under way as often as this date?

Contract Amount	Type of Work	Date Completed	Owner's Name and Address
-----------------	--------------	----------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Have you ever failed to complete any work awarded to you?  Yes  No  
If "Yes", state where and why.

\_\_\_\_\_

\_\_\_\_\_

7. Are you at present in any major litigation or lawsuits involving construction work of any type?  
 Yes  No

If "Yes", explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Explain in detail the manner in which you have inspected the work proposed in this Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Explain in detail your plan or layout for performing the work proposed in this contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. If this contract is awarded to you, your company's administrative manager for the work will be Mr./Ms. \_\_\_\_\_, and your resident construction superintendent will be Mr./Ms. \_\_\_\_\_.

11. What experience in this type of work is enjoyed by the individual designated as superintendent above?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. What portions of the work do you intent to sublet? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What equipment do you own that is available for the proposed work?

Quantity	Description, Size, Capacity, etc.	Condition	Years in Service	Present Location
----------	-----------------------------------	-----------	------------------	------------------

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

14. Have you received firm offers for all major items of material and/or equipment within the prices used in preparing your proposal?     Yes     No

The signatory of this questionnaire guarantees the truth and accuracy of all statements herein made and all answer\`s herein expressed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# Subcontractor's Pre-Bid Disclosure Statement

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

1. This Pre-Bid Disclosure Statement is submitted to the Brownsville Navigation District by:  
 a Corporation,  a Co- partnership, or  an individual.

Address: \_\_\_\_\_ Contractor's #: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

2. Year's in business under present business name: \_\_\_\_\_
3. Years of experience in construction work of the type called for in this contract as:  
 a General Contractor  a Sub-Contractor

4. What projects has your organization completed? List most recent **FIRST**.

Contract Amount	Type of Work	Date Completed	Owner's Name and Address
-----------------	--------------	----------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. What projects does your organization have under way as often as this date?

Contract Amount	Type of Work	Date Completed	Owner's Name and Address
-----------------	--------------	----------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Have you ever failed to complete any work awarded to you?  Yes  No  
If "Yes", state where and why.

\_\_\_\_\_

\_\_\_\_\_

7. Are you at present in any major litigation or lawsuits involving construction work of any type?  
 Yes  No  
If "Yes", explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



8. Explain in detail the manner in which you have inspected the work proposed in this Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Explain in detail your plan or layout for performing the work proposed in this contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. If this contract is awarded to your prime contractor, your company's administrative manager for the work will be Mr./Ms. \_\_\_\_\_, and your resident construction superintendent will be Mr./Ms. \_\_\_\_\_.

11. What experience in this type of work is enjoyed by the individual designated as superintendent above?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. What portions of the work do you intent to sublet further? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What equipment do you own that is available for the proposed work?

Quantity	Description, Size, Capacity, etc.	Condition	Years in Service	Present Location
----------	-----------------------------------	-----------	------------------	------------------

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Have you received firm offers for all major items of material and/or equipment within the prices used in preparing your proposal?  Yes  No

The signatory of this questionnaire guarantees the truth and accuracy of all statements herein made and all answers herein expressed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# Agreement

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ by and between the BROWNSVILLE NAVIGATION DISTRICT, Texas (hereinafter called OWNER), and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### Article 1. WORK.

CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the work described herein and complete all the work as specified or indicated in the Contract Documents. The work is generally described as:

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

at the Brownsville Navigation District, Texas.  
(hereinafter referred to as "Work").

### Article 2. ENGINEER.

The project has been designed by the Engineering Department of the Brownsville Navigation District (hereinafter also called ENGINEER) in cooperation with the OWNER.

### Article 3. CONTRACT TIME.

3.1 The Work shall be substantially completed within thirty (30) days from issuance of Notice to Proceed, and shall be completed within forty five (45) days from issuance of Notice to Proceed.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as liquidated damages for the delay (but not as a penalty) CONTRACTOR shall pay OWNER five hundred (\$500.00) dollars for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

### Article 4. CONTRACT PRICE.

4.1 CONTRACTOR shall perform the Work described in the Contract Documents for the amounts shown in the Bid Proposal, and OWNER shall pay CONTRACTOR in current funds based on the Bid Proposal.

---

Article 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by OWNER as provided for in the General Conditions.

5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the twentieth day after submittal of the Application for Payment each month as provided below. All progress payments shall be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments shall be in an amount equal to 90% of the amount requested in the Application for Payment, with 10% remaining as retainage for the project, to be released in accordance paragraph 5.2.

5.1.2 Upon substantial completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 90% of the Contract Price, less such amounts OWNER shall determine in accordance with paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by OWNER as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

6.2 CONTRACTOR has made or caused to be made examinations and investigations of information as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are or will be required by CONTRACTOR for such purposes.

6.3 CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

6.4 CONTRACTOR is skilled and experienced in the type of work described in the Contract Documents.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consists of the following:

- 7.1 Invitation to Bid.
- 7.2 Instructions to Bidders (pages 1 to 10, inclusive).
- 7.2 Security Grant Contract Provisions (pages 1 to 2, inclusive).
- 7.3 Bid Form (pages 1 to 3, inclusive).
- 7.4 Bid Bond.
- 7.5 Statement of Non-collusion.
- 7.6 Disclosure of Interests.
- 7.7 Certificate and Definitions
- 7.6 Contractor's Pre-Bid Disclosure Statement (pages 1 to 3, inclusive).
- 7.9 Subcontractor's Pre-Bid Disclosure Statement (pages 1 to 3, inclusive).
- 7.10 Agreement.
- 7.11 Performance Bond.
- 7.12 Payment Bond.
- 7.13 Certificates of Insurance.
- 7.14 Standard General Conditions (pages 1 to 44, inclusive).
- 7.15 Supplemental General Conditions (pages 1 to 14, inclusive).
- 7.16 Railroad Crossing Specifications (Fifty Six [56] Pages, inclusive).
- 7.17 Construction Drawings – (One [1] Sheet, inclusive).
- 7.18 Notice of Award & Acceptance of Notice.
- 7.19 Notice to Proceed & Acceptance of Notice.
- 7.20 Any modification, including Change Orders, duly delivered after execution

of this Agreement.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

Article 8. MISCELLANEOUS.

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

8.2 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4 The invalidity or unenforceability of any provision of the Contract Documents shall not affect the validity or enforceability of any other provision of the Contract Documents.

8.5 This Agreement and the Contract Documents are subject to all applicable laws, statutes, codes, ordinances, rules and regulations.

8.6 In the event of default by CONTRACTOR under the Contract Documents, OWNER shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

8.7 If any action at law or in equity is necessary by OWNER to enforce or interpret the terms of the Contract Documents, OWNER shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the OWNER is entitled.

8.8 The Contract Documents constitute the entire agreement between the parties hereto and supersede all prior agreements and understandings between the parties. The Contract can be modified or amended by written agreement of the parties.

8.9 These Contract Documents are governed by the laws of the State of Texas and the parties agree that venue for all lawsuits arising from these Contract Documents shall lie in Cameron County, Texas.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR, or by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_.

**BROWNSVILLE NAVIGATION DISTRICT**

By: \_\_\_\_\_  
**John Reed, Chairman**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:  
Attn: Mr. Ariel Chávez II, P.E./R.P.L.S.,  
Director of Engineering Services  
1000 Foust Road  
Brownsville, TX 78521

Address for giving notices:  
Attn:

The Brownsville Navigation District is a governmental entity as defined by Texas Tax Code Section 151.309. District takes the position that this contract is exempt from taxation under Section 151.311 of the Texas Tax Code. The District will provide Contractor with evidence of District's status as a governmental entity, so that Contractor may claim exemption from sales tax for all purchases of tangible personal property used in the performance of this contract. **The parties agree that for purposes of claiming the exemption Contractor is the agent of District within the meaning of 34 Texas Administrative Code Rule 3.322.** However, District and Contractor further agree that (1) to the extent this contract or purchases made to fulfill this contract are taxable, that this is a "separated contract", and that the following amount of money represents that part of the total contract price representative of the value of tangible personal property to be physically incorporated into the project realty: \$ \_\_\_\_\_, and (2) in no event shall District be liable to Contractor for an increase in the Contract Price because of sales taxes.

# Performance Bond

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership, or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the BROWNSVILLE NAVIGATION DISTRICT, Texas, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, 2018, a copy of which is hereto attached and made a part hereof, for the construction of the:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year post-construction guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.



PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

This bond is subject to and governed by Article 5160 of the Texas Revised Civil Statues and all amendments thereto.

IN WITNESS WHEREOF, this instrument is executed in triplicate, each counterpart of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal) Secretary By: \_\_\_\_\_(s)  
(Signature)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Surety) Secretary By: \_\_\_\_\_  
(Attorney-in-Fact)

(SEAL)

\_\_\_\_\_  
(Witness as to Surety) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute BOND.

ATTACH  
POWER OF ATTORNEY  
TO BE FURNISHED BY CONTRACTOR

# Payment Bond

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership, or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the BROWNSVILLE NAVIGATION DISTRICT, Texas, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, 2018, a copy of which is hereto attached and made a part hereof, for the construction of the \_\_\_\_\_.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose legally perfected claim may be unsatisfied.

This bond is subject to and governed by Article 5160 of the Texas Revised Civil Statues and all amendments thereto.

IN WITNESS WHEREOF, this instrument is executed in triplicate, each counterpart of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal) Secretary By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Surety) Secretary By: \_\_\_\_\_  
(Attorney-in-Fact)

(SEAL)

\_\_\_\_\_  
(Witness as to Surety) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract. If Contractor Partnership, all partners should execute BOND.

ATTACH  
POWER OF ATTORNEY  
TO BE FURNISHED BY CONTRACTOR

# **Certificates of Insurance**

---

OLD S.H. 48 RAILROAD CROSSING INSTALLATION

ATTACH

CERTIFICATES OF INSURANCE

TO BE FURNISHED BY CONTRACTOR

# General Conditions

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT

Prepared by

Engineers' Joint Contract Documents Committee

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
A practice division of the  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

-----

AMERICAN CONSULTING ENGINEERS COUNCIL

-----

AMERICAN SOCIETY OF CIVIL ENGINEERS

-----

CONSTRUCTION SPECIFICATION INSTITUTE

The document has been approved and endorsed by:

The Associated General Contractors of America

## TABLE OF CONTENTS OF GENERAL CONDITIONS

Article Number	Title
1	DEFINITIONS
2	PRELIMINARY MATTERS
3	CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE
4	AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS
5	BONDS AND INSURANCE
6	CONTRACTOR'S RESPONSIBILITIES
7	OTHER WORK
8	OWNER'S RESPONSIBILITIES
9	ENGINEER'S STATUS DURING CONSTRUCTION
10	CHANGES IN THE WORK
11	CHANGE OF CONTRACT PRICE
12	CHANGE OF CONTRACT TIME
13	WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK
14	PAYMENTS TO CONTRACTOR AND COMPLETION
15	SUSPENSION OF WORK AND TERMINATION
16	(RESERVED)
17	MISCELLANEOUS



Index to General Conditions

## GENERAL CONDITIONS

### ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addenda** - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents. These Addenda shall become a part of the Contract Documents and modify the drawings, specifications or other bid documents as indicated. No verbal changes in the Work as shown or described shall become binding.

**Agreement** - The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

**Application for Payment** - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

**Bid** - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**Bonds** - Bid, performance and payment bonds and other instruments of security.

**Change Order** - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

**Contract Documents** - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

**Contract Price** - The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

**Contract Time** - The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

**CONTRACTOR** - The person, firm or corporation with whom OWNER has entered into

the Agreement.

Defective - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof), has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

Drawings - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by OWNER.

ENGINEER - The person, firm or corporation named as such in the Agreement.

Field Order - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.

General Requirements - Sections of Division 1 of the Specifications.

Laws and Regulations; Laws or Regulations - Laws, rules, regulations, ordinances, codes and/or orders.

Notice of Award - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

OWNER - The public body or authority, corporation, association, firm or person with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

Resident Project Representative - The authorized representative of ENGINEER who is assigned to the site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are

specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Unit Price Work - Work to be paid for on the basis of unit prices.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

Work Directive Change - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in paragraph 10.2.

Written Amendment - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2. PRELIMINARY MATTERS

### Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

### Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### Commencement of Contract Time; Notice to Proceed:

2.3 The Contract Time will commence to run on the thirtieth day after the after the effective Date of the Agreement, or if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Time commence to run later than the seventy fifth day after the day the of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### Starting the Project:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

### Before Starting Construction:

2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, if CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1 an estimated progress schedule indicating the starting and

completion dates of the various stages of the Work;

2.6.2 a preliminary schedule of Shop Drawings submissions; and

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

2.7 Before any Work at the site is started, Contractor shall deliver to Owner, with a copy to Engineer, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3, 5.4, and Owner shall deliver to CONTRACTOR certificates (and other evidence of insurance requested by CONTRACTOR) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7.

Preconstruction Conference:

2.8 Within twenty days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

Finalizing Schedules:

2.9 At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

### ARTICLE 3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work,

materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3 If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER. However, CONTRACTOR shall be not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents if CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

Amending and Supplementing Contract Documents:

3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.4.1 a Formal Written Amendment,
- 3.4.2 a Change Order (pursuant to paragraph 10.4), or
- 3.4.3 a Work Directive Change (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.5.1 a Field Order (pursuant to paragraph 9.5),
- 3.5.2 ENGINEER's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or

3.5.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.6 Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER. All drawings, specifications or other documents (or copies of any thereof) are upon completion of the project to become the property of OWNER. Further use thereof without written consent of OWNER is prohibited.

ARTICLE 4. AVAILABILITY OF LANDS: PHYSICAL CONDITIONS: REFERENCE POINTS

Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Condition:

4.2.1 Explorations and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface or subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions: If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5 Possible Document Change: If ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, may be allowable to the extent that they are attributable to any such inaccuracy or difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Articles 11 and 12.

Physical Conditions - Underground Facilities:

4.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.



4.3.2 Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

#### Reference Points:

4.4 OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## ARTICLE 5. BONDS AND INSURANCE

#### Performance and Other Bonds:

5.1 CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the

project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond or Surety, both of which must be acceptable to OWNER.

Contractor's Liability Insurance:

5.3 CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts and/or omissions any of them may be liable:

5.3.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

5.3.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The insurance required by these paragraphs 5.3 and 5.6 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and ENGINEER by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and

furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

Contractual Liability Insurance:

5.4 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.30 and 6.31.

Owner's Liability Insurance:

5.5 Owner shall be responsible for purchasing and maintaining OWNER'S own liability insurance and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6 Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and ENGINEER's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

5.7 OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEERS and ENGINEER's consultants in the Work, all of whom shall be listed as insured or additional insured parties.

5.8 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days prior written notice has been given to CONTRACTOR by certified mail and will contain waiver provisions in accordance with paragraph 5.11.2.

5.9 OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTORS, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount will be borne by CONTRACTOR. Subcontractor, or others suffering any such loss and if any of them wishes property insurance coverage within the

limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10 If CONTRACTOR requests in writing that other special insurance be included in the property insurance policy, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

#### Waiver of Rights:

5.11.1 OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraph 5.6 and 5.7 and any other property insurance applicable to the Work, and also waives all such rights against the Subcontractors. ENGINEER, ENGINEER's consultants and all other parties named as insureds in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, ENGINEER, ENGINEER's consultants and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy is issued.

5.11.2 OWNER and CONTRACTOR intend that any policies provided in response to paragraph 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by ENGINEER or ENGINEER's consultant or any Subcontractor, CONTRACTOR will obtain the same, and if such waiver forms are required of any Subcontractor, CONTRACTOR will obtain the same.

#### Receipt and Application of Proceeds:

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreements is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. OWNER as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, OWNER as trustee shall, upon the occurrence of any insured loss, give bond for the proper performance of such duties.

## Acceptance of Insurance:

5.14. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.7. If CONTRACTOR has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by OWNER, in accordance with paragraphs 5.6 and 5.7 on the basis of their not complying CONTRACTOR shall notify OWNER in writing thereof within ten days of the date of delivery of such certificates to CONTRACTOR in accordance with paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by OWNER or CONTRACTOR to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

## Partial Utilization - Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10 provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

## ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES

## Supervision and Superintendence:

6.1. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

## Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey

and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

Adjusting Progress Schedule:

6.6. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items:

6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by ENGINEER if sufficient information is submitted by CONTRACTOR to allow ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by ENGINEER will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of

Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish at CONTRACTOR's expense additional data about the proposed substitute.

6.7.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to ENGINEER, if CONTRACTOR submits sufficient information to allow ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in paragraph 6.7.1 as applied by ENGINEER and as may be supplemented in the General Requirements.

6.7.3. ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guaranty or other surety with respect to any substitute. ENGINEER will record time required by ENGINEER and ENGINEER's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not ENGINEER accepts a proposed substitute. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's consultants for evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for

acceptance or objection in the bidding documents or the Contractor Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price may be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. All increases or decreases in the Contract Price shall be governed by all state and local statutes, codes, laws, ordinances, rules and regulations governing competitive bidding and Change Orders. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and/or omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and/or omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7.

#### Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against claims, damages, losses and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.



---

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations. CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the Place of the Project which are applicable during the performance of the Work.

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or any of the land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify, hold OWNER and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or

equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17. 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 all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all employees on the Work and other persons and organizations who may be affected thereby;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in

part, by OWNER and ENGINEER, and by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21. CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

#### Emergencies:

6.22. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change order will be issued to document the consequences of the changes or variations.

#### Shop Drawings and Samples:

6.23. Not Used

6.24. Not Used

6.25. Not Used

6.26. ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incidents thereto. The review and approval of a separate item as such will not indicate approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.2 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawings or sample approval; nor will any approval by ENGINEER

relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1

6.28. Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to ENGINEER's review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

Indemnification:

6.30. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, or regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.31. In any and all claims against OWNER or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32. The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

## ARTICLE 7 - OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

7.2. CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that renders it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor ENGINEER shall not have any authority or responsibility in respect of such coordination.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1. OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under

the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

8.5. OWNER's responsibility in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.6.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

## ARTICLE 9 -ENGINEERS STATUS DURING CONSTRUCTION

Owner's Representative:

9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and 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's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

Project Representation:

9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project

Representative to assist ENGINEER in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4. ENGINEER, after consultation with OWNER, will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have the authority to disapprove or reject Work which ENGINEER believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.28 inclusive.

9.8. In connection with ENGINEER's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9. In connection with ENGINEER's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR ENGINEER's

preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to ENGINEER written notice of intention to appeal from such a decision.

#### Decisions on Disputes:

9.11. ENGINEER will be the interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

#### Limitations on ENGINEER's Responsibilities:

9.13. Neither ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, and Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

9.15. ENGINEER will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs



incident thereto and ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.16. ENGINEER will not be responsible for the acts and/or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

#### ARTICLE 10 - CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.4.1. changes in the Work which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be

adjusted accordingly.

## ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2. The Contract price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party promptly and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1. through 11.9.3. inclusive).

11.3.2. By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1).

11.3.3. On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

### Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe

benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine which bid will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.9.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4--all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the intentional and/or negligent acts and/or omissions of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts and/or omissions any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

#### CONTRACTOR's Fee:

11.6. The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon.

11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's Fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

11.6.2.3. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.4. the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease; and

11.6.2.5. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER. CONTRACTOR agrees that:

11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof. CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefor as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

12.3. All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

#### ARTICLE 13 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

##### Warranty and Guarantee:

13.1. CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

##### Access to Work:

13.2. ENGINEER and ENGINEER's representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

##### Tests and Inspections:

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish ENGINEER the

required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's or ENGINEER's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or if materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals other than those which are required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

13.5. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

13.6. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.7. Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

#### Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges or engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

#### Owner May Stop the Work:

13.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been



eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

#### Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with nondefective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### One Year Correction Period:

13.12. If within one year after the date of issue of the Certificate of Acceptance or such longer period of time as may be prescribed by Laws or Regulations, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instruction, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with nondefective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

#### Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment), prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such final payment, an appropriate amount as determined by OWNER will be paid by CONTRACTOR to OWNER.

#### OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice of ENGINEER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days'

written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

#### ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

##### Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

##### Application for Progress Payment:

14.2. At least twenty days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

##### CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and

equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

14.4. OWNER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to make payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based upon ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10 and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the Work is defective, or completed Work has been damaged requiring correction or replacement.

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order.

14.7.3. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4. of ENGINEER's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

OWNER may refuse to make payment in whole or in part of the amount recommended by ENGINEER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR written notice (with a copy to ENGINEER) stating the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have ten days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within twenty days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said twenty days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion, ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

14.10. Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents or which OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work,

may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written statement as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents--all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

#### Final Payment and Acceptance:

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### Contractor's Continuing Obligation:

14.15. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion or Acceptance, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

Waiver of Claims:

14.16. The making and acceptance of final payment will constitute:

14.16.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.16.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

Owner May Suspend Work:

15.1. OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both; directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

Owner May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2. if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3. if CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.4. if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

15.2.5. if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 29. as revised from time to time);

15.2.7. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.9. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be kept by OWNER. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph OWNER shall now be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work



and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

15.5. If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR, may upon seven days written notice to OWNER and ENGINEER terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven day's written notice to OWNER and ENGINEER stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16 (Reserved)

#### ARTICLE 17 - MISCELLANEOUS

##### Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation in the case of the CONTRACTOR or the General Manager in the case of the OWNER for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### Computation of Time:

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

##### General:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a

waiver of the provisions of any applicable statute of limitations or repose.

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the conditions, warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to OWNER and ENGINEER which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, conditions, warranties and guarantees made in the Contract Documents will survive the execution, final payment and termination or completion of the Agreement. All statements contained in any document required by OWNER, whether delivered at the time of the execution of the Contract Documents or at a later date, shall constitute representations, warranties and guarantees herein.

# Supplementary General Conditions

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

### 1. GENERAL

The Standard General Conditions of the construction Contract prepared by the ENGINEER's Joint Contract documents Committee (No. 1910-8 1990 Edition) shall form a part of this contract, together with the following Supplementary General Conditions. A copy of the Standard General Conditions (No. 1910-8) is bound herewith.

The following supplements modify, change, delete, or add to the General Conditions, where any part of the General Conditions is modified or voided by these articles, the unaltered provisions of that part shall remain in effect.

### 2. DETAILED AMENDMENTS TO THE GENERAL CONDITIONS

The following Articles of the Standard General Conditions are hereby amended as follows:

ARTICLE 1: The definition for Contract Documents is hereby amended to insert the word "General and Supplementary General Conditions", after the word "Agreement"

ARTICLE 2: Add the following definitions:

- a. Standard abbreviations: Wherever reference is made to standard specifications, standard of quality or performance, as established by a recognized national authority, the reference may be by initials as generally recognized throughout the authority.
- b. Addenda: Supplements to, change in or corrections to the Drawings and/or Specifications issued in writing by the Engineer during the period of bidding. These addenda shall become a part of the contract and modify the Drawings and/or Specifications as indicated. No verbal changes in the work as shown or described shall becoming binding.
- c. Alternates: Additions, omissions from, or changes to requirements for the project, each of which shall be bid separately and shall be included in or omitted from the contract at the discretion of the owner.
- d. Furnish: To supply at the job site the material, equipment, etc., referred to. Installation is not required of the supplier by the Specifications, but shall be arranged for by the General CONTRACTOR.
- e. Provide: To furnish and install in the location shown or approved at the job site, the material, equipment, etc., referred to.

### ARTICLE 5: BONDS AND INSURANCE

Delete the last sentence of Article 5.1 delaying with U.S. Treasury Department Listing and substitute the following:

All the surety companies providing bonds for this project must be registered with the Secretary of State of the State of Texas.

Add to Article 5.3 the following subparagraphs:

5.3.1. **COMPENSATION INSURANCE.** The Contractor shall procure and shall maintain during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work on this project under this Contract, and in case of any such work sublet, the CONTRACTOR shall require the subcontractor similarly to provide Workmen' Compensation Insurance for all the latter's employees to be engaged in such work unless employees are covered by the protection afforded by the CONTRACTOR's Compensation Insurance. In case of any class of employees engaged in hazardous work on the project, under this Contract and is not protected under the Workmen's Compensation Statute, the CONTRACTOR shall provide and shall cause each subcontractor to provide adequate insurance for employees not otherwise protected.

Worker's Compensation	Which Complies with the Texas Workers Compensation Act as well as all Federal acts applicable to the Contractor's operation at the site.
Employer's Liability	\$1,000,000.00 for each occurrence.

5.3.2. **CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.** The Contractor shall procure and shall maintain during the life of this contract CONTRACTOR's Public Liability Insurance for injuries, including accidental death, to any one person, and subject to the same limit for each person, on account of one accident, and CONTRACTOR's Property Damage Insurance in amount as follows:

Comprehensive General Liability	\$1,000,000.00 Combined Single Limit (\$ 4,000,000.00 if explosives are involved in the performance of the contract)
---------------------------------	---

Including: Bodily Injury Liability, Personal Injury Liability, Property Damage Liability, Broad Form Property Damage Liability, Contractual Liability, Products/Completed Operations Liability, Liability for Property of Others in the Care, Custody and Control of the Contractor.

Comprehensive Automobile Liability	\$1,000,000.00 Combined Single Limit
------------------------------------	--------------------------------------

5.3.3. **SUBCONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.** The CONTRACTOR shall require each of his subcontractors to procure and to maintain, during the life of this subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type in subparagraph.

5.3.4. Hereof, in amounts approved by the OWNER.

5.3.5. **SCOPE OF INSURANCE AND SPECIAL HAZARDS.** The insurance required under subparagraph 5.3.2. and 5.3.3. hereof shall provide adequate protection for the Contractor

and his subcontractors respectively against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone against any special hazards which may be encountered in the performance of this contract.

## ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES

Add to subparagraph 6.5:

The CONTRACTOR shall notify the OWNER in writing of any conflict between the Manufacturer's directors and the Contract Documents and shall not perform any work on any item until such conflict has been resolved.

Upon award of the Contract, the OWNER will, on written request of the CONTRACTOR, furnish the CONTRACTOR with a certificate of exemption from the Limited Sales, Excise and Use Tax in an amount not exceeding the above mentioned bid price for materials or property have been or will be utilized in the performance of the Contract to the full extent of the amount for which a certificate of exemption is requested.

Add the following Subparagraph:

- 6.3.3. The CONTRACTOR shall acquaint himself with all matters and conditions concerning site and existing construction. Any practical criticism or exception regarding feature of the work presented in writing with the Proposal will be considered at that time. If no criticism or exception is given with the Proposal, it shall be assumed that the Contractor agrees that the project, as outlined in the Drawings and Specifications, can be completed satisfactorily. After a Contract Agreement to perform the work has been signed by the CONTRACTOR, it shall then be his responsibility to provide satisfactory work that will meet the full intent of the Contract Documents. The CONTRACTOR shall then pursue this work with the other trades so that all phases of the work may be properly coordinated without delays or damage to any parts of the work.

## ARTICLE 13. WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS: CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.

Add the following Subparagraph:

- 13.1 Disputes over Improper Functioning. In case of dispute as to the cause of improper functioning of all or any part of the work, the burden of proof that he has complied with the Contract Documents rests with the CONTRACTOR for this work. He shall submit in writing his opinion of the cause of his recommendation for proving the adequacy of his work. The OWNER shall have those tests made, which he deems advisable, by an independent testing laboratory of this choice.. If any tests so made indicate a defect in material or workmanship, or that one or more manufactured components of the work are performing below the standard set by the manufacturer's published data and specifications, the entire cost of all such tests shall be paid for the by the CONTRACTOR, and he shall also pay for retesting of the corrected work until it functions satisfactorily.

ARTICLE 14. PAYMENTS AND COMPLETION.

Add the following to Paragraph 14.1 1:

A qualified person representing the CONTRACTOR shall be present at this final inspection to demonstrate the systems and prove the performance of the equipment. Prior to this inspection, all work shall have been completed, tested, balanced and adjusted and in final operating condition.

Make the following change to Paragraph 14.4 "Approval of Payments"

OWNER shall, within twenty (20) days of presentation to him of an approved application for Payment, pay Contractor the amount approved by Engineer.

ARTICLE 16. ARBITRATION. Delete this entire Article.

Add the following Article.

ARTICLE 18. THE CONTRACTOR SHALL COMPLY WITH THE COMPELAND ACT 48, STATUTE 948 AND ALL AMENDMENTS OR MODIFICATIONS OF THE ORIGINAL ACT OF JUNE 13,1934.

3. TEMPORARY FACILITIES

(a) Sanitary Facilities for Workmen

(1) CONTRACTOR, shall provide and maintain suitable weathertight, painted sanitary toilet facilities for all workmen for the entire construction period. Comply with all requirements of applicable health authorities. When toilet facilities are no longer required, promptly remove from the site, disinfect and clean the area as required.

(2) CONTRACTOR shall keep toilet facility swept and supplied with toilet tissue at all times.

(b) Weather Protection

(1) Except where otherwise, specified, CONTRACTOR shall, at all times, provide protection against weather, so as to maintain all work, materials, and fixtures free from injury or damages. All new work likely to be damaged shall be covered or otherwise protected as required.

(c) Work Areas

(1) The CONTRACTOR shall be confined to all working easements provided.

Storage of excavation material and all contractor equipment and material shall remain within the limits of working easements.

4. TEMPORARY UTILITIES

The CONTRACTOR shall furnish all temporary utilities as required, for the completion of the work.

5. CONSTRUCTION SEQUENCE

- (1) That the following sequence of work be used as a basis for preparation to the Construction Schedule.
- (2) To cooperate with and facilitate the Contractor in the whole of the work to be carried out subject to the following being observed:
  - (a) The CONTRACTOR shall, within five (5) calendar days after the date of the Award of Contract, submit a Construction Schedule for the approval of the Owner and Engineer. This Schedule shall outline an orderly sequence of construction as required to meet the completion time stipulated in the contract.
  - (b) The CONTRACTOR shall coordinate his work with that of other contractors whose work may occur at a conflicting time and location. The coordination shall be such that work will be maintained at a normal rate.
  - (c) Satisfactory access or detour roads shall be provided where necessary due to construction.

6. MEASUREMENT

Before ordering any material or doing any work, the CONTRACTOR will verify all measurements of any existing and new work and shall be responsible for their correctness. Any differences which may be found shall be submitted to the Engineer for consideration before proceeding with the work. No extra compensation will be allowed because of differences between actual dimensions and measurements indicated on the working drawings.

7. PROTECTION

- a. The CONTRACTOR shall send proper notices, make all necessary arrangements and perform all other services required for the care, protection and maintenance of all public utilities, including fire plugs, telephone and telegraph poles and wires, and all other items of this character on or about the site, assuming all responsibility and paying all costs for which the OWNER may be liable.
- b. Temporary Drainage. The CONTRACTOR shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep the excavation free of water.
- c. Bracing, Shoring and Sheeting. The CONTRACTOR shall provide all shoring,

bracing . and sheeting as required for safety and for the proper execution of the work; and have same removed when the work is completed.

- d. Fires shall not be built on the premises except by the express consent of the OWNER and City Fire Marshall.

8. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

- a. The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the OWNER, nor shall the CONTRACTOR allow any subcontractor to commence work on this Contract until the insurance required of the subcontractor has been so obtained and approved.

- b. Compensation Insurance. The CONTRACTOR shall procure and shall maintain, during the life of his Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work on this project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all the latter's employees to be engaged in such work unless employees are covered by the protection afforded by the CONTRACTOR's Compensation.

Insurance. In case of any class of employees engaged in hazardous work on the project under this Contract is not protected under the Workmen's Compensation Statute, the CONTRACTOR shall provide and shall cause each subcontractor to provide adequate insurance for employees not otherwise protected.

- c. CONTRACTOR's Public Liability and Property Damage Insurance. The CONTRACTOR shall procure and shall maintain during the life of this contract, Contractor's Public Liability Insurance for injuries, including accidental death, to any one person, and subject to the same limit for each person, on account of one accident, and CONTRACTOR's Property Damage Insurance in amounts as follows:

Comprehensive General Liability	\$1,000,000.00 Combined Single Limit (\$ 4,000,000.00 if explosives are involved in the performance of the contract)
---------------------------------	---

Including: Bodily Injury Liability, Personal Injury Liability, Property Damage Liability, Broad Form Property Damage Liability, Contractual Liability, Products/Completed Operations Liability, Liability for Property of Others in the Care, Custody and Control of the Contractor.

Comprehensive Automobile Liability \$1,000,000.00 Combined Single Limit

NOTE: Automobile insurance shall cover all automobiles and trucks owned by the CONTRACTOR.

- d. Subcontractor's Public Liability and Property Damage Insurance. The



CONTRACTOR shall require each of his subcontractors to procure and maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type specified in subparagraph C hereof, in amounts approved by the OWNER.

- e. Proof of Carriage of Insurance. The CONTRACTOR shall furnish the OWNER with certificates showing the type, amount class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statements. "The insurance covered by this certificate will not be concealed or materially altered except after ten days written notice has been received by the OWNER.

#### 9. ACCIDENT PREVENTION

Precaution shall be exercised at all times for the protection of persons (including employees) and property, and hazardous conditions shall be guarded against or eliminated.

#### 10. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress and the time for completion of the work to be done thereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed, by and between the parties hereto, that the work embraced in this Contract shall be commenced on a date to be specified in the work order.
- b. The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the parties hereto, that the time for the completion of the work described herein is a reasonable time for completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in the locality.
- c. If the said CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, then the said Contractor does hereby agree, as a part consideration for awarding of this Contract, not as a penalty but as liquidated damages for such breach of calendar day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work.
- d. The Damage to OWNER by reason of this contract not being completed as of that date are parties hereto have therefore fixed and limited such damages to the amount stated in the agreement per day for each day the job runs beyond such date and the fixing of such damages constitutes a part of the consideration for the Contract.
- e. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract,

additional time is allowed for the completion of any work, the new time fixed by such extension shall not be charged with liquidated damages or any excess cost when the delay in the completion of work is due:

- (1) To any preference, priority or allocation order duly issued by the Government.
- (2) To enforceable cause, beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, acts of God, or the public enemy, acts of the OWNER, acts of another Contractor in the performance of the Contract with OWNER, fires, floods, epidemics, Quarantine restriction, strikes, freights embargoes, and unusually severe weather.
- (3) To any delays of subcontractors and/or material suppliers occasioned by any of the causes specified in (1) and (2).
- (4) Provided, further, that the Contractor shall, within seven (7) days from the beginning of such delay, notify the OWNER, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the CONTRACTOR within a reasonable time of its decision in the matter.

#### 11. INSPECTION AND TESTING OF MATERIALS

- a. All materials and equipment/furnished by manufacturers shall be tested, inspected, and certified in accordance with the Contract Documents, laws, ordinances, or any public authority requiring any work to be specifically tested. The cost of such tests, inspections and certifications shall be borne by the CONTRACTOR.
- b. The CONTRACTOR shall cooperate with the testing laboratory to the end that the function and services of the laboratory may be properly performed. The Contractor shall give the OWNER's representative and testing laboratory a minimum of twenty-four (24) hour notice of readiness for all testing as required. Costs of all field tests by such a laboratory shall be borne by the OWNER, unless otherwise stipulated in the Supplementary General Conditions, Article 13.

#### 12. REFERENCE POINTS

The ENGINEER will establish horizontal and vertical controls only (reference points and benchmarks) as shown on the construction plans.

The CONTRACTOR must notify the ENGINEER at least 48 hours prior to starting work on any section or part of the work where controls have not been established or are not identifiable or visible to the CONTRACTOR.

The ENGINEER will upon such advance notice assist the CONTRACTOR in locating and identifying the various CONTRACTOR in location and identifying the various control points and will replace any control points that have been destroyed by others prior to beginning of CONTRACTOR's operations.

After the control points are established and/or identified as outlined above, maintenance

of such control points will be the responsibility of the CONTRACTOR. Any re-staking required for any reason thereafter shall be the final responsibility of the CONTRACTOR.

The CONTRACTOR will provide all other construction staking (cut stakes, blue topping, intermediate string line control, etc.) required to verify grades, depths, thickness and alignment of the various items of construction.

13. SERVICES AT START UP

The CONTRACTOR shall provide the services of technical representative, for the CONTRACTOR furnished equipment, for a sufficient period to assist in start up and initial adjustment of all equipment and to train, advice and consult with the OWNER's operating personnel.

14. PERMITS

Permits, fees and licenses necessary for the pursuit of the work shall be obtained and paid for by the CONTRACTOR.

15. MAINTENANCE OF SITE AND CLEANUP

The work site shall be kept reasonably clean at all times. Surplus materials shall be disposed of by the CONTRACTOR except for the designated to be salvaged. In final cleanup operations, all equipment, scrap materials and temporary structures shall be removed and the site left clean.

16. PROTECTION AND REPLACEMENT OF PROPERTY

Driveways, culverts, storm sewer inlets and laterals, and other public or private property that is destroyed or removed during the construction shall be replaced to its original condition by the CONTRACTOR. Temporary drainage is to be provided as necessary.

17. CONSTRUCTION AREA

CONTRACTOR shall be responsible to maintain and protect in good condition while under construction and exposed areas that become damage shall be CONTRACTOR's responsibility to repair at no cost to owner. This includes construction area being exposed to rainfall, vehicular traffic, etc.

CONTRACTOR shall be responsible for providing temporary access in a safe and approved manner at all times to private properties being affected by this work. After work is complete, any damages, alterations or modifications to existing structures as part of the temporary access construction activities shall be restored to original conditions or repaired as necessary at the sole expense of the CONTRACTOR.

18. PROTECTION OF TREES, AND SHRUBS

Care shall be exercised to prevent damage to trees, plants and shrubs along the work site. No tree, plant or shrub shall be removed unless it interferes unduly with the

construction work. Permission for such removal must first be obtained from the ENGINEER. Provisions of the Technical Specifications shall govern in matters of this nature.

19. BARRICADES AND WARNINGS

Adequate barricades and warning devices shall be provided at the work site. Lights shall be provided between sunset and sunrise when necessary in the opinion of the ENGINEER in accordance with the Traffic Controllers Manual.

20. LOCATION OF & DAMAGE TO EXISTING UTILITIES AND STRUCTURES

The CONTRACTOR is Responsible for locating underground obstacles. It is not represented that the Plans show all sewers, water lines, gas lines, telephone lines, and other underground obstacles. The CONTRACTOR shall exercise caution to prevent damage to existing facilities during the progress of the construction work, taking care to locate same, where possible, in advance of the actual work. The ENGINEER will render all assistance possible to the CONTRACTOR in the matter of determining the location of existing utilities by making available such maps, records and other information as may be accessible to him, when requested to do so, but the accuracy of such information will not be guaranteed. The CONTRACTOR shall make good on all damage to existing utilities resulting from his operations. Where a pipe, duct or other structure of a utility is exposed, which, in the opinion of the ENGINEER requires strengthening, altering or moving, the CONTRACTOR shall perform such work on same, as the ENGINEER may order, which work will be paid for as extra work in accordance with the terms of the Contract relating to extra work. Should the CONTRACTOR, in the layout of his work, encounter any pipe, underground utility, or structure, the location of which has not been furnished to him by the ENGINEER, he shall bring such conditions to the attention of the ENGINEER for his determination of the method to be used to remove or bypass such obstructions.

It is essential that in the event of any damage being caused to existing units then immediate attention be given to their repair, if necessary at the expense of labor and material scheduled to be employed at the new work. Any repair work carried out shall be at the cost of the CONTRACTOR and shall be to the complete satisfaction of the OWNER, who will acknowledge the same in writing.

It is therefore the duty of the CONTRACTOR prior to the commencement of construction to inspect and accurately record in writing to the OWNER and ENGINEER, the conditions of any unit which he reasonably suspect or knows to be damaged, faulty, or defective.

In addition, any such unit(s) so recorded, which in the opinion of the Contractor may deteriorate further as a result of the proposed mode of operations should be protected and/or remedial measures employed as agreed to, and at the cost of the Owner.

21. MATERIALS AND WORKMANSHIP

No material which has been used by the CONTRACTOR for any temporary purpose whatsoever is to be incorporated in the permanent structure without written consent of the ENGINEER. Where materials or equipment are specified by a trade for brand name, it is

not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance and to establish an equal basis for the evaluation of bids. Where the words "equivalent", "proper" or "equal to" are used, they shall be understood to mean that the thing referred to shall be properly the equivalent of or equal to some other thing, in the opinion of judgment of the ENGINEER. Unless otherwise specified, all materials shall be of the best of their respective kinds and shall be in all cases fully equal to the approved samples.

Notwithstanding that the words "or equal to" or other such expressions may be used in the Specifications in connection with a material, manufactured article or process, the material, article or process specifically designated shall be used, unless a substitute shall be approved in writing by the ENGINEER, and the ENGINEER shall have the right to require the use of such specifically designated material, article or process.

22. CUTTING, PATCHING AND FITTING

The CONTRACTOR shall perform all cutting, patching, or fitting of this work that met be required to make its several parts come together properly and fit it to receive or be received by work or others shown on, or reasonably implied to the drawings and Specifications for the completed structure or facility. The CONTRACTOR shall not endanger any work by cutting, digging or otherwise, and shall not cut or alter the work of others unless specifically noted on the drawings and specifications or authorized in writing by the ENGINEER and the OWNERS of such other work.

23. RIGHT OF ENTRY

The OWNER reserves the right to enter the property or location on which the work herein contracted for is to be constructed or installed, by such agents as it may elect, for the purpose of supervising and inspecting the work, or for the purpose of constructing or installing collateral work as said OWNER may desire.

24. SUPERINTENDENT AND INSPECTION BY OWNER

It is agreed by the CONTRACTOR that the OWNER shall be and is hereby authorized to appoint from time to time subordinate engineers, supervisors, or inspectors, as the said OWNER may deem proper, to inspect the material furnished and work done under this agreement, and to see that the said material is furnished and said work is done in accordance with the Specifications. The CONTRACTOR shall regard and obey the directions and instructions of any sub-coordinate engineers, supervisors, or inspectors as appointed, when such directions are consistent with the obligations of this agreement and these accompanying Specifications, provided, however, that should the CONTRACTOR object to any order by any subordinate engineer, supervisor, or inspector, the CONTRACTOR may, within six (6) days, make written notice to the ENGINEER for his decision. Except, as herein before provided, the authority of subordinate engineers, supervisors, or inspectors shall be limited to the rejection of unsatisfactory work and materials and to the suspension of the work, until the question of acceptability can be referred to the ENGINEER.

25. SUPERINTEDENT BY CONTRACTOR

Except where the CONTRACTOR is an individual and gives his personal superintendent to the work, the CONTRACTOR shall provide a competent superintendent, satisfactory to the OWNER and the ENGINEER, on the work at all times during working hours with full authority to act from him. The CONTRACTOR shall provide an adequate staff for the proper coordination and expediting of his work.

The CONTRACTOR shall provide an on-site representative, satisfactory to the OWNER and the ENGINEER, available at all times (i.e., twenty-four (24) hours per day, seven (7) days per week). The on-site representative shall be stationed close enough to be on the site within 30 minutes of notification. The on-site representative shall have full access to all equipment and material and have full authority necessary to correct any problems, deficiencies, or emergencies which may arise during non-working hours and during the absence of the superintendent.

The name, address, and phone number of both the superintendent and the on-site representative shall be given in writing to the ENGINEER and the Local Public Agency prior to the beginning of construction.

Additional provisions concerning superintendent by the CONTRACTOR are given in General Condition 102 of these Contract Documents.

26. "AS BUILT" DRAWINGS – Not Required

A complete set of contract drawings shall be stapled together and the official "As Built" set on which the CONTRACTOR shall record currently the work carried out through all phases of construction.

The set shall be kept in the office in a neat and clean condition and be available for inspection by the OWNER or ENGINEER at any time during the Contract period. At the completion of the Contract it shall be handed to the ENGINEER accompanied by a letter stating that each drawing has been signed by the CONTRACTOR to the effect that the drawings are a true and accurate record of the work carried out.

27. ACCEPTANCE AND FINAL PAYMENT

Upon written notice that the work is ready for inspections and acceptance, the OWNER shall promptly make such inspection, and when he finds the work acceptable under the Contract fully performed, he shall promptly issue a final certificate over his own signature, stating that the work provided for in this Contract has been completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the CONTRACTOR, including the retained percentages, shall be paid to the CONTRACTOR at the office of the OWNER within fifteen (15) days after the date of said final certificate. The CONTRACTOR shall submit satisfactory evidence to the OWNER that all payrolls, material bills, and other indebtedness connected with the work have been paid before the final certificate is issued.

The making and acceptance of the final payment shall constitute a waiver of all claims by the OWNER, other than those arising from unsettled liens, from faulty work appearing

after final payment or from requirements of the Specifications, and of all claims by the CONTRACTOR, except those previously made and still unsettled.

28. GUARANTEE

The work shall be guaranteed to be free from defects due to faulty workmanship or materials for a period of one year from the date of issue of the Certificate of Acceptance. Work found to be improper or imperfect shall be replaced or done without cost to the OWNER within the year guarantee period. Neither the Certificate nor Acceptance, final payment, or any provision of the Contract Documents shall free the CONTRACTOR from his guarantee. Failure to repair or replace faulty work entitles the OWNER to repair or replace the same and recover the costs from the CONTRACTOR and/or his Surety. The CONTRACTOR shall be the sole guarantor of the work installed under this contract and no third party guarantees by subcontractors or suppliers of various components or materials will be acceptable, nor shall agreements with subcontractors or material or component suppliers by the CONTRACTOR reduce the CONTRACTOR's responsibility under this agreement. The Performance Bond shall remain in full force and effect through the guarantee period.

29. PREFERENCE IN EMPLOYMENT

Preference employment shall be given to resident citizens of the area where such persons are available and fully qualified to perform the work to which the employment relates.

30. ANTI-KICKBACK REGULATIONS

The CONTRACTOR shall comply with the Copeland Act 48, Statute 948 and all amendments or modifications of the original act of June 13, 1934.

31. CONTRACTOR'S RESPONSIBILITY

Nothing in these documents shall be constructed as relieving the CONTRACTOR of sole responsibility for coordinating all work, work schedules, and securing proper interface between the various trades, and Subcontractors.

32. BRAND NAMES

The items listed by brand name are to indicate level of quality only and are not a propriety name. They should have added to the listing of a brand name the phrase- "Or Equal".

33. OPERATIONS & MAINTENANCE LITERATURE

All items of equipment required for this contract shall be bid to provide and include as part of the price, literature explaining "Operation & Maintenance" of that item of equipment. If a manufacturer does not print such a standard O & M Manual approved, in writing, by the Manufacturer.

34. MODIFICATIONS OR BID OR WITHDRAWAL PRIOR TO OPENING

At any time prior to bid opening, the CONTRACTOR may, after handing in or submitting his bid, obtain his bid for purposes of modification or withdrawal. Bid opening is defined at the time and date at which bids are received and publicly opened. No bid will be received after that time and date.

35. RETAINAGE AND PROGRESS PAYMENTS

OWNER will make monthly progress payments to CONTRACTOR in response to properly submitted and approved pay requests utilizing the format included in this project manual. Amount due each pay request shall be equal to the Gross amount of work completed to date, less five percent (5%) retainage, less previous payments made on the project.



# **RAILROAD CROSSING SPECIFICATIONS**

---

OLD S.H. 48 RAILROAD CROSSING INSTALLATION

EXHIBIT A

TECHNICAL SPECIFICATIONS

FOR

**“OLD STATE HIGHWAY 48 RAILROAD CROSSING INSTALLATION”**

BROWNSVILLE TEXAS

CAMERON COUNTY

ALL FOR

BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILWAY, LLC

**TABLE OF CONTENTS**

**Exhibit A** - Technical Specifications for Old S.H. 48 Railroad Crossing Installation, Brownsville, Texas, Cameron County, all for Brownsville & Rio Grande International Railway, LLC .....1

**DIVISION 1** - **SUMMARY AND CONDITIONS**

    Section 100 - Summary of Work .....4

    Section 110 - Definitions .....8

    Section 120 - General Conditions .....11

    Section 140 - Materials .....23

**DIVISION 4** - **TRACK WORK**

    Section 400 - Track Construction .....26

    Section 410 - Spiking .....29

    Section 420 - Rail Anchors .....31

    Section 430 - Thermite Welding .....33

    Section 435 - Flash-Butt Welding .....41

    Section 440 - Thermal Rail Adjustment .....42

    Section 460 - Ties .....44

    Section 470 - Ballast and Surfacing .....48

    Section 480 - Grade Crossings .....54

**DIVISION 1**

**SUMMARY AND CONDITIONS**

## SECTION 100

### SUMMARY OF WORK

#### 1. General

The Work shall consist of furnishing all plant, equipment, tools, supplies, labor and selected materials to complete all the Work. The Work will be in strict accordance with these Specifications, Drawings, Details, Exhibits, Schedules, Addenda and Contract Documents, in a manner satisfactory to Brownsville & Rio Grande International Railway, LLC, herein called "Railroad", its subordinate in authority, and herein called "Engineer" and the Brownsville Navigation District, Texas hereinafter called "Owner".

#### 2. Site

The site is located on the Brownsville & Rio Grande International Railway, in and near the City of Brownsville, in Cameron County, Texas; portions of the Work are located within the Port of Brownsville, Texas, as follows:

- **Installation of Railroad Crossing:** Old State Highway 48 STA 106+20, TransMontaigne Site (coordinates: 25.96255°, -97.38031°).
- **Installation of Railroad Crossing:** Old State Highway 48 STA 115+90, Interlube Site (coordinates: 25.96345°, -97.37755°).
- **Installation of Railroad Crossing:** Old State Highway 48 STA 120+50, TLO Site (coordinates: 25.96384°, -97.37623°).

Contractor shall examine Site and shall be deemed to possess complete personal knowledge of the existing conditions including underground and overhead facilities and installations before submitting its proposal, and to accept such existing conditions as being satisfactory.

#### 3. Scope of Work

Contractor shall be notified of the "Not to Exceed" value of the Awarded Work in the Notice to Proceed ("NTP"). Contract shall not exceed the "Not to Exceed" value of any line item, without advance approval of a Change Order or Extra Work Order.

The Work shall include Contractor furnishing all supervision, labor, equipment, select materials, fuel, and incidentals to provide the following:

##### **A. Unit Price Form, Bid Items 1, 2 and 3 – Installation of Railroad Crossings**

- a) Rehabilitate nominally two hundred forty foot (216') long public road crossing.
- b) Properly replace approximately four hundred and eighty (480) lineal feet of rail through and adjacent to crossing using Owner provided new nominally eighty foot (80') long 115RE rails.
- c) Install new Owner provided 7" x 9" x 8'6" ties under and for ten (10) ties beyond the ends of any crossing panels.

- d) All road closures shall be coordinated by the Contractor with Port of Brownsville, Chief of Police & Security, Phone: (956)509-2100.
  - e) The completed rail installation, along each rail replaced, shall be jointless (CWR), through the road crossing, with all joints welded by the Contractor, using Contractor furnished rail welds. The ends of the welded rail strings outside of the ends of the road crossing shall be bolted.
    - Contractor, at its option, may pre-weld rail prior to installation or drill two (2) outside holes on each rail end for temporary rail joints.
    - Permanent rail joints shall have all holes properly drilled and bolted.
    - Rail Joint bars and bolts for temporary rail joints to be provided by Contractor.
    - All costs associated with rail joints to be considered incidental to the Work.
  - f) Replace all tie plates under new rail, using railroad provided tie plates.
  - g) Properly surface and align track throughout road crossing and adjacent track approaches where crossties were installed.
    - Rate of runoff shall not exceed one quarter inch ( $\frac{1}{4}$ " ) per thirty one feet (31').
    - If required for adequate runoff, surfacing and alignment work shall extend through adjacent tracks and turnouts.
    - Runoff costs to be considered incidental to the Work.
  - h) As a part of the Work, Contractor shall expect to perform half replacement of Road Crossings, while maintaining two lanes of continuous roadway traffic. All costs associated with maintaining traffic through road crossings during the Work, shall be considered incidental to the Work.
  - i) As a part of the Work, Contractor shall properly dispose of all released road crossing debris including roadway materials, crossing panels, metal materials and wood ties off of Railroad property. All costs associated with material disposal shall be considered incidental to the Work.
  - j) Payment for Ballast used in this portion of the Work to be paid for separately under Unit Price Form, Bid Item 3 – Provide, Handle, and Distribute Ballast.
  - k) Payments for Unit Price Form, Bid Item 1 – Rehabilitate South Yard West Road Crossing will be made on a Lump Sum basis, at the rate shown on the Unit Price Form. No progress payments will be made for this item, Contractor may only submit invoicing for this item after all Work associated with this Bid Item is completed to the satisfaction of the Engineer.
- B. Unit Price Form, Bid Item 4 - Provide, Handle, and Distribute Ballast**
- a) Properly Provide, Handle, and Distribute Ballast.
  - b) Contractor shall not plan on or rely upon Owner to provide work trains, locomotives, or train crews to assist in ballast delivery and distribution.
  - c) The full amount of ballast identified in the Bid Form shall be delivered to the Owner. Any extra ballast, not used as a part of the Work, shall be stockpiled at a central location as directed by the Engineer
  - d) Contractor shall collect scale tickets from each truck upon delivery, and submit with

invoices. Quantities for invoicing to be based upon submitted scale tickets.

- e) Payments for Unit Price Form, Bid Item 3 - Provide, Handle, and Distribute Ballast will be made on a per Ton basis, at the rate shown on the Unit Price Form. Contractor may invoice for progress payments, as ballast is delivered, based upon scale tickets attached to submitted invoices.

### **C. Employee Training**

Contractor will train their employees on the Railroad's Roadway Worker Protection Program ("RWP") and Continuous Welded Rail ("CWR") Procedures. The Contractor will be responsible to provide appropriate training, prior to any of the Contractor's employees, personnel, subcontractors, or suppliers, entering Railroad property.

Ensuring the successful completion of all Contractor employees, personnel, subcontractors, or suppliers shall be the sole responsibility of the Contractor. No additional time will be provided for Employee Training.

There shall be no additional payments for Employee Training. Any costs associated with Employee Training shall be considered incidental to the Work.

#### **a) RWP Training**

Contractor will be required to provide photo of each person participating in the RWP training for a photo ID that will be provided upon successful completion of the RWP training. Employees shall maintain the photo ID on their person for inspection, while on Railroad property, or risk removal from Railroad property. RWP training and photo ID is not required for site delivery truck drivers who do not exit their trucks while on site or foul the track.

Contractor shall, at Contractor's expense, contact and coordinate training through: National Railroad Safety Services, Inc., 9808 Windisch Road, Cincinnati, Ohio 45069, Telephone: (877) 984-6777, [www.nrssinc.net](http://www.nrssinc.net). Contractor shall provide sufficient video conferencing facility and equipment for all of its personnel to participate in the class.

For Contractor employees with past RWP training and experience, RWP Training cost is \$55 per person, with a maximum class size of 25 and a minimum charge per class of \$220, class time is approximately 4 hours.

For Contractor employees without past RWP training and experience, RWP Training cost is \$110 per person, with a maximum class size of 25 and a minimum charge per class of \$440, class time is approximately 8 hours.

#### **b) CWR Procedures Training**

Contractor will be required to ensure successful completion of the CWR Procedures Training of all Contractors' employees, personnel, subcontractors, or suppliers that directly supervise any Work on the Railroad's track, prior to performing any Work that disturbs the Railroad's track. CWR Procedures Training is only required for those persons that directly supervises any Work. The Contractor shall provide the names of the personnel that have successfully completed the training along with copies of the successfully completed test results, to the Engineer, prior to performing any trackwork on tracks with CWR.

**D. Insurance**

Properly provide all required Insurance, in accordance with the Contract requirements. Any costs associated with Insurance shall be considered incidental to the Work.

**END OF SECTION**

SECTION 110DEFINITIONS

Wherever used in these Specifications or in the other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof.

1. "AAR Signal Manual" - Specification of Communication & Signal Division, Association of American Railroad (now titled: "AREMA Communications & Signals Manual").
2. "AASHTO" means American Association of State Highway Transportation Officials.
3. "Addenda" means the written or graphic instruments issued prior to the award of the Contract that clarify correct or change the bidding or the Contract Documents.
4. "ALTA" means American Land Title Association
5. "ANSI" means American National Standards Institute.
6. "AREMA (AREA) Specifications" means the current specifications and recommendations, as of the date of the Bid advertisement, of the American Railway Engineering and Maintenance- of-Way Association "Manual for Railway Engineering" and its companion volume "Portfolio of Trackwork Plans".
7. "ASTM" means American Society for Testing and Materials.
8. "Bid" means the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
9. "Change Order" means a document recommended by the Engineer which is signed by Contractor and Railroad, which authorizes an addition, deletion or revision in the terms, Work, or an adjustment in Contract Price or contract Time, issued on or after Effective Date of Agreement.
10. "Contract" or "Contract Documents" means the Construction Contract, Addenda (which pertain to the Contract Documents), Contractor's Bid, Bonds, Insurance Requirements, General Conditions, Special Conditions, Drawings and Specifications as the same or more specifically identified with the Construction Contract, together with all amendments, modifications and supplements issued on or after the effective date of the Construction Contract, and any written supplements or amendments thereto and drawings covering the performance of the Work and the furnishing of all superintendence, labor, tools, equipment, material, supplies and all other items required to properly complete the Work.
11. "Contractor" sometimes referred to as General Contractor means the person or persons, firm, partnership, corporation, or combination thereof, which have entered into the contract with Railroad and assumes responsibility of all the Work.
12. "Continuous Welded Rail (CWR)" – refers to rail four hundred feet (400') or greater in length.
13. "Day" means calendar day unless otherwise specifically provided.
14. "DOT" means United States Department of Transportation



15. "Drawings" means the official project plans, profiles, typical cross sections, general cross sections, working drawings, structural plans and details, and supplemental drawings, or reproductions thereof, issued for construction and approved by the Engineer, which show the location, character, dimensions and details of Work to be performed.
16. "Engineer" means the System Engineer – Construction & Maintenance, acting either directly or through properly authorized representatives, such representatives acting within the scope of the particular duties delegated to them by the System Engineer.
17. "Emergency Work" means Work performed by the Contractor to mitigate emergency incidents, not caused by the Contractor, that pose and clear and emanate danger to life or may cause grievous property damage, performed without advance special instructions or authorization from the Engineer.
18. "Extra Work Order" means a document recommended by the Engineer which is signed by Contractor and Railroad, which authorizes Work not included, contemplated or classified in the Contract, by agreement between Contractor and Railroad, issued on or after Effective Date of Agreement.
19. "FHWA" means U.S. Department of Transportation Federal Highway Administration.
20. "Federal Standards" means all Federal regulations, standards and codes including, but not limited to, the Federal Railroad Administration Track Safety Standards found in the Code of Federal Regulations 49 CFR 213, Federal Railroad Administration Railroad Workplace Safety found in the Code of Federal Regulations 49 CFR 214 and Federal Railroad Administration Rules and Regulations governing Railroad Signals and Train Control Systems 49 FRA CFR 233, 234, 235, and 236 and applicable United States Department of Labor, Occupational Safety and Health Administration ("OSHA") requirements.
21. "IDOT" means the Illinois Department of Transportation
22. "IFC" means issue for construction.
23. "ISEA" means International Safety Equipment Association
24. "Monitor" A person, designated by the Contractor that acts as the sole and single point of contact for the Railroad to communicate On-Track Protection and Roadway Worker Protection for the all Contractor's activities on or within twenty five feet (25') of the Railroad's tracks.
25. "Month" means calendar month, unless otherwise specifically provided.
26. "MSHA" means Mine Safety and Health Administration
27. "MUTCD" - Manual on Uniform Traffic Control Devices, U.S. Department of Transportation Federal Highway Administration.
28. "NEC" - National Electric Code, National Fire Protection Association.
29. "NIOSH" means National Institute for Occupational Safety and Health
30. "Notice of Award" means a written directive issued by Railroad to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, Railroad will sign and deliver the agreement.

31. "Notice to Proceed" means a written notice issued by Railroad to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligation under the Contract Documents.
32. "NPDES" means National Pollutant Discharge Elimination System.
33. "NRT" means Neutral Rail Temperature
34. "NSPS" means National Society of Professional Surveyors
35. "On track car" means any unit of on-track work equipment such as a track motor car, highway-rail vehicle, push car crane, ballast tamping machine, etc.
36. "Railroad" means Brownsville & Rio Grande International Railway, LLC, with whom the Contractor has entered into an agreement and for whom the Work is to be provided.
37. "OSHA" means the United States Department of Labor, Occupational Safety and Health Administration.
38. "PPE" means Personal Protective Equipment.
39. "Specifications" means those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship applied to the Work and certain administrative details applicable thereto.
40. "Subcontractor" means an individual, firm or corporation having a direct contract with Contractor or with any other subcontractor for the performance of a part of the Work at the site.
41. "SWPPP" means Stormwater Pollution Prevention Plan.
42. "USACE" means United States Army Corps of Engineers.
43. "Work" means the entire completed construction of the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing and incorporating labor, material and equipment into the construction, all as required by the Contract Documents.

**END OF SECTION**

## SECTION 120

### GENERAL CONDITIONS

1. **Safety** - The safe operation of the Railroad shall take precedence over all Work and nothing shall be done by Contractor that will endanger personnel, operations, equipment, or public safety.
  - 1.1 **Safety Meeting** - Prior to starting any project Work, a safety meeting shall be held between the Project Supervisor and Railroad. The purpose of this meeting is to familiarize Contractor with Railroad's Safety and/or Operating Rules and Regulations. It is the responsibility of Contractor to indoctrinate its employees and subcontractors accordingly.
  - 1.2 **Job Briefings** - Contractor shall conduct Job Briefings, as required in the OmniTRAX Roadway Worker On-Track Safety Program, at a minimum on a daily basis prior to commencing any Work, and additional follow up job briefings as required. All Contractor and Subcontractor personnel shall attend Job Briefings. All personnel shall be solely and fully responsible for understanding the content of the Job Briefings. Where Co-Mingled Work is being performed, job briefings shall include Contractor, Subcontractor, OmniTRAX Personnel, and any other third parties.
  - 1.3 **Working Within 25' of Track** - When working on or within twenty five feet (25') of a track, Contractor shall implement a safety program conforming to the requirements of Railroad and Federal, State and local laws, rules and regulations. Contractor's work force must be trained and understand Roadway Worker Rules and Bridge Worker Safety Rules. All employees of Contractor who enter Railroad's property must meet the qualifications of a "Roadway Worker" as defined by the FRA, including all required training. Each Contractor work group must have a designated "Employee in Charge" capable of providing on track protection. Contractor's employees must also comply with all safety and operating rules of Railroad.
  - 1.4 **Zero Tolerance Policies**
    - 14.1 **Drugs and Alcohol** - Contractor shall enforce a zero tolerance policy for drugs and alcohol in the work place. No person may enter Railroad property for any reason, or who is or appears to be, under the influence of alcohol or a controlled substance. Contractor shall prohibit its employees and the subcontractors from possessing and consuming alcoholic beverages, intoxicants, and controlled substances on or about Railroad.
    - 14.2 **Personal Protective Equipment (PPE)** - Contractor shall enforce a zero tolerance policy for failure of its employees and subcontractors to use required PPE. No person may enter Railroad property for any reason, without proper PPE. Contractor will be fully responsible to ensure that all of its employees, subcontractors and subcontractor's employees are provided with and wear hard hat compliant with the latest ANSI/ISEA for the type(s) of Work being performed, retroreflective orange vest, safety glasses and/or face shields, lace up steel toe work boots and any other PPE required for the Work being performed.

- 1.5 Fitness of Track** - Contractor shall ensure all Work, where the Contractor has disturbed the track, is fit for the safe passage of trains and at a minimum, meets the requirements of The FRA Track Safety Standards (49 CFR 213), for the Class of that track, at the end of each shift and/or before clearing for trains, unless specific advance approval, in writing, is provided by the Engineer. Contractor shall not expect Engineer approval of substandard Work to meet scheduling requirements or to clear the track at the designated time. These requirements in no way release the Contractor from the final quality requirements provided in the Specifications.
- 1.6 Bridge Worker Safety** - Contractor will be fully responsible for having and implementing a Bridge Worker Safety program for all employees that may Work on or about a bridge structure as required by the FRA pursuant to 49 CFR 214. Contractor is responsible for having its people trained and equipped to manage its own Bridge Worker Safety Program while working on Railroad's property.
- 1.7 Sanitation** - Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of Federal, State, and Local Boards of Health or other authorities having jurisdiction.
- 1.8 Lighting** - It may be necessary that Contractor furnish and maintain lighting plants to conduct construction activities when the natural sunlight is not available, this cost is to be considered incidental Work.
- 1.9 Housekeeping** - Contractor shall be responsible to maintain the cleanliness of the Work site and all haul roads, private and public. Any waste, trash, or debris generated by Work shall be properly disposed of by Contractor. If haul vehicles are loaded in such a manner that materials cannot be hauled without debris being deposited on the roadways, Contractor shall take all steps necessary to clean the roadways of the material it has generated. When utilizing public facilities Contractor must comply with all rules and regulations that govern those facilities.
- 1.10 Silica Dust** - The Work site may contain free silica dust. Contractor shall take all necessary precautions to ensure that its employees and Subcontractors do not breath such dust. Contractor's employees and Subcontractors shall never handle products containing silica dust or enter enclosed areas where silica dust may be present without proper NIOSH/MSHA approved respiratory protective equipment. Contractor acknowledges the above warnings and assumes responsibility and shall: (i) Communicate this warning in writing to its employees, contractors, agents, and invitees on the Work Site; and, (ii) Provide any equipment necessary for their protection.
- 2. Programs & Procedures** - Contractor is responsible to ensure all Contractors' employees, personnel, subcontractors, or suppliers comply with the requirements of the Railroad's Programs and Procedures, while on Railroad Property. Contractor shall maintain copies of the Programs and Procedures at each work site, readily available to all Contractors' employees, personnel, subcontractors, or suppliers, at each work site. The Railroad will provide an electronic copy of these Programs and Procedures to the Contractor.
- 3. Equipment & Materials**
- 3.1 Unsafe Equipment** - If in the opinion of the Engineer any of Contractor's or subcontractor's equipment is unsafe for use on the Project, Contractor, at the request of

the Engineer shall remove such equipment from the Project.

- 3.2 Securing On Track Equipment** - Contractor will not leave unattended equipment on the main track. When Contractor leaves unattended equipment on a track other than the main track, it will either ensure that a properly placed and locked derail is in placed on either side of all parked equipment, or groups of parked equipment, to prevent machinery from accessing active tracks. All turntable mounted booms must have their booms secured parallel to the track when not working; this would include time waiting for movement on adjacent track(s). All equipment with drop down work heads will have those work heads lowered to prevent equipment from moving. Loose tools and other light equipment will be secured.
- 3.3 Warning Devices** - All heavy equipment used by Contractor and subcontractors shall be equipped with audible back-up warning devices. On track equipment shall be equipped with automatic change of direction alarms, in accordance with 49CFR214.
- 3.4 Crossing Rails with Off Track Equipment** - If Contractor must cross any tracks or paved roads on Railroad's property with cleated or crawler type equipment, the track or pavement shall be protected with a temporary surface approved by the Engineer. The equipment shall cross perpendicularly to the tracks.
- 3.5 Equipment and Material Storage** - No materials, tools or equipment shall at any time be stored or maintained nearer than fifteen feet (15') from the center line of any operated track, without the express permission of the Engineer or his authorized representative, in each and every instance. Contractor will operate no automotive or tractor equipment so as to damage the track or roadbed. Contractor shall confine Contractor's apparatus; the storage of materials and the operations of Contractor's workmen to limits indicated by laws, ordinances, permits or requests of the Engineer and shall not unreasonably encumber the premises with its material, equipment, and supplies.
- 3.6 Removal of Equipment and Materials** - Upon completion of the Work, or in case of cancellation of this Contract before completion for any cause whatever, Contractor shall promptly remove all of its equipment, material, tools, and supplies from premises of Railroad. If Contractor fails to do so within fifteen (15) Days after notice from Railroad, Railroad shall have the right to remove such equipment, material tools and supplies at the expense of Contractor.
- 3.7 Clean Up** - If Contractor fails to clean up the Worksite area upon completion of the project, Railroad may do so and the cost thereof shall be deducted from the Contractor's retention money.
- 3.8 Waste and Disposal** - Waste produced by Contractor will be disposed of in a manner that will comply with all Federal, State, City, or other Regulations and Laws. This includes spent motor oil, lubricants, oil filters, shipping containers, welding debris, ties, rail, other track materials, tie plugging materials, dunnage, and all other miscellaneous waste items.

**3.9 Adjacent Plantings and Apparatus** - All lawns, plantings, trees, shrubbery, fencing, signage, roadways, and areas adjacent to the project shall be protected against Contractor traffic, machinery, spillage and misuse, unless Contractor has an agreement with the owner of this property. If at any time during the progress of the Contract any lawns, plantings, etc., are damaged or destroyed or any portion of the ground surfaces are damaged, rutted or destroyed, it shall be the Contractor's responsibility to replace and/or restore the damage at no additional expense to Railroad.

**4. Workmanship** - Workmanship shall be of the highest quality throughout. All Work and materials and the manufacture and preparation of such materials, from the beginning of the project until final completion of the Work and its acceptance by Railroad, shall be subject to inspection and approval by the Engineer. The Contractor and not the Railroad is responsible for final quality.

**5. Order of Precedence**

The Contract Documents shall govern in the following order of precedence:

- (a) Services Agreement;
- (b) Technical Specifications;
- (c) Reference Standards; and,
- (d) Contract Drawings.

In case of differences and/or discrepancies between items listed or described within the same level of order of precedence set forth above, the more expensive items(s) shall be deemed to be the one(s) required by the Railroad.

**6. Headings, Indexes, and Table of Contents** - The headings to the individual Articles, as well as Indexes and Table of Contents, are for convenience of reference only, and shall not affect the construction or interpretation of any provisions Contract.

**7. Use of Referenced Standards** - In case of a conflict between the Contract Specifications and any Referenced Standards, the Contract Specifications shall govern. Unless otherwise specified, Referenced Standards apply only to material, workmanship, and procedure. Commercial terms and legal responsibilities are not intended to be included in the reference. All material, equipment, and workmanship, specified by the number, symbol, or title of a Referenced Standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date of the Invitation to Bid or Request for Proposal, except where a particular edition or revision thereof is indicated in the reference.

**8. Drawings** - The Drawings and these Specifications show and describe the Work in detail, and are to be considered cooperative. All Work necessary for the completion of the Work shown on the drawings, but not described in these Specifications, and all Work described in these Specifications, but not shown on the drawings, OR REASONABLY IMPLIED BY EITHER OR BOTH, shall be included in the Contract and shall be executed in the best manner, the same as if fully shown and specified. Specifications for the project will be made a part of the contract, and the project Work shall be executed in compliance therewith.

Contractor shall maintain a copy of the project specifications, related drawings, copies of Work permits, and a current copy of the Schedule at the jobsite at all times. Contractor shall not commence Work until all of the documents are at the site. Contractor shall insure all field supervisors are fully knowledgeable of the material(s) contained in the above referenced documents.

## **9. Errors and Discrepancies**

**9.1** If Contractor, in the course of the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality or any applicable code or ordinance, or any errors or omission in plans or in the layout as given by Railroad, it shall be its duty to inform the Engineer immediately, and the Engineer shall promptly verify the same. Any Work done after such discovery, until authorized by the Engineer, will be done at Contractor's risk and Contractor shall bear any extra expense resulting therefrom.

**9.2** In all cases of discrepancy in figures or details and in all cases where no figures or memoranda are given, the decision of the Engineer shall be obtained before proceeding with the Work. If Contractor adjusts any such discrepancy without having first obtained the approval of the Engineer, it shall be at Contractor's risk and Contractor shall bear any extra expense resulting therefrom.

**10. Addressing Contractual Disputes and Questions** - In the event of any questions arising out of the performance of this Contract, Contractor agrees to submit in writing to the Engineer, a detailed statement covering such question within ten (10) Days after such question arises. In the event Contractor fails to so notify the Engineer concerning any questions in the manner and time aforesaid, then Contractor shall have waived his alleged rights concerning the same during the performance of the Contract or at any time in the future.

**10.1** It is understood and agreed by and between the parties hereto, that this provision does not and shall not, in any way amount to admission on the part of Railroad that any extras or additional compensation claims may arise hereunder during the life of this agreement.

**10.2** In the event that any such question does arise and the parties hereto are unable to arrive at a mutual understanding or agreement concerning same, then Railroad may at its election at that time without any liability to Contractor for such action, terminate this agreement by written notice.

**11. State Specifications** - If an item of a technical nature, other than trackwork, should develop pertaining to Work outlined in these Specifications that is not covered by these Specifications, Contractor shall perform this Work in accordance with the following standard documents for construction after notification and approval by the Engineer. Use the current Department of Transportation Specifications, in the State where the Work is being performed.

**12. Extra or Added Work** - Any changes in the Work or Extra Work shall only be in accordance with duly executed Change Orders and Extra Work Orders approved by Railroad and Contractor.

**12.1 Changes** - Railroad shall have the right to make any alterations or changes in the nature or dimensions of the Work, either before or after its commencement, and such changes shall in no way affect or void the obligations of this Contract.

**12.2 Extra Work** - If in the opinion of the Engineer, any Work should be done or material furnished which is not included, contemplated, or classified in this Contract, Contractor shall, upon written order ("Extra Work Order") signed by an authorized representative of Railroad, do such Extra Work or furnish such extra material. By agreement between Contractor and Railroad, such Extra Work or material may be paid for on a lump sum basis, on the basis of unit prices, other method as agreed upon in writing by Railroad and Contractor. No bill or claim for Extra Work or material shall be allowed or paid unless done or furnished under the provisions of this paragraph. All Extra Work shall be covered, governed and controlled by all the terms and provisions of this Contract. Contractor shall furnish the Engineer reports in the number, form and detail prescribed by the Engineer for all Extra Work done or material furnished.

**12.3 Emergency Work** - In an emergency endangering life or posing clear and imminent danger of grievous Railroad property damage ("Emergency Work"), Contractor without special instructions or authorization from the Engineer, shall act or prevent such loss or injury until such time as the Engineer or his authorized representative can be contacted for an assessment of the situation. The Contractor shall make every effort to immediately contact the Engineer, or in the case where the Engineer is unavailable, others at the Railroad. He shall also act, without appeal, if so authorized or directed by the Engineer or his authorized representative. Any compensation requested by Contractor on account of such Emergency Work shall be determined by negotiation and agreement between Contractor and Railroad, based on the rates submitted with the Bid.

**13. Project Supervisor and Discipline** - Contractor shall keep a competent Project Supervisor constantly at the Work. The Project Supervisor must have the ability to speak and write using the English language. The Project Supervisor must be able to follow and maintain a technical discussion on the Work being performed and have the basic writing skills necessary to maintain daily work reports and other correspondence as may be required during the course of a project.

**13.1** Contractor shall give constant and efficient attention to the faithful and diligent prosecution of the Work and during its progress shall be represented at all times at the Work site by a competent Project Supervisor. Contractor shall at all times enforce strict discipline and good order among his employees. The Engineer may require Contractor to remove from Railroad's premises any employee or representative of Contractor deemed by the Engineer to be incompetent, careless or otherwise unsuitable for the Work.

**13.2** Railroad at its sole discretion will determine the acceptability of the Project Supervisor and



may require Contractor to replace the Project Supervisor if deemed unacceptable. Project Supervisor shall be available during prescribed working hours for discussion of past or future Work, the progress schedule, inventory of materials receipted, acceptability of the Work, etc. Failure of Contractor to provide a Project Supervisor who is thoroughly familiar with the plans and specifications, and in complete control of all Work within the project limits shall be cause to suspend the Work until such requirements are met. No additional compensation or additional contract time will be allowed due to suspension of the Work, delays, or any inconvenience resulting from noncompliance with this provision.

- 14. Schedule** – Contractor shall, submit to the Engineer, a schedule and updated schedules, showing the order consistent with the requirements of these Specifications, in which Contractor proposes to start the several salient features of the Work, and the contemplated dates for completing same. The schedule shall be in the form of a progress chart of a suitable scale to appropriately indicate the percentages of Work scheduled for completion at any time. Contractor shall keep this chart current weekly and furnish the Engineer two (2) prints and electronic copy of the chart at the end of each week showing the actual progress of the Work during the week or at such other intervals as requested by the Engineer. Contractor shall base its schedule on the Work window provided by Railroad. No Work shall be performed by Contractor on Railroad's property in excess of the approved schedule without Railroad's advance approval.
- 14.1** The cost of scheduling and updating the schedule shall be considered incidental to the Work of the project.
- 14.2** Contractor shall submit to the Engineer, a proposed schedule with its bid. Within five (5) Days after receipt of the Notice to Proceed.
- 14.3** The schedule may be revised upon mutual agreement between Railroad and Contractor.
- 14.4** Whenever any portion of any pay item(s) falls behind schedule by three (3) Days and jeopardizes the completion date of any item(s) as stated in the latest approved schedule in the sole opinion of the Engineer, Contractor upon request by the Engineer, shall submit a recovery plan consisting of a revised Construction Progress Schedule with narrative discussion of the changes in logic and available resources; and shall, to the extent necessary to complete the Work in accordance with the revised Construction Progress Schedule, increase its labor force, equipment and/or provide overtime or shift Work, and shall have any subcontractor do likewise, all at no additional cost to Railroad. This recovery plan shall be submitted to the Engineer within forty eight (48) hours of the Engineer's request and shall be implemented within two (2) Days following Railroad's approval.
- 14.5** In the event the above paragraph is not complied with, Railroad may suspend any further Work on the project. The time and associated expense is at Contractor's sole cost and expense until such time that a revised Schedule is submitted and approved by the Engineer.
- 14.6** The schedules shall contain by siding all relevant project activities including milestones and dependencies, highlighting the critical path. The schedule must include design, engineering, permitting, material procurement, construction staking, utilities, grading,

trackwork and all pertinent details required for the Work.

**14.7** Upon failure of Contractor to make satisfactory progress in the Work, based on the time allowed for the Contract or any extensions thereof, Contractor shall take such steps as may be necessary to improve the progression of the Work by increasing the number of shifts and/or overtime operations, days of Work, and/or amount of construction plant, all without additional cost to Railroad.

**15. Permits** - Contractor shall obtain any and all necessary permits relative to the Work, paying any and all fees therefor, and shall have the Work inspected when required by the authorities. Contractor shall be responsible for the observance of all Federal, State, and Local laws relative to the Work.

**16. Roads and Grade Crossings**

**16.1 Road Closures** - Contractor to coordinate the temporary closing of roadways and shall be completely responsible for the placement and maintenance of signs and barricades for the duration of the project through the completion of roadway approach Work.

**16.2 Grade Crossing Permits** - Operations of Contractor may involve working through and/or crossing State, City or County roads. Contractor shall obtain from proper authorities, permits to perform Work through the grade crossings and/or for crossing the roads with construction equipment. The grade crossing or roadway travel surface is to be returned to an acceptable condition. Contractor will furnish, without cost to Railroad; any flagging protection as may be required by said authority. Any crossings and the use of roads or any repairs, maintenance or alterations required by said authority, shall be completed by Contractor without additional cost to Railroad and to the complete satisfaction of said authority.

**16.3 Roadway Traffic Control for Construction Activity** - All signs, barricades, traffic control and flagging necessary to suspend, at any time, the normal function of a roadway or portions thereof to vehicular and/or pedestrian traffic during installation of a grade crossing and or grade crossing warning system upgrade or Work within the limits of the grade crossings activation, including the necessary associated Traffic Control Plans, shall be prepared and furnished by Contractor, at its expense. The Traffic Control Plans prepared and the corresponding control devices shall be in strict accordance with the requirements of the Federal Highway Administration ("FHWA") Manual on Uniform Traffic Control Devices ("MUTCD") and the applicable Traffic Control Standards for the State where the Work is being performed.

It shall be the responsibility of Contractor to erect, maintain and remove such signs, barricades and traffic control and to ensure that their placement, location and numbers are all in accordance with Federal, State and Local requirements during the length of time that the road is closed or restricted to traffic. Copies of Traffic Control Plans shall be delivered to the Engineer. Prior to their delivery to the Engineer, the Traffic Control Plans shall have received the approval of the local governing authority having jurisdiction over the roadway.

At such time(s) as grade crossing warning systems are out of service during the upgrading procedure or Work within the activation limits, Contractor is responsible, at

its expense, for providing roadway Traffic Control in order to protect vehicular and pedestrian traffic from train and or Work equipment movements. Traffic Control shall consist of a minimum of two (2) appropriately equipped and trained flaggers. Flagging equipment and flagger training shall be in strict accordance with requirements of the Federal Highway Administration ("FHWA") Manual on Uniform Traffic Control Devices ("MUTCD") and the applicable Traffic Control Standards for the State where the Work is being performed. In addition, all flagging shall be in accordance with current applicable Federal Railroad Administration requirements.

Contractor supplied flaggers shall coordinate with any Railroad employee(s) on site and Railroad's Employee in Charge while working within the grade crossings activation limits or during out of service grade crossing warning systems to enable them to know the schedule of train movements and flag traffic accordingly.

## **17. Excavation and Utilities**

**17.1 Excavation Notification** - Prior to any excavation on either public or private properties, Contractor will be responsible for identification of all utilities in advance and notify all owners and operators of underground facilities in the dig site following all applicable Federal, State and Local Laws, Rules, or Regulations. In no case shall any excavations be performed without first following notifications and procedures for the State where the Work is being performed; utilities shown on drawings shall not relieve the Contractor or its subcontractors from following required notifications and procedures (Call Before You Dig). Contractor shall be solely responsible for any costs related to repairs of damaged utilities, when the Contractor has failed to follow proper utility notifications and procedures.

**17.2 Utilities** - If and when crossing the any Utility, following are General Requirements; however Contractor must follow any rule or procedure established by utility owner:

1721 There are numerous utility locations on the site. Contractor will have to make its own contacts prior to any Work being performed and establish any and all coordination that will be required to allow Work to progress over and adjacent to their facilities. If they require on site flagging while Work is to be performed costs to be considered incidental to the Contractor's Work.

1722 Contractor will provide a list of equipment that is to include the type(s) and operating weights, tire widths, track widths and length on the ground for each piece of equipment to be utilized and that may cross the gas line(s) to allow Utility company to calculate the loadings and provide the Contractor requirements that will have to be met to operate over their lines. Successful Contractor will provide the list and details within to Utility Company upon notification of award of contract to allow Utility Company to begin their calculations.

1723 The Contractor shall ensure a utility company field operator will be required on-site anytime when on the easement or within fifteen feet (15') of the Utility.

1724 Contractor will be responsible for any and all utility flagging or monitoring costs incurred due to its construction activities. Overtime rates may apply, any related costs to be considered incidental to the Work.

1725 Contractor shall furnish water for use in modifying the soil moisture.

1726 Contractor responsible for all the "potholing" of utilities required for this Work.

**17.3 Utility Adjustments** - Except as otherwise provided in these Specifications Railroad, without cost to Contractor, will arrange for permanent adjustments of any pipelines, aerial or underground wire lines, cables or fiber optic lines on Railroad's Right of Way that will interfere with Railroad's design of the Work. Notwithstanding Railroad's intention to have such facilities adjusted, Contractor shall be responsible for any and all damage to property of others, including said facilities, caused by Contractor's operations. Contractor responsible for contacting and managing all the utility crossings within their work limits to ensure there are no issues between their facilities and Contractor's Work.

**18. Coordination of Work** - Contractor will coordinate his and the Work of its subcontractors with the Work or operations being performed by others.

**19. Workmanship** - Workmanship shall be of the highest quality throughout. All Work and materials and the manufacture and preparation of such materials, from the beginning of the project until final completion of the Work and its acceptance by Railroad, shall be subject to inspection and approval by the Engineer.

**20. Testing** - Where the Contract Documents or law requires the testing of workmanship, materials or the operation of mechanical and/or electrical equipment, such tests shall be made at Contractor's expense. No tests will be deemed valid unless witnessed by the Engineer or his designated representative. Thermite ultrasonic weld testing is to be performed at Contractor's expense by a testing firm agreed to by Railroad in the presence of the Engineer.

**21. Inspection and Acceptance** - Inspection of the Work shall not relieve Contractor of any obligation to fulfill all conditions of the Contract as prescribed. If any Work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination and properly restored at Contractor's expense.

**22. Verifying Quantities** - Contractor shall be responsible for verifying all quantities and providing all necessary data for Railroad to determine quantities. Drawings shall provide sufficient surveys, dimensions, cross-sections, details, take-off tables, and calculations to support payment.

**23. Re-Examination of Work** - The Engineer may order re-examination of any Work and if so ordered, Contractor must uncover the Work. If such Work is found to be in accordance with the Contract Documents, Railroad shall pay for the uncovering and restoring of the area.

**24. Sales and Use Taxes** - Unless otherwise specified, Contractor shall be responsible to pay any sales and use taxes properly assessed, under any Federal, State or Local law in effect during the term of the Contract, against any materials, tools, supplies, services and equipment furnished directly by Contractor and used in carrying out the Work.

**25. Existing Signage** - Any existing signage must be identified and if removed in the process of construction they must be reinstalled in the same location, all performed as a part of the Work.

**26. Use of Property**

**26.1** Contractor shall have the right and license to enter upon Railroad's property to the extent necessary to perform the Work, but only at such points, times or places and in accordance with any instructions given by the Engineer. Contractor must provide, at its expense, any additional property or premises required.

**26.2** Before entering upon or making use of any property which is not owned or controlled by Railroad in connection with the Work, Contractor, at its expense, shall obtain and file with the Engineer, the permission of the owner of such property for such use. Subsequent to vacation of such private property Contractor shall furnish the Engineer a properly executed release by the owner of such property from any consequence of such use.

**27. Substitution of Listed Personnel** - Contractor shall first obtain Railroad consent prior to the replacement of any of the personnel provided in the submitted List of Project Personnel. Contractor shall submit the request for substitution, in advance and in writing, to Railroad. The proposed replacement personnel shall have an equal or greater level of experience than the person(s) who they are replacing. The request shall include the reason for the request and include the resume of the replacement person(s) that shows an equal or greater level of experience. Railroad will provide consent within five (5) Days and shall not unreasonably withhold consent.

**28. Addition or Substitution of Subcontractor** - Should the Contractor determine that addition or substitution of any Subcontractor provided on the submitted List of Subcontractor(s) is necessary; Contractor shall first obtain Railroad consent. Contractor shall submit, in writing, to Railroad include the ground(s) for the request for the addition or substitution in advance of the substitution. Railroad will provide consent within five (5) Days and shall not unreasonably withhold consent.

**29. Contractor Quality Control System**

**29.1** It is imperative that this project be administered according to the Specifications. Therefore, the Contractor will establish a quality control system which will assure adherence to the schedule and these Specifications.

**29.2** The Contractor will assign a Contractor Quality Control Representative ("CQCR") who shall have the following specific minimum qualifications: education with a high school diploma. Prior experience: Incumbent shall have functioned for not less than five (5) years as a Project Supervisor of similar projects and shall be familiar with the generally accepted rehabilitation or construction practices, applicable codes and standards, and materials as will be applied to and incorporated into this Project.

**29.3** It shall be the direct responsibility of the CQCR to inspect and document the compliance from a quality standpoint of all products and materials (regardless of responsibility of supplying such material) required under these Specifications prior to their installation. It shall be the direct responsibility of the CQCR to insure the proper

quantities of materials to be supplied by Railroad are distributed in advance and in sufficient quantity to prevent any delays to the Contractor's forces.

- 29.4** The CQCR shall keep a log, segment by the various Work areas, of all services performed and products and materials installed by Bid Line Item in a form as mutually agreed to by Contractor and the Engineer. This log shall be used in determining payment owed to Contractor and shall be presented to the Engineer on a daily basis, unless mutually agreed to otherwise by Contractor and the Engineer.
- 29.5** The CQCR shall arrange for and be responsible for the delivery of the daily production report by the Contractor's Work force for each of the project elements to the Engineer.
- 29.6** The CQCR shall immediately report any observed deficiencies, in either material quality or quantity (distributed or stockpiled) to the Engineer.
- 29.7** The CQCR shall review the schedule on a daily basis and provide a determination as to the progress being made is pursuant to that detailed in the schedule. This information shall be noted on the daily production report and submitted to Railroad.
- 29.8** There shall be no separate payment for any obligations of the Contractor, or costs incurred by the Contractor, under this section as this cost will be considered as incidental to the performance of the contract.
- 29.9** Railroad reserves the right during the course of the project to request the Contractor to replace the CQCR at any time during the course of the project, for which the Contractor shall arrange compliance within a reasonable time.

**END OF SECTION**

## SECTION 140

### MATERIALS

#### **1. GENERAL**

- 1.1 Contractor is responsible for all handling of all materials, including, but not limited to transportation, loading, unloading, stockpiling, coordination of deliveries.
- 1.2 Contractor shall store and distribute materials in such a manner as to avoid damage, loss, or theft and not interfere with the ongoing operations. Any damage, loss, or theft of materials shall be at the Contractor's expense.
- 1.3 Materials delivered by Owner or its agent for use in this project shall be deemed delivered to Contractor when notice is given by Owner that the materials have been placed for unloading or are otherwise available for Contractor's use. Contractor is obligated to fully inventory and document receipt of that delivery of material on a daily basis, providing Owner the inventory of all materials delivered and all documentation including scale tickets and delivery tickets.
- 1.4 Upon delivery of Contractor furnished materials to the site, Engineer shall be allowed access to inspect and check materials to the extent possible prior to placement in the Work. If the Engineer should reject any material upon delivery or after installation, Contractor shall promptly remove from the site any material that does not comply with specified requirements and replace accordingly at no additional expense to Railroad.
- 1.5 Contractor shall provide all required resources and equipment needed for material distribution. Contractor shall not expect, nor plan, for Railroad work trains, locomotives, or any other Owner resources to be used for the Work.

#### **2. RAILROAD FURNISHED MATERIALS**

- 2.1 The Owner will furnish the following materials:
  - Rail, New #115RE, nominally eighty foot (80') long lengths, drilled rail ends
  - Tie Plates #115RE, new
  - Track Bolts with Nuts, new
  - Compromise Rail Joint Assemblies
  - Track Spikes, new
  - Rail Anchors, new
  - Polymer Composite Ties, new
  - Composite Crossings

### **3. CONTRACTOR FURNISHED MATERIALS**

- 3.1** Contractor shall provide all materials, not specifically provided for in Article 2, require to properly complete the Work.
- 3.2** The lack of a specific bid item for any required material(s) shall not relieve the Contractor of its obligation to provide all required materials.
- 3.3** Provide other materials as specified, including:
- Rail Welds.
  - Tie Plugs.
  - Ballast.
  - Perforated drain pipes and conduits for road crossings.
  - Temporary rail joints and temporary compromise rail joints, including nuts bolts and washers.

### **4. Released Materials**

- 4.1** Work to include Contractor to gather, load, haul, remove, and properly dispose of all released materials from Railroad property, including ties and metal materials. All materials shall be removed from the right of way on a daily basis as the Work progresses, and shall be complete prior to moving on to another Work location. The removal of all waste material shall be considered part of the Work and performed at no additional cost to the Railroad.
- 4.2** Contractor shall not invoice the Railroad for Work where released materials have not been removed from the trackway and properly stockpiled, and where required, removed from railroad property and properly disposed. Where removal and disposal of released materials is considered as a part of the Work; Work is not completed until released materials have been removed from railroad property and properly disposed.

**END OF SECTION**



**DIVISION 4**

**TRACK WORK**

## SECTION 400

### TRACK GENERAL

1. Track construction shall be supervised by personnel experienced and skilled in railway track construction.
2. All track construction shall be governed by these Specifications, Exhibits and other Drawings or documents incorporated herein. Any item not covered specifically herein shall be in accordance with current AREMA Specifications, Standards and Recommended Practices subject to the approval of the Engineer.
3. Tie plates shall be applied in a workmanlike manner at the time the rail is laid to avoid unnecessary spiking.
  - 31 Tie plates must be placed under each rail at every timber cross tie. Cross ties located under an existing thermite weld shall be re-positioned and adjacent ties uniformly re-spaced; ties shall be perpendicular to the track centerline.
  - 32 Tie plates must be positioned so that the bottom of the plate will can't rail to gauge side and shall be centered on the tie and so applied as to obtain proper bearing on the rail.
  - 33 Tie plates must be positioned so that the shoulder is against the outside base of the rail for the entire length of the shoulder.
  - 34 The bottom of the rail, the tie plate and the wearing surface of the tie shall be broom cleaned before the rail is laid.
4. Track and Guard Rail gauges shall be at standard. Gauge shall be measured between heads of rails, at right angles, measured in a plane five eighths inch ( $\frac{5}{8}$ " ) below the top of rail. A variance of plus or minus one eighth inch ( $\pm\frac{1}{8}$ " ) will be accepted. Gauge requirements are all inclusive, and all tolerance shall be met, as follows:
  - Track Gauge:  $56 \frac{1}{2}$ " ,  $\pm\frac{1}{8}$ " (between:  $56 \frac{3}{8}$ " and  $56 \frac{5}{8}$ " )
  - Guard Check Gauge:  $54 \frac{5}{8}$ " ,  $\pm\frac{1}{8}$ " (between:  $54 \frac{1}{2}$ " and  $54 \frac{3}{4}$ " )
  - Guard Face Gauge:  $52 \frac{3}{4}$ " ,  $\pm\frac{1}{8}$ " (between:  $52 \frac{5}{8}$ " and  $52 \frac{7}{8}$ " )
  - Flangeway Gauge:  $1 \frac{7}{8}$ " ,  $\pm\frac{1}{8}$ " (between:  $1 \frac{3}{4}$ " and 2" )
5. Track shall be gauged at every fourth third tie to proper gauge, prior to fill in spiking.
6. Rails must not be driven into position, but shall be moved with rail tongs, lining bar, crane or other equipment.
7. Rails shall be so laid that the joints on opposite rails are not closer than twelve feet (12'), except at compromise rail joints, turnouts, and special trackwork.

- 8. Rails of miscellaneous lengths, less than thirty nine feet (39') shall be used at suitable intervals for maintaining the proper stagger of joints on curves. Rail joints will not be allowed within the limits of, or within ten feet (10') of public or private grade crossings, in no case shall rails shorter than twelve feet (12') be used.
- 9. Rails shall be laid one at a time, to insure good adjustment, and shall be bolted tight before spiking.
- 10. Rail ends and surface of rail for entire joint area shall be cleaned of all dirt, rust or scale. Shims are to be removed after all joint bolts have been tightened for the final time.
- 11. Expansion shims of soft wood or fiber shall be used by Contractor in the thickness prescribed for various rail temperatures in the table below.
  - 11.1 Expansion shims shall be completely removed from joints after the joint is fully bolted.
  - 11.2 Care shall be taken not bump rail ends, disturb rail gaps on adjacent joints.

<b>Gaps at Rail Ends When Installing Jointed Rail</b>		
<b>Rail Temperatures</b>	<b>39' Rail Lengths</b>	<b>78' to 80' Rail Lengths</b>
Below 25°F	1/4"	3/8"
25°F to 50°F	3/16"	3/8"
51°F to 75°F	1/8"	1/4"
76°F to 100°F	1/16"	1/8"
Above 100°F	Laid Close Without Bumping	1/16"

- 12. All rail joints shall be fully bolted, using six (6) hole joint bars, except when (4) four hole bars are provided by the Railroad.
- 13. At temporary rail joints, where the joints are to be welded at a later date, as a part of this Work, bolt the four (4) outside holes, two (2) on each rail end.
  - 13.1 In no case shall less than two (2) bolts be provided on the end of each rail.
  - 13.2 Rail End miss-match at temporary rail joints shall not exceed one eighth inch (1/8").
- 14. All track bolts shall be installed when the rail is laid and nuts turned up snug, after which all bolts shall be tightened. After track has been brought to final grade and alignment, bolts shall be re-tightened using a wrench not under thirty six inches (36") and not over forty two inches (42") in length applied by persons of average strength or by use of a bolt tightener. Bolts tightening machines shall be set for 25,000 lbs., ±5,000 lbs. load. Over tightening of bolts will not be permitted. Bolts shall be installed in an alternating pattern in the joint bars. Each bolt shall be equipped with a spring washer of size required to fit the diameter of the bolts specified.

15. Rails shall be cut square and clean using rail saws. Holes for bolts shall be drilled utilizing an approved type of rail drill. Under no circumstances shall new holes be drilled between two holes already drilled. Cutting rails, drilling holes, or modifying joint bars by means of a gas, electric torch, or plasma cutter shall not be permitted.
16. Rail End Miss-Match on Permanent Rail Joints
  - 161 Miss-match shall not exceed one sixteenth inch ( $1/16''$ ), as measured with a twenty four inch (24'') straight edge on the gage face, gage corner, running surface, and the field side top fillet.
  - 162 Miss-match shall be uniformly run off at a rate of one eighth inch ( $1/8''$ ) per foot (1').
  - 163 Miss-match shall be run-off by grinding; rail ends shall not be welded.
17. Nicked or gouged rail shall be rejected and replaced as determined by the Engineer at expense of Contractor. This includes the cost of the replacement rail and any associated costs in changing out the defect.
18. Track material shall be handled in such a manner so as not to interfere with or be covered up when ballast is unloaded.
19. The cost of repositioning or straightening skewed ties is to be considered incidental to the Work.

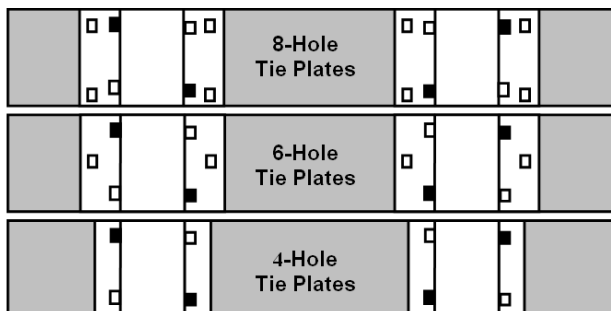
**END OF SECTION**

## SECTION 410

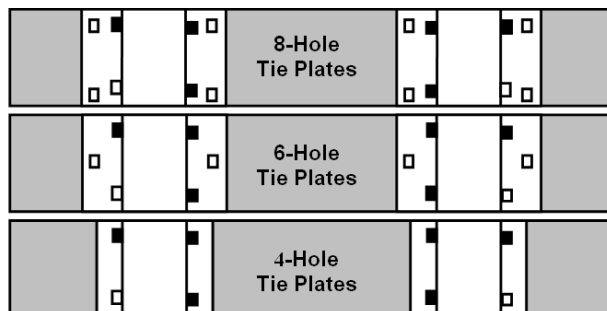
### SPIKING

1. A minimum of two spikes per tie plate shall be installed, one on the gauge side and one on the field side of the rail base to fasten each rail to a tie.
2. Spikes shall be staggered so that the outside spikes shall be on the same side of the tie and the inside spikes on the opposite side. Outside (field) spikes should be placed on the side of the tie toward the zero mile post, or where no mile posts exist, toward the direction of decreasing stationing.
3. Spikes shall be started vertically and square. They shall be driven straight with full bearing against the base of the rail. Straightening spikes started crooked with a maul will not be permitted. Spikes started crooked shall be pulled, the holes plugged and spikes re-driven. Spikes shall be driven with the underside of the head of the spike contacting the top of the base with a minimum of pressure.
4. **Spiking Patterns** – Tie plates in open track shall be spiked using the following patterns, based on degree of curvature:

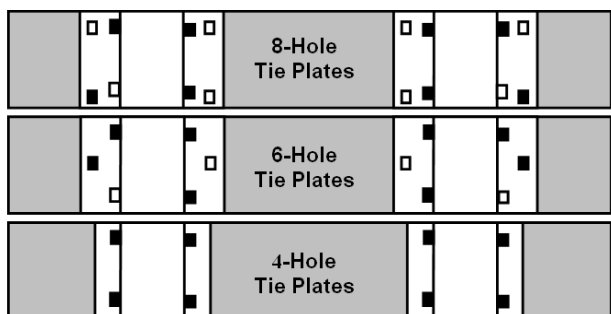
**Tangent and Curves less than 2°  
(2 Spikes per Tie Plate)**



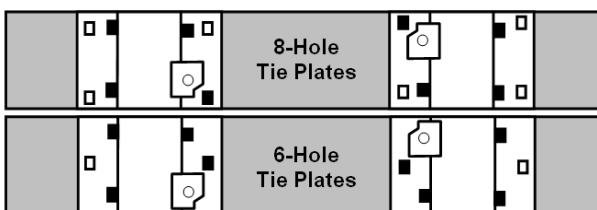
**Curves 2° and less than 4°  
(3 Spikes per Tie Plate)**



**Curves over 4°, Special Trackwork,  
and Grade Crossings  
(4 Spikes per Tie Plate)**



**Curve Block Plates  
(4 Spikes per Tie Plate)**



5. **Special Trackwork Spiking Patterns** - All special plates shall be fully spiked. Standard tie plates through the special trackwork and for twenty four (24) ties on each side shall use the spiking pattern for Curves over four degrees (4°).
  
6. **Grade Crossings** - All ties plates through and for five (5) ties beyond any covered ties, on both ends of grade crossings shall use the spiking pattern for curves over four degrees (4°). If anchor spikes interfere with crossing planks, they may be relocated to line spike holes; however, four (4) spikes per plate shall be used.

**END OF SECTION**

## SECTION 420

### RAIL ANCHORS

1. Rail anchors shall be applied immediately after the rail has been laid, adjusted, installed, or disturbed.
2. Existing rail anchors may be reused, provided they are fit, not sprung or otherwise damaged. Only new rail anchors shall be used on new rail.
3. When utilizing a rail heater to obtain the proper rail temperature the rail anchors shall be properly set immediately behind the rail heater.
4. Anchors shall not be applied within one inch (1") or over the top of any upset metal at rail welds.
5. Rail anchors must be set with the full bearing surface against the side of the tie and remain tight on the rail. Loose rail anchors shall be replaced.
6. Anchors shall be omitted at rail joints and on rails across from rail joints, except within switches, where anchors shall be applied throughout except adjacent to switch points, guard rails and on frogs and applied where they can be removed where the track is fully constructed, installed, and assembled.
7. Anchors shall be fully be fully driven or engaged on the rail; however, care must be taken to avoid over-driving, as this may fracture or spread the metal, resulting in loss of holding power.
8. Any rail anchor that is fractured or with metal spread will be rejected and replaced with another anchor at Contractor's expense.
9. Spring type anchors shall be applied according to the manufacturer specifications.
10. Rail Anchors shall be applied to the gauge side of the rail base, except where there is insufficient space for application within special trackwork.
11. Rail anchors are not required on rails with resilient rail clips that provide sufficient clamping force to restrain the rail longitudinally. Where resilient rail clips are used along one rail only, rail anchors shall be properly applied along the opposite rail as provided herein.

#### **12. Anchor Patterns**

##### **12.1. General**

- 12.1.1. Anchors must be on the same side of the same tie on both rails.
- 12.1.2. Where the anchoring function is otherwise provided, rail anchors may be omitted.
- 12.1.3. Anchors shall not be applied where they will interfere with signal or other track appliances, where they are inaccessible for adjustment or inspection.
- 12.1.4. Anchors may be omitted within the road crossing if they would interfere with the installation of the crossing material.

**12.2. CWR**

**12.2.1.** CWR is defined as rails four hundred feet (400') or more in length.

**12.2.2.** Box Anchor every other tie, except across from rail joints.

**12.2.3.** Rail Joints within CWR (including temporary rail joints): box anchor all ties for one hundred and ninety five feet (195') in each direction, along the same rail as the joint only.

**12.2.4.** When a turnout is within one hundred and ninety five feet (195') of a rail joint within CWR, properly anchor the entire turnout and approaching tracks, as indicated in herein.

**12.3. Jointed Rail:** Box Anchor every other tie, except across from rail joints, except as provided in Article 10.

**12.4. Turnouts, Split Switch Derails, Track Crossings, and Special Trackwork:** Box anchors every tie through and for one hundred and ninety five feet (195') on all tracks approaching the Turnouts, Track Crossings and Special Trackwork.

**12.5. Bridges:**

**12.5.1.** Ballast Deck Bridges: Anchor the as required for in 12.1 through 12.4.

**12.5.2.** Open Deck Bridges: Box anchors every tie for one hundred and ninety five feet (195') away from the headwalls. No rail anchors to be applied to the ties on the open decks bridges.

**END OF SECTION**



## SECTION 430

### THERMITE WELDING

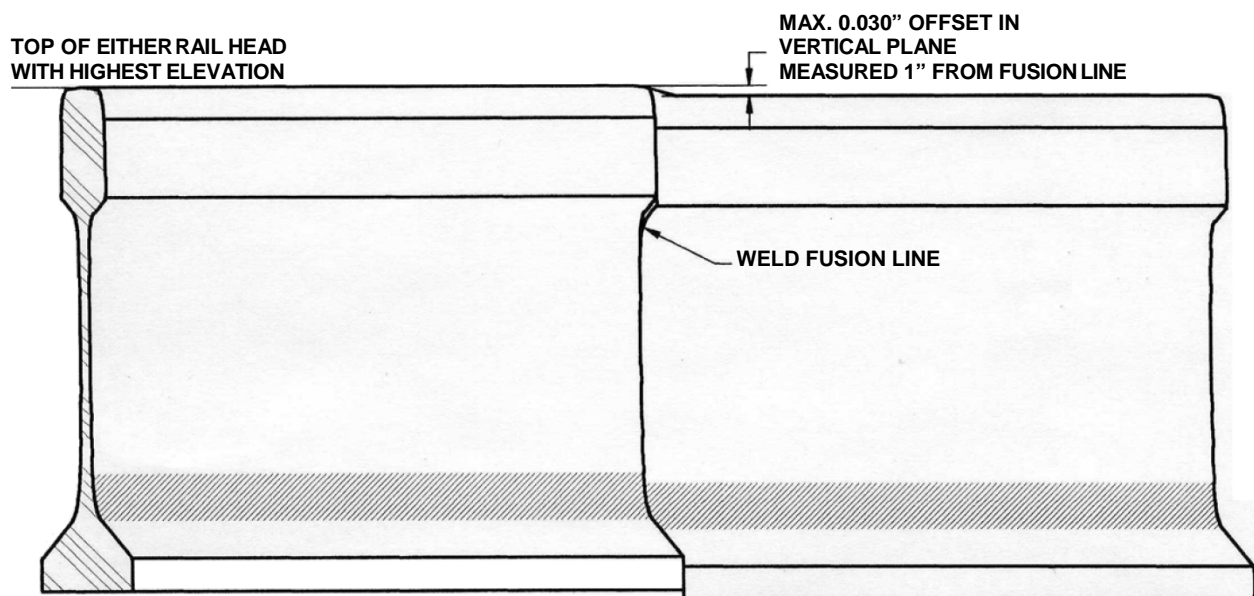
1. At the Contractors Option either thermite welding or flash-butt welding may be used rail welds.
2. Rails shall be cut square and clean by means of rail saws and cleaned a minimum distance of six (6) inches from the end with torch and wire brush. This area to be free of grease, rust and other foreign material, along with any other recommendations of the welding kit manufacturer.
3. No holes closer than five inches (5") from the weld will be permitted in the rail. Distance is measured from the cut face to the closest edge of the hole.
4. All thermite welding shall be supervised and performed by an experienced rail welding supervisor certified by the manufacturer of the welding equipment.
5. All welds giving fault indication by ultrasonic inspection, magnetic particle inspection or visible inspection shall be replaced at no expense to Railroad. This includes the addition of a rail plug and the additional welds.
6. Railroad will compensate Contractor for only one weld at a joint, all additional Work and costs associated with attempting and failing to make a successful weld, resulting in a rail plug and two welds will be at Contractor's expense.
7. Ultrasonic testing of all completed welds in the track shall be performed at Contractor expense. Ultrasonic testing will be performed by a competent testing service as agreed to by Railroad. Welds not meeting the following requirements will be rejected:
  - 7.1. Each weld shall have full penetration and complete fusion with no evidence of surface or internal fissures or cracks.
  - 7.2. Porosity or slag type defects shall not exceed 0.040 inches in any dimension and the total area of all defects shall not exceed 0.024 square inches.
  - 7.3. Contractor and Engineer shall visually inspect all thermite welds for surface cracks. Welds with surface cracks visible to the eye will not be acceptable.
8. If a defective weld is found, it shall be cut out and a new section of rail not less than eight (8) feet long on tangent track and not less than twelve feet (12') long on curved track shall be inserted. Two new welds made and re-tested all at no cost to Railroad.
9. Contractor shall inform the Engineer daily of the location of completed welds using # -"Daily Thermite Welding Report". All thermite welds performed under this contract will be listed on a Daily Thermite Welding Report; including the welds Contractor will not be reimbursed.
10. The thermite welding method and procedure shall comply with AREMA specification for "Thermite Welding - Rail Joints" as found in Chapter 4 of the AREMA Manual for Railway Engineering, recommendations from the welding kit manufacturer and as specified herein.

11. The faces of the rail ends shall be arranged at right angles by cutting or grinding. The rail ends to be welded shall be properly gaped and aligned to produce a weld that will conform to the specified alignment tolerances. No dip in the rails will be allowed. Refer to the Figures 1, 2, and 3. Miss-match on the field side top rail head fillet shall be ground to run off any miss- match at a rate of one eighth inch (1/8") per foot (1').
12. Before preheating check the rail temperature with a rail thermometer if the rail temperature is below thirty five degrees Fahrenheit (35°F) the following procedures must be followed to ensure that a proper preheat is made. Both rails must have supplemental heat applied to raise the rail temperature to between ninety (90°F) and one hundred (100°F) degrees Fahrenheit. When performing thermal rail adjustment, closure welds shall not be made at temperatures below thirty two degrees Fahrenheit (32°F).
  - 12.1. The length of rail to be supplementally heated shall be between thirty (30") and thirty six (36") inches and for rail temperatures from thirty five (35°F) down to fifteen (15°F) degrees Fahrenheit.
  - 12.2. A rail expander should be placed on the rail to maintain the correct gap and crown unless temperature conditions are such that the possibility of rail movement is eliminated.
  - 12.3. If a change in rail temperature is anticipated while the weld is being poured or cooling, the rail expander should be adjusted to compensate for any stresses that will occur at the weld due to a change in temperature.
  - 12.4. Depending upon the type of change expected, one of the following procedures will assist in preventing temperature induced stresses from affecting the quality of the weld.
  - 12.5. Rail temperature is low and a raise in temperatures is anticipated, the rail expander should be set up to expand the gap and enough pressure built up to cause a slight increase in the gap. This should prevent any subsequent decrease in gap width.
  - 12.6. Rail temperature is high and a drop in temperature is anticipated, the rail expander should be set up to pull and enough pressure built up to cause a slight subsequent increase in width.
  - 12.7. Whenever either of the above procedures is required, the final gap width must be as stated in the manufacturer's instructions for the rail weight being welded.
  - 12.8. The rail expander must remain on the rail until the weld is complete and has cooled to 700 degrees Fahrenheit (700°F). This is verified when the center of the weld around its entire periphery will not melt a seven hundred degree Fahrenheit (700°F) tempilstick.
  - 12.9. When the rail expander is removed, it must be released in a gradual manner.

13. Rail ends will be preheated prior to welding to a sufficient temperature and for a sufficient time to ensure full fusion of the weld metal to the rail ends without cracking of the rail or weld, pursuant to manufacturer instructions.
14. The mold shall be left in place after tapping for a sufficient time to permit complete solidification of the molten metal and proper slow cooling to prevent cracking and provide a complete weld with the proper hardness and ductility.
15. The completed weld shall be finished by mechanically controlled grinding to conform to the same requirements specified for shop welding with the exception of grinding under the base.
16. Thermite welding shall not be performed during rain or snow.
17. Hot slag shall not be dumped or poured on wet soil, wet ballast or into water or snow.
18. On curves where the slag basin is placed on the low side, the plug portion of the mold must be filled so that it is horizontal when placed in the mold and will cause the molten metal to flow equally to both sides of the mold.
19. Date and initials of welder and Contractor's name shall be placed on the web of the rail with metal marking paint and all welds shall have a number based upon a numbering system approved by the Engineer. These marks will be placed on the field side of the rail being welded.
20. Thermite welds will not be made within three feet (3') of another thermite, plant weld, or from the end of a rail joint without written approval by the Engineer.
21. As much as possible, Contractor shall cut rail to fit the weld between two ties to prevent the need for re-spacing ties. Re-spacing of switch ties is not allowed.
22. Contractor shall ensure ties and tie plates are tight against the bottom of the ties to provide firm support at installed welds.
23. Contractor shall plug and re-drive all necessary spikes and properly re-apply and adjust anchors as necessary to conform to anchor pattern.
24. Contractor shall clean up all waste from the field welding process and shall properly dispose of all superfluous materials off Railroad property.
25. Contractor shall provide sufficient time to allow welds to cool to four hundred fifty degrees Fahrenheit (450°F) and have completed the finish grinding prior to any train movement across welds.

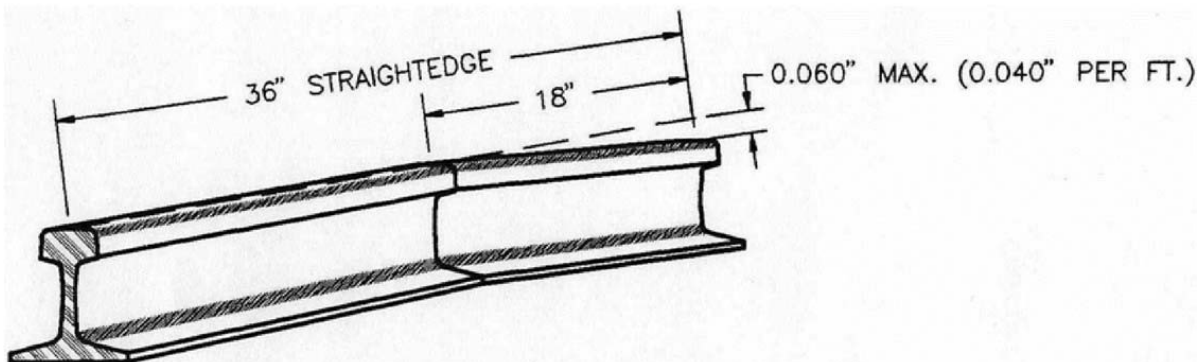
- 26. With the "unfinished" base of the thermite welds Contractor shall exercise caution when adjusting the rail so as not to bind the rail at a tie plate or allow the cross tie to be skewed.
- 27. At closure welds, the air and rail temperature at the time of rail anchoring shall be painted on the web of the rail with four inch (4") tall letters. As an example: A98° R102° will indicate an air temperature of 98°F and a rail temperature of 102°F. The marking should be made with a type of permanent paint.
- 28. No thermite welding is to be performed on any open deck timber structure. Where joints exist on open deck timber structures the rail shall be removed from the structure, welded off the structure, then replaced. Contractor shall take all steps necessary to ensure that no fires occur when welding on or near any timber part of a structure.
- 29. A Daily Rail Welding Report, as shown in Figure 4 shall be submitted to the Engineer, detailing each rail weld performed that day.
- 30. As CWR is installed, a Daily Rail Temperature Report, as shown in Figure 4 shall be submitted to the Engineer, detailing rail laid or adjusted that day.

**Figure 1**  
**Detail of Maximum Vertical Offset at Welds**

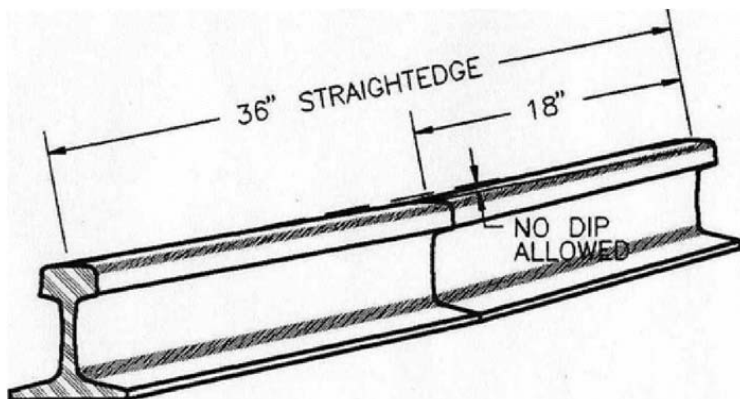


**NOTE: MEASUREMENTS SHALL BE PERFORMED USING A 36" STRAIGHTEDGE AND TAPER GAUGE**

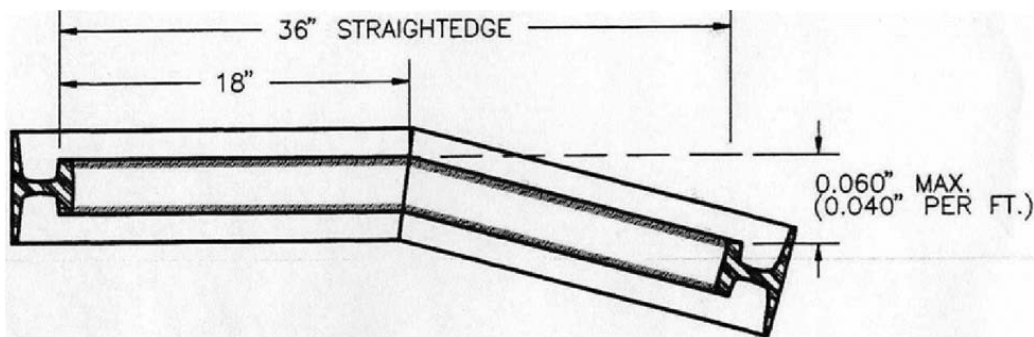
**Figure 2**  
**Tolerances for New and Relay Rail Welds**



**ELEVATION OF RAIL SHOWING WELD MISALIGNMENT TOLERANCE IN VERTICAL ALIGNMENT (PEAK)**

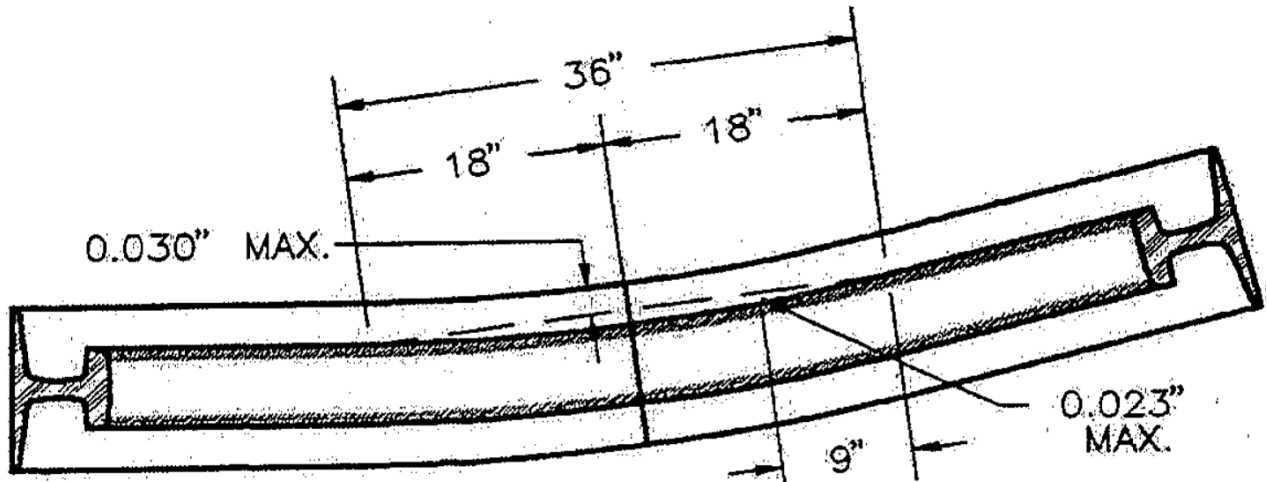


**ELEVATION OF RAIL SHOWING WELD MISALIGNMENT TOLERANCE IN VERTICAL ALIGNMENT (DIP)**

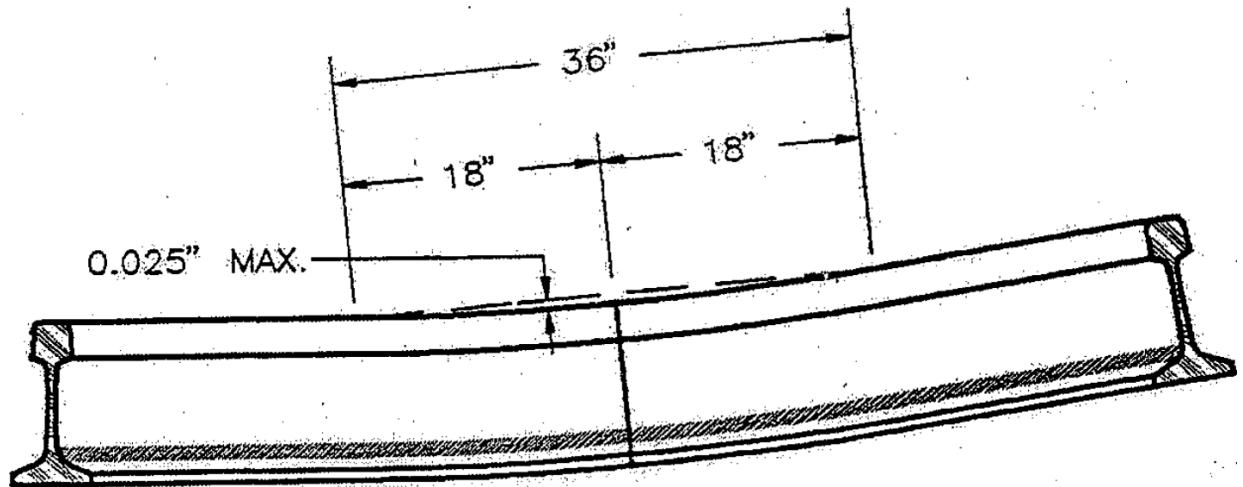


**PLAN VIEW OF RAIL SHOWING WELD MISALIGNMENT TOLERANCE IN HORIZONTAL ALIGNMENT**

**Figure 3**  
**Tolerances for Inspection of Relay Rail**



**TOP VIEW OF RAIL**  
**LATERAL (HORIZONTAL) LINE TOLERANCE AT RAIL ENDS**



**SIDE ELEVATION OF RAIL**  
**UNIFORM UPSWEEP TOLERANCE AT RAIL ENDS**



## Figure 5 Daily Rail Temperature Report

OmniTRAX <b>OmniTRAX Logistics Services, LLC</b> <b>DAILY TEMPERATURE REPORT</b>								
GANG NO.:		DATE:		SUPERVISOR:			FOREMAN:	
CHECK APPROPRIATE BOX		DIVISION:			GANG HOURS WORKED:			
<input type="checkbox"/> RAILROAD FORCES <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> MAINTENANCE <input type="checkbox"/> RAIL PROGRAM		NEAREST STATION:			_____ A.M.		_____ P.M.	
					_____ TOTAL HOURS			
MILEPOST LOCATION	TRACK NO.	RAIL		RAIL WEIGHT	TEMPERATURE			TIME MADE
		N / E	S / W		NEUTRAL RAIL	AIR	HEATED RAIL	

NEUTRAL RAIL TEMPERATURE RECORDER EVERY TWO (2) HOURS.  
 AIR TEMPERATURE RECORDED EVERY HOUR.  
 HEATED RAIL TEMPERATURE RECORDED EVERY 350 FEET OR NINE (9) RAIL LENGTHS.

REMARKS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

THIS FORM SHALL BE KEPT BY THE CONTRACTOR WITH A COPY GIVEN TO THE ENGINEER ON A DAILY BASIS.

RECORDERS NAME (Printed) \_\_\_\_\_ (Signed) \_\_\_\_\_

**END OF SECTION**



## SECTION 435

### FLASH-BUTT WELDING

1. At the Contractors Option either thermite welding or flash-butt welding may be used rail welds.
2. All requirements, tolerances and testing described in Section 550, "Thermite Welding" will apply to flash-butt welding.
3. All welds will be tested as specified in Section 550.
4. CWR may be pre-welded into strings not to exceed one thousand seven hundred and fifty linear feet (1,750').
5. Rails shall be cleaned to bright metal where welding head electrodes come into contact with the rail. Flash marks and arcing shall be removed.
6. No flash butt welding is to be performed on any open deck timber structure. Where joints exist on open deck timber structures the rail shall be removed from the structure, welded off the structure, then replaced. Contractor shall take all steps necessary to ensure that no fires occur when welding on or near any timber part of a structure.

**END OF SECTION**

## SECTION 440

### THERMAL RAIL ADJUSTMENT

1. Continuous Welded Rail (“CWR”) will be laid and anchored in tension, not compression.
2. When adjusting rail, rail movement and not temperature shall be used to determine proper rail adjustment.
3. Final thermal rail adjustment shall not be performed, until after all surfacing and alignment Work is completed and the track fully ballasted.
4. At any location where the rail is cut or otherwise disturbed, the rail and adjacent connecting rail shall be properly thermally adjusted to the required neutral rail temperature and rail anchors properly installed and adjusted along both rails, including the opposite rail.
5. When welding plug rails in CWR, after the proper neutral rail temperature is achieved and welding is complete, ensure the proper anchor pattern the anchors along both rails, as required, with all rail anchors tight against the ties, for one hundred ninety five feet (195’) in all directions, along the disturbed rail.
6. When Work is interrupted, ensure the proper anchor pattern the anchors along both rails, as required, up to the point where the Work stops, with rail fully applied up to that point. When Work resumes, the rail shall be re-adjusted for at least one hundred ninety five feet (195’) from the previous stopping point.
7. Neutral Rail Temperature (“NRT”)
  - 7.1 CWR shall be laid, spiked and anchored at a temperature of between ninety five and one hundred and ten degrees Fahrenheit (95°F and 110°F).
  - 7.2 If neutral rail temperatures exceed 110 degrees Fahrenheit (110°F) without the assistance of external heating equipment Contractor is to continue the relaying unless otherwise notified by the Engineer.
  - 7.3 Curved track shall not be shifted to obtain the proper neutral rail temperature.
8. A record of thermal rail adjustment shall be maintained by Contractor of the rail and air temperatures for each segment of CWR and submitted to the Engineer on a daily basis. See: - Daily Rail Temperature Report.
9. As Work progresses, the neutral rail temperature of the rail shall be maintained and the rail properly anchored closely behind the Work.
10. At beginning and ending locations, the rail anchors shall be removed for not less than one hundred ninety five feet (195’) in all directions.

11. When welding CWR or welding to remove rail joints, the adjacent rails shall be de-anchored for not less than one hundred ninety five feet (195') in all directions, or up to any fixed objects such as installed road crossing or installed and properly anchored turnouts. After the proper neutral rail temperature is achieved and welding is completed, install anchors along both rails, as required, with all rail anchors tight against the ties.
12. Care shall be taken not to shift, move, or change the position of switch points, stock rails, guard rails, when rail is adjusted.
13. When CWR Strings begin or terminate at or are within one hundred and ninety five feet (195') turnout(s) or other special trackwork, the entire turnout(s) or special trackwork unit(s), though and for not less than one hundred ninety five feet (195') in all directions on all connecting tracks, shall be fully anchored as provided herein.
14. The Contractor shall submit for the Engineer's review and approval a Work plan for maintaining the proper Neutral Rail Temperature ("NRT") during the Work. The Work plan shall be approved any the Engineer prior to beginning any Work and at a minimum include:
  - 14.1 Maintenance of NRT during operations.
  - 14.2 NRT verification procedure.
  - 14.3 Procedure for starting and stopping Work.
  - 14.4 Anchoring procedures.
  - 14.5 Tie in and closure procedures.

**END OF SECTION**

## SECTION 460

### TIES

#### **1. New Installations**

- 1.1. Ties shall be installed perpendicular to the rail. In turnouts and special trackwork, perpendicular to the straight sides, unless otherwise indicated in the approved drawings.
- 1.2. Contractor shall space crossties at twenty inch (20"), with a tolerance of plus or minus one half inch ( $\pm\frac{1}{2}$ " ), without accumulation. Under crossing panels, at grade crossings, spacing shall be per manufacturer's instructions, but no case less than twenty inches (20").
- 1.3. Ties will be handled in such a manner as to avoid damage such as breaking or bruising.
- 1.4. Contractor at its expense will remove and replace any tie that has been damaged beyond its intended use as determined by the Engineer.

#### **2. Existing Track**

- 2.1. Contractor will remove and replace all ties marked or otherwise identified.
- 2.2. All tie plates broken, missing or bent are to be replaced. The cost is to be considered incidental to the Work.
- 2.3. Ties shall be handled in such a manner as to avoid breaking or bruising.
- 2.4. In renewing ties or with associated Work, Contractor will not scatter ballast beyond the existing ballast section.
- 2.5. Tie replacements shall be performed in advance of any rail relays, and/or out of face surfacing and alignment Work.
- 2.6. Before releasing the track for train operations, at the end of each work shift:
  - 2.6.1. Contractor shall remove all released materials from the trackway.
  - 2.6.2. Ties shall be fully tamped, spiked, and have rail anchors properly applied.
  - 2.6.3. Switch Ties shall be machined tamped, integrally with the tie installation operations. At a minimum, tamping shall be performed using:
    - A Jackson model 900 or 2400, Harsco model STM, or Engineer approved equal; or,
    - Hand power tampers (hydraulic or electric), with tamping along both sides of each tie at each rail seat, at each rail; or,
    - A purpose design tamping back hoe or excavator attachment that has squeeze capability. Tamping using a bucket or hoe attachment shall not be performed.
  - 2.6.4. Ballast shall be regulated through the areas where ties have been replaced, integrally with the tie installation operations, to ensure the cribs are full, matching the existing ballast section, and smooth walking/working surface.

- 2.7. Ties shall be removed in one piece, where possible, and without damaging or disturbing adjacent ties that are to remain.
- 2.8. Contractor is not to "hump" the track during the removal and placement of cross ties. If such a condition arises, Contractor, at its expense must excavate the area affected sufficiently, to eliminate the "hump" to the satisfaction of the Engineer. Alternately, Contractor may raise the adjacent track to preserve the pre-existing surface, line and gauge at its expense.
- 2.9. Contractor at its expense will remove and replace any cross tie that has been damaged by the Contractor beyond its intended use as determined by the Engineer.

### 3. Composite Ties

- 3.1. All composite ties shall be properly drilled prior to spiking in accordance with the composite tie manufacturer's instructions.
- 3.2. All composite ties shall be properly spiked in accordance with the composite tie manufacturer's instructions.

### 4. Steel Ties

#### 3.3. Where steel ties are supplied by Contractor:

- Have manufacturer's identification stamp, tie size, date of manufacture and quality control code will be clearly and permanently marked on the top of each tie.
- Minimum of 10 Millimeter thickness.

#### 3.4. For steel crosstie turnouts, all drilling required to construct turnout must be performed using a magnetic drill.

#### 3.5. In out of face installation and new track construction transition zones between steel and wood ties shall be installed as follows:

- Provide transition from wood tie track to steel ties by installing wood ties ten (10) each= of 7"x 9"x8'6" hardwood ties with sixteen inch (16") tie plates with elastic fasteners,= spaced on twenty inches (20") centers.
- When transitioning from steel ties to wood tie track, do not install transition zones in curves= or through road crossings. Instead, extend the steel tie limits to beyond these conditions.

#### 3.6. Steel crosstie installation shall be laid at right angles to the track centerline and conform to the following:

#### 3.7. In new track construction or out of face installation Install steel ties on twenty four inch (24") centers for new construction on tangent tracks and on twenty one inch (21") centers) on curved track of three degrees (3°) or greater, and laid at right angles to the track centerline.

#### 3.8. In locations where steel ties are intermixed with wood ties-steel ties shall be replaced in- kind at the same locations as the steel tie marked for replacement or otherwise to match the existing pattern unless other specified.

**3.9.** The bearing surfaces of the crossties shall be clean before rail installation.

**3.10.** To fasten steel ties:

- Install proper elastic rail fastener hook-in shoulders in the holes in the top of the steel ties.
- Install proper elastic rail fasteners into the shoulders.
- Any crossties that do not fully bear on the ballast shall be nipped up prior installing clip.
- Final gage for steel ties shall be fifty six and one half inches (56<sup>1</sup>/<sub>2</sub>" ).

**3.11.** On steel ties where missing shoulders and/or clips exist the shoulders and clips shall be correctly re-installed.

**3.12.** In tie replacement projects, if a steel tie is marked and the shoulder hole is sufficiently worn or damaged wherein the shoulder and clip cannot properly secure the rail the Engineer shall be notified.

**3.13. Tamping, Ballasting, and Regulating Steel Ties**

**3.11.1.** In new track construction steel tie track and switches shall be built on top of pre-ballasted track surfaces with a depth of ballast so that the tamping tools do not penetrate the into the subgrade.

**3.11.2.** Before tamping the ties, ensure that adequate ballast is in the crib and shoulder areas to squeeze ballast into the tie pods.

**3.11.3.** Adjust tamping tools until the top of the tamping blades are between zero inches (0") and five eighth inches (<sup>5</sup>/<sub>8</sub>" ) below the base of the steel tie in its lowered position.

**3.11.4.** The limit switches on the tamper should be adjusted so that the depth of insertion for steel ties is between approximately two and two and one half inches (2" and 2 <sup>1</sup>/<sub>2</sub>" ) less than the depth of insertion for wood tie surfacing to ensure proper steel tie surfacing and lining.

**3.11.5.** If tamping tool insertion is set too deep (not adjusted from the setting for wood tie construction), proper compaction of the ballast under the steel ties will not be achieved.

**3.11.6.** The tamping tool paddles (or blades) must be in good condition.

- Paddles worn beyond normal wear limits must be replaced before surfacing steel tie track.
- Worn blades will not move sufficient ballast to fill the pods on the underside of the steel ties, nor will they provide sufficient compaction to consolidate the ballast under the steel ties.

- 3.11.7.** The ballast shall be well tamped the entire length of each crosstie with a tamper that has a traversing or movable vibratory work head. Generally, to tamp a steel tie, insert the tamping tool as follows:
- Insert the tool (usually two or three times) with multiple squeezing to move enough ballast to fill the pods. A single insertion will not adequately compact the ballast.
  - Follow this tamping cycle:
    - Double tamp steel tie rail seats.
    - Double tamp steel tie centers.
    - Double tamp steel tie rail seats again.
  - A tamper equipped with additional tamping tools in the center of the track is also acceptable in lieu of moveable work heads; however, the center of the tie must be tamped.
- 3.11.8.** When steel ties are interspersed with wood ties, two full surfacing passes shall be made.
- With the first pass, surface the entire track in accordance with normal procedures.
  - For the second pass, only tamp the steel ties, without lifting the track.
  - It is important that the tamping tools are set at the proper insertion depth for steel ties. Two insertions at the rail seats are required.
  - Center tamping of the steel ties is not required for the final pass.
  - Steel ties shall always be tamped last.
  - Make sure the center of the pod is full, but make sure its compaction is less than the compaction at the rail seats.
  - Use the inspection holes on the top of the ties on either side of the rail seats to observe how much the ballast has compacted within the tie pod.
- 3.11.9.** Final track alignment changes shall be made before making the last surfacing pass and lift on steel tie track and switches.
- 3.11.10.** Do not over broom steel ties. Leave crib rock to top of tie, but not on rail fasteners.

**END OF SECTION**

## SECTION 470

### BALLAST AND SURFACING

1. Track ballast gradation shall be an AREMA #3 nominal size 2" - 1", IDOT CA-5 fulfills the gradation requirement.
2. Walkway ballast gradation shall be an AREMA #4 nominal size 1½" – ¾" (IDOT CA-7 or CA-11).
3. Material furnished by Contractor, Prior to delivering any Contractor provided ballast to the Work Site, shall conform to current Specifications contained in Chapter 1 Part 2 - 2.4.4 Gradations (Table 1-2-2) AREMA "Manual for Railway Engineering". Aggregate shall have a percentage of wear, by the Los Angeles abrasion test, of not more than 35.
4. Contractor shall submit, to the Engineer for review and approval, independent test results, for each ballast type and source used, to the Engineer, for review and approval, prior to use in the Work. Each submittal of test results shall be complete, and accompanied by a completed copy of Contractor Provided Ballast and Switch Walkway Material Review Worksheet (Figure 1) and additional pit and source information as required, for each separate ballast source. If ballast source(s) or material(s) change after the Engineer's approval, resubmission is required prior to the delivery of any ballast to the site.
5. Ballast and/or walkway ballast may be stockpiled in area(s) identified by the Engineer. Contractor shall provide all necessary equipment, tools, and devices to handle the hauling and proper distribution of ballast and walkway ballast material.
6. Contractor will provide all necessary equipment, tools, and devices to handle the hauling and proper distribution of ballast material and will properly distribute ballast and walkway ballast, surface, line, finish surface, line, regulate and broom track.
  - 6.1 If Contractor over distributes material it may be required to properly redistribute the material or could option to furnish the additional material at its expense to correct the areas that do not have sufficient material.
7. No part of the track structure will be raised more than four inches (4") in one lift. Areas requiring a greater raise will have to be worked more than once and Contractor may have to distribute additional ballast materials to conform to the specified ballast and walkway cross sections. All cross ties are to be fully tamped before proceeding with any additional lift.
8. Power tamping machines, Jackson 6700, Harsco Mark IV, or equivalent with laser liner shall be used.
  - 8.1 Contractor will raise and surface track with machines having a minimum of eight tamping bits per rail, each foot will be replaced once its aggregate size is reduced to one and one half inches by three inches (1 ½" x 3"). Each tie will be tamped with a minimum of two (2) insertions per lift, with insertion depth of the Tamping paddles between one half inch (½") and inch (1") below the bottoms of the ties.



- 8.2** The power tamping machines are to be multi-tooled and automatic with a profile reference beam of not less than seventy five feet (75') and having tamping pressures sufficient to close the ballast beneath each tie.
- 8.3** Contractor may operate in tandem a lead machine followed by a junior machine, the junior machine may lack the profile reference system, otherwise be identical to the lead machine as far as tamping feet, the number of insertions, squeeze pressures and other related characteristics. The lead machine will tamp a minimum of every second tie with the junior machine tamping all others.
- 9.** Each lift is to be tamped from a line fifteen inches (15") inside each rail on both sides of and to the ends of the ties. Center area between these limits shall be filled lightly with ballast but not tamped. Tamping shall proceed simultaneously at both ends of the tie making sure ballast is forced directly under the ties and against the sides and ends of the ties.
- 10.** Too many insertions with a power tamper may cause a center bound track condition. Two (2) squeezes per tie up to a two inch (2") raise with one additional insertion and squeeze for each additional one inch (1") of raise is required. Joint ties should be given one additional squeeze.
- 11.** At turnouts, rail crossings and crossovers, tamp ballast uniformly for the full length of the ties. The straight side is to be used as the line rail.
- 12.** In locations where power tampers cannot fill and compact ballast such as at frogs, guard rails, switch portions of turnouts, head blocks, etc., provisions must be made to mechanically tamp with air or other power tamping tools.
- 13.** During raising and tamping, if any crib area is void of ballast below the bottom of the tie then the area of the track is to be re-tamped following the application of additional ballast.
- 14.** While raising and tamping, track level boards or other standard surfacing measuring devices, separate from that provided on the tamping machine, shall be constantly used to insure correct surface and cross level.
- 14.1** A laser liner shall be employed when lining all tangent track.
- 14.2** Track geometry deviations shall not exceed plus or minus one eighth inch ( $\pm 1/8"$ ).
- 14.3** With the exception of fixed locations designated by the Engineer, which are to receive no change in vertical or horizontal alignment, Contractor will ballast and surface through curves to conform to the super elevations specified or furnished on the drawings or by the Engineer. The low (inside) rail of each curve shall be the profile rail. The high (outside) rail of each curve will be the line rail.
- 14.4** Contractor will employ spiral transitions (when designed on the approved drawings) at both ends of every curve worked.
- 14.5** Existing curves are **not** to be lined in, if Contractor lines a curve in then Contractor will be responsible to adjust (destress) the CWR and/or jointed rail after the track has been surfaced and regulated to the design ballast cross section.

15. Stakes are not to be disturbed or removed until approval has been received from Engineer. When raising track Contractor has a tolerance of minus one inch (-1") to the established grade. Contractor will lower the track at its expense if it is raised above the established grade. If track has not risen to the established grade then Contractor will unload ballast in sufficient quantity and continue to surface the track to comply with the tolerances.
16. On new track construction, all crossties are to be straightened and re-spaced as necessary immediately prior to unloading ballast for the final raise.
17. Contractor will notify the Engineer when any stake or marker has been disturbed or destroyed. Contractor may be required to replace the stakes at its expense.
18. Care must be exercised by Contractor to avoid over stressing or permanently bending the rail, joints or damaging turnout components when lifting or jacking track.
19. Contractor at its expense will correct any down or skewed tie that is a result of tamping and raising track. Tie plates will be positioned so that the shoulder is against the outside base of rail for the entire length of the shoulder.
20. Contractor at its cost will re-drive all high spikes and will replace all spikes or steel tie fasteners removed.
21. Contractor at its cost will replace and/or adjust all rail anchors or rail clips that are knocked off or that worked loose during the surfacing and regulating. Rail anchors will remain matched across from each other on each rail.
22. As an integral part of the surfacing and regulating operations, Contractor will restore any joints, bolts, or switch components damaged or loosened by the Work.
23. Contractor will utilize a ballast regulating machine to provide the specified ballast and walkway cross section.
  - 23.1 No dirt or foreign materials will be allowed into the ballast section.
  - 23.2 Track will be boomed to remove ballast from the top of ties or on the top of the rail base in the completed track.
  - 23.3 After regulating ballast in turnouts, switch points, switch rods and guard rails will be pocketed and cleared of ballast.
  - 23.4 Where insufficient subgrade width exists for the full indicated ballast section, vary the shoulder width to fit the existing subgrade. If required, use the entire toe path to maximize shoulder width.
  - 23.5 Where insufficient the adjacent subgrade is high, unless otherwise indicated on the approved drawings, provide the full ballast section, as indicated in Figures 2 and 3, tying in to the existing subgrade.
24. Walkway ballast shall be distributed and dressed pursuant to these specifications, Exhibits and drawings. Walkway material and Work shall be considered incidental to the surfacing of the track.
  - 24.1 Walkway ballast shall be placed a minimum of one hundred and twenty five feet (125') ahead of all switch points and along the entire connection track between crossover turnouts.
  - 24.2 Walkway material shall be placed from the outside ballast edge to a point eight and one half feet (8½') from the centerline of the track. Walkways around switch stand to be dressed as indicated in Figures 2 and 3.

- 24.3** For a single turnout the walkways shall extend one hundred and twenty five feet (125') of the switch points, along the entire switch tie pattern and extend to a point where the track centers exceed thirteen feet (13').
- 24.4** Walkways shall be dressed as indicated in the Figure 2.
- 24.5** Where switches and derails are spaced less than three hundred feet (300') apart, the walkways shall be continuous in the area(s) between them.
- 25.** Contractors shall exercise caution while regulating ballast shoulders so as to avoid track misalignments and to avoid obstructing adjacent drainage ditches, structures or culverts with ballast, dirt, vegetation or other material.
- 25.1** Contractor shall initiate cleaning or removing objects or material that obstructs an adjacent drainage ditch, structure or culvert as soon as possible at its expense.
- 25.2** Contractor is responsible to ensure that the partially ballasted track does not buckle out of alignment. If a misalignment of the track occurs as a result of Contractor's operations these specifications shall govern.
- 26.** Contractor will operate a power tamper with the capability to fully Work a turnouts and other special trackwork with the appropriate number of hand jacks to maintain cross level.
- 26.1** Contractor will raise, surface and line each turnout as encountered in the progression of this Work. Each turnout is to be raised and surfaced in continuity with the track as an integral part of the surfacing operation.
- 26.2** Contractor will raise each turnout including the turnout side through the long switch ties, beyond the thirteen foot (13') clearance point and will then transition into the existing track which is not to be raised.
- 27.** Contractor will make vertical profile transitions into and out of all fixed points encountered in its Work. The transition will not exceed one quarter inch ( $\frac{1}{4}$ " ) per thirty one feet (31').
- 28.** Contractor will line and surface into and out of each open deck bridge, rail crossing and fixed concrete structures. This is to ensure that the top of rail profile will take the form of a straight line in the vertical plane across each such obstacle and extending for one hundred feet (100') beyond each end of the structure or crossing. Any transition required beyond the one hundred feet (100') distance from the straight line will not be in excess of one quarter inch ( $\frac{1}{4}$ " ) per thirty one feet (31'). Runoffs into and out of areas not specified to be worked and on the diverging tracks beyond the turnouts be considered incidental to the Work.
- 29.** If Contractor raises the track or turnouts too high to comply with the runoff limitations, Contractor, at its expense, will excavate the ballast to lower the track and then ballast and surface the track again to bring it into full conformity.
- 30.** Track will not be raised under overhead structures without advance written approval by the Engineer so Contractor will be aware of the maximum allowed raise.
- 31.** One half inch ( $\frac{1}{2}$ " ) of superelevation will be placed in the curves behind the turnouts in spurs and side tracks and at other locations as specified.
- 32.** Contractor may have to make multiple passes through the track and turnouts to raise the track and turnouts to the design elevation.

**Figure 1 - Ballast and Switch Walkway Material Review Worksheet**

Reviewer:		Material:	
Date:		Contractor:	
Job:		Specification:	
Testing Company:		Gradation Used:	

<b>Material Type (Check 1 Only)</b>						
Granite	Traprock	Quartzite	Limestone	Domestic Limestone	Blast Furnace Slag	Steel Furnace Slag

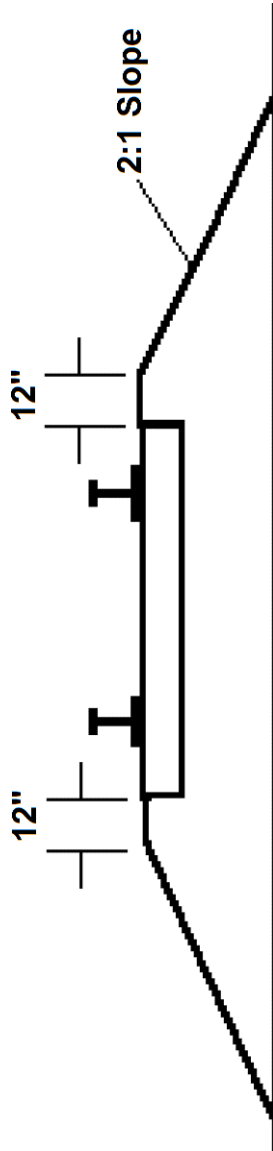
<b>PROPERTY</b>	<b>ASTM</b>	<b>Report Value</b>
Percent Material Passing No. 200 Sieve	C 117	
Bulk Specific Gravity	C 127	
Absorption Percent	C 127	
Clay Lumps Friable 5 Cycles	C 142	
Degradation	See Note #1	
Soundness (Sodium Sulfate)	C 88	
Flat and/or Elongated Particles	D 4791	

<b>Gradation (Percent by Weight Passing)</b>									
3"	2 1/2"	2"	1 1/2"	1"	3/4"	1/2"	3/8"	#4	#8

**Notes:**

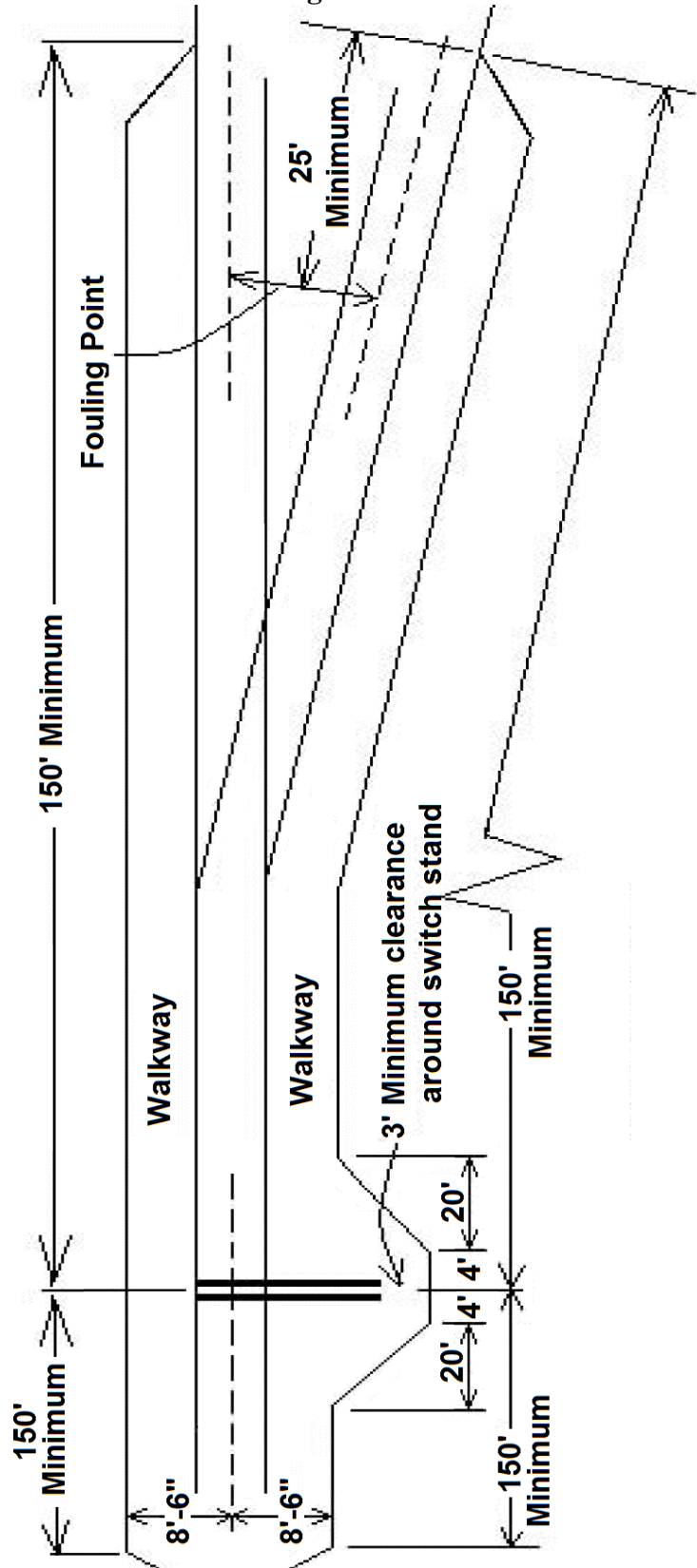
1. Materials having gradations containing particles retained on the one inch (1") sieve shall be tested by ASTM C 535. Materials having gradations with 100% passing the one inch (1") sieve shall be tested by ASTM C 131.
2. Tests shall be performed at an approved laboratory.
3. Representative samples for gradation shall be taken for every thousand (1,000) tons being loaded for shipment in accordance with ASTM D 75.
4. The full range of laboratory testing shall be performed at least two (2) times a year to insure the quality of material being produced.
5. If supplier changes the location of the source or encounters changes within the supply source (shelf), laboratory testing should be performed on the new material to ensure compliance with the specifications.

Figure 2  
Open Track  
Ballast Cross-Section  
(Not to Scale)



**END OF SECTION**

Figure 3



## SECTION 480

### GRADE CROSSINGS

#### **1. General**

- 1.1 There shall be no rail joints within or within five feet (5') of the ends of road crossings.
- 1.2 Rail road crossing flangeways are to remain clear of all foreign obstructions.
- 1.3 Cross ties shall be spaced pursuant to the grade crossing surface manufacturer specifications, but in no case more than twenty inch (20" Centers).
- 1.4 New crossing timbers shall have the timber screws countersunk and holes field bored so as not to damage crossing panels or crossties to split. Crossties shall be field bored prior to driving timber screws.
- 1.5 The length of the road crossing shall be increased to accommodate the use of full length crossing panels.
- 1.6 Timber screws shall be in sufficient quantity to properly fasten each crossing timber to each cross tie, and not less than that recommended by the manufacturer of the road crossing panel.
- 1.7 The road crossing shall be placed to coincide with the centerline of the road or traveled surface.
- 1.8 When road crossing surface extends beyond the existing roadway surface, Contractor shall place an asphalt transition between the roadway and the end of the road crossing panels.

#### **2. Replacement of Existing Road Crossings**

- 2.1 No half replacement of existing road crossings will be permitted unless required by roadway owner. If a detour route is not possible Contractor shall construct and maintain a temporary shoofly to bypass traffic around the Work site. Contractor will be responsible and consider the Work incidental for all Work and expense to construct, maintain, sign and remove a vehicle shoofly.
- 2.2 Contractor will exercise extreme care in unloading and placing ballast so as not to have excess material around the road crossing. Upon completion of Work, Contractor will grade and shape the four quadrants to ensure drainage from the road crossing, roadway and track. This grading shall be considered incidental to the Work being

performed.

Contractor shall excavate, remove, and dispose of existing ballast within existing road crossings, and for five (5) ties beyond the end of the ends of the crossings, to a minimum width of twelve (12") beyond the both ends of the ties to a minimum depth of four inches (4") below the bottom of the ties.

- 2.3** Following the installation of the permanent road crossing surface, Contractor will adjust the roadway approaches providing a smooth travel surface to properly accommodate vehicular traffic free of any dips or water pockets. At existing paved roadways, Contractor will roto mill both roadway approaches to accommodate a minimum two inch (2") butt joint and adjust the roadway approaches at each road crossing to provide a smooth travel surface to accommodate vehicular traffic.
- 2.4** Contractor, at its expense, shall properly dispose of all waste materials generated off Railroad property.
- 2.5** Contractor shall be responsible for hauling, placing and compacting hot mix bituminous concrete materials for the permanent roadway surfaces. Contractor may maintain a road crossing temporarily surfaced with cold patch until the permanent road crossing surface is installed at no additional cost to Railroad.

### **3. Roadway Profile**

- 3.1** Generally the roadway profile shall be in a flat plane across the top of final rail elevation extending five feet (5') either side of centerline of track.
- 3.2** From five feet (5') from centerline to a point thirty feet (30') from centerline (another twenty five feet (25')) the roadway surface may raise above or drop below the final top of maximum of three inches (3").
- 3.3** From this point, thirty feet (30') from centerline, ideally, the grade rises or falls a maximum of five percent (5%) till the new roadway surface intersects with the existing roadway surface.
- 3.4** It is at this point where a two inch (2") butt joint should be cut into the existing roadway surface to ensure an adequate asphalt paving transition is obtained.
- 3.5** For dirt or gravel roadways, pavement thickness shall uniformly taper from full depth at crossing panel to two inches (2") thick out fifteen feet (15') from the track centerline.

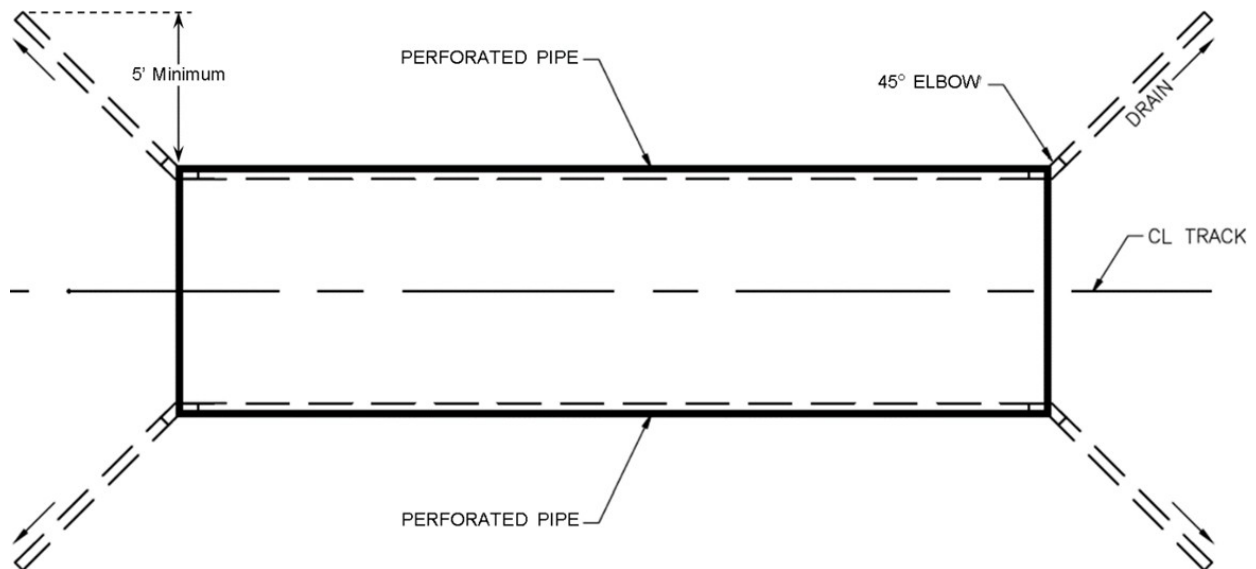
4. For Signaled crossings, contractor shall place two (2) individual lines of four inch (4") diameter schedule 80 PVC conduit at every public road crossing or any road crossing equipped with signals. The lines shall be placed under the same of the track as signal bungalow, if the road crossing is an existing signaled crossing. For Public Road Crossings not currently equipped with signals, place one (1) line of four inch (4") diameter schedule 80 PVC, along each side of the track, two (2) total. PVC conduit is not required at private crossings. The ends of unused conduits shall be capped.
  
5. At all public grade crossings, or when indicated on the drawings place new perforated six inch (6") diameter eighteen (18) gauge steel corrugated drainage pipe with connecting bands, hardware and elbows, as shown in Figure 1. The pipes shall extend a minimum of five feet (5') from the ends of the ties, and if necessary longer to extend to adjacent low areas or drainage ditches.

Drainage rock with a minimum size of three quarter inch (3/4") clean to be placed around the perforated drainage pipes for their entire length; ballast may be used.

**6. Pavement Markings**

- 6.1 Permanent advance warning signs and pavement markings are not included as a part of this Work.

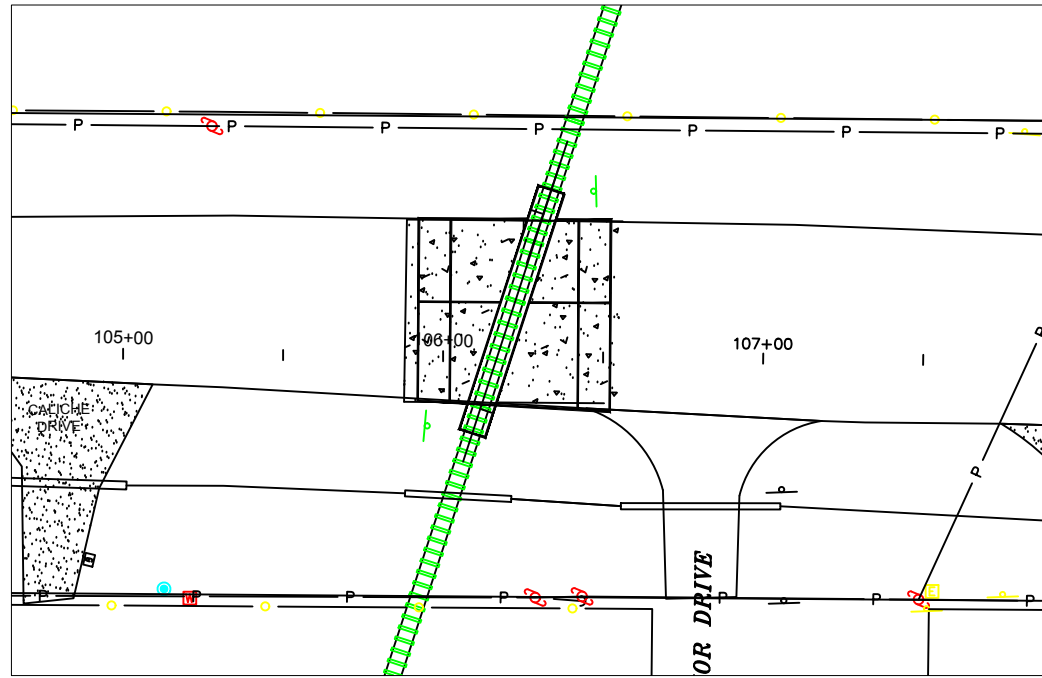
**Figure 1 – Perforated Drain Pipe Layout (Where Required)**



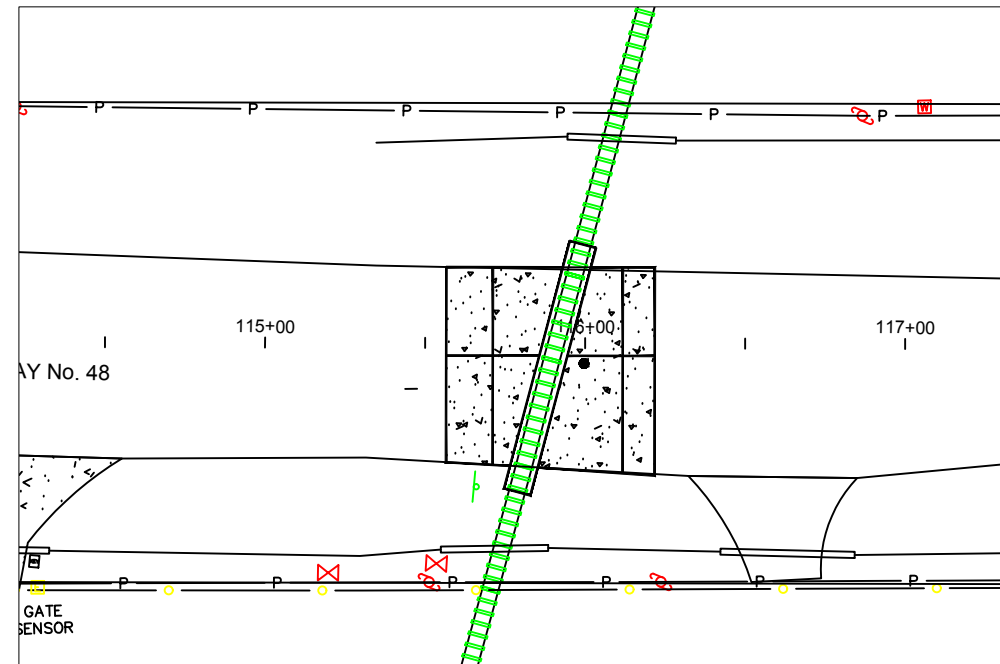
**END OF SECTION**



This Drawing is being provided to you by the BND for information purposes only, and the BND makes no warranty, representation, or guarantee of any kind, and the recipient shall assume all liability and responsibility for verifying the existence, location, dimensions, properties, etc., of any boundary lines, easements, rights-of-way, or any other information therein depicted, and for the accuracy, precision, etc., of the annotations, dimensions and geometry therein shown.



RAILROAD CROSSING No. 1  
CONCRETE PLAN  
SCALE: 1" = 60'



RAILROAD CROSSING No. 2  
CONCRETE PLAN  
SCALE: 1" = 60'



RAILROAD CROSSING No. 3  
CONCRETE PLAN  
SCALE: 1" = 60'

**CONSTRUCTION DRAWINGS**  
**OLD STATE HIGHWAY No. 48**  
**RAILROAD CROSSING INSTALLATION**

DRAWN BY: PE	APPROVED BY:
DATE DRAWN: SEPT. 11, 2018	REVISION DATE:
CHECKED BY: A. CHAVEZ II	DWG. NO.
SCALE: AS SHOWN	FILE NAME:

BROWNSVILLE NAVIGATION DISTRICT  
ENGINEERING DEPARTMENT  
BROWNSVILLE, TEXAS 78521  
PHONE (956) 831-4592 1-800-378-5395  
FAX (956) 831-6153  
EMAIL achavez@portofbrownsville.com

# Notice of Award

---

## OLD S.H. 48 RAILROAD CROSSING INSTALLATION

TO:

PROJECT DESCRIPTION:  
**OLD S.H. 48 RAILROAD  
CROSSING INSTALLATION**

Dear Sir:

The Brownsville Navigation District ("Owner") has considered the bid submitted by your company for the above referenced project in response to its Invitation for Bids dated 09/17/2018 and 09/24/2018, and the Instructions to Bidders.

You are hereby notified that your bid has been accepted by the Brownsville Navigation District in the amount of \_\_\_\_\_.

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute this Agreement and furnish the bonds and insurance certificates within ten (10) days from the date of this Notice, Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your bid as abandoned and as a forfeiture of your BID BOND.

The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

OWNER: BROWNSVILLE NAVIGATION DISTRICT, TEXAS.

By: \_\_\_\_\_  
ARIEL CHAVEZ II, P.E./R.P.L.S.  
Director of Engineering Services

## Acceptance of Notice

---

Receipt of the above NOTICE OF AWARD is hereby acknowledged by \_\_\_\_\_  
on this this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

By: \_\_\_\_\_  
OFFICER'S NAME  
Officer's Title

# Notice to Proceed

---

## BND ROAD SPOT REPAIRS AND ASPHALT SURFACING

Dated: \_\_\_\_\_

TO:

PROJECT DESCRIPTION:  
**OLD S.H. 48 RAILROAD CROSSING  
INSTALLATION**

OWNER's Contract No.: \_\_\_\_\_ - \_\_\_\_\_

CONTRACT FOR: [Description of Work]

Dear Sir:

You are hereby notified that the Contract Time under the above contract will commence to run on \_\_\_\_\_ - \_\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and completion and readiness for final payment are \_\_\_\_\_ - \_\_\_\_\_ and \_\_\_\_\_ - \_\_\_\_\_.

Before you may start any Work at the site, paragraph 2.7 of the Standard General Conditions provides that you and Owner must each deliver to the other (with copies to ENGINEER and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must coordinate the BND Engineering Department for any possible modifications to the contract documents.

OWNER: BROWNSVILLE NAVIGATION DISTRICT, TEXAS.

By: \_\_\_\_\_  
ARIEL CHAVEZ II, P.E./R.P.L.S.  
Director of Engineering Services

## Acceptance of Notice

---

Receipt of the above NOTICE OF AWARD is hereby acknowledged by \_\_\_\_\_  
on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

By: \_\_\_\_\_  
OFFICER'S NAME  
Officer's Title