

CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR

This FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR (the "Supplemental Contract") is made and entered into by and between El Paso County, Texas, a political subdivision of the State of Texas (the "Owner"), and **Jordan Foster Construction, LLC** (the "Contractor"). This Supplemental Contract is executed under seal, and shall be effective on the date executed by the last party to execute it.

This Supplemental Contract is for the provision of labor, material, and equipment for certain improvements as shown in attachment Exhibit 2 to the Ascarate Park Special Events Area located at 6900 Delta Drive, El Paso, Texas, 79905 (the "Project").

Contractor was awarded job order contract #17-7261 ("Contract #17-7261"), executed November 16, 2017, and thereafter extended on October 4, 2018 and again on November 5, 2019, by the Texas Education Agency Region 19 acting as Allied States Cooperative ("ASC") under the provisions of Tex. Gov't Code, Chapter 791 as noted on the Education Service Center Region 19 Allied States Cooperative RFP Award Summary attached in Exhibit 1.

Owner is a member of ASC and is authorized under Tex. Gov't Code, Chapter 791 to procure products and services from vendors who have been awarded contracts by ASC through the job order contract procurement method administered by ASC and thereby satisfy the requirement that Owner seek competitive bids for the purchase of products and services as would be otherwise required by Tex. Local Gov't Code Chapters 262 and 271.

Under the job order procurement method, when Owner issues a Job Order, Owner and Contractor become bound by the specifications, scope, pricing, and other terms and conditions set forth in Contract #17-7261 awarded to Contractor by ASC.

Under the job order procurement method, Owner and Contractor may agree to additional terms and conditions that modify Contract #17-7261. Such additional terms and conditions are referred to as a Supplemental Contract and become binding on the parties.

Owner has received a proposal from Contractor ("Contractor's Proposal"), which it desires to accept through the issuance of a Job Order, to complete all Project work as set forth in the Scope of Work in Contractor's Proposal.

Owner intends to issue a Job Order to Contractor and intends for the terms and conditions set forth herein to constitute a Supplemental Contract.

Contractor agrees that the terms and conditions set forth herein shall constitute a Supplemental Contract.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree:

1. DOCUMENTS INCORPORATED BY REFERENCE

The entire agreement between Owner and Contractor relating to the Project ("the Contract") includes this Supplemental Contract, the plans and specifications for the Project identified thereon as such, plus the following (if any): 1) Contract # 17-7261, including the scope, specifications, contract terms and conditions and pricing, and other terms and conditions set forth therein, and the RFP award summary, attached hereto

as **Exhibit 1**; 2) copies of Owner's Project specifications and plans and Contractor's Proposal, all attached hereto as **Exhibit 2**; 3) a copy of Contractor's Performance and Payment Bonds, attached hereto as **Exhibit 3**; 4) a copy of the Insurance Certificates, attached hereto as **Exhibit 4**; 5) a copy of the currently effective Prevailing Wage Rates for Heavy/Highway Construction and Building Construction Trades, and Definitions for Heavy/Highway and Building Labor Classifications attached hereto as **Exhibit 5**; 6) a copy of the currently effective Apprenticeship Order and the List of Required Apprenticeship Programs, attached hereto as **Exhibit 6**. The Job Order and any Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of the Contract. Documents not included or expressly contemplated in this Paragraph 1 do not, and shall not, form any part of the Contract.

2. PURPOSE OF THE SUPPLEMENTAL CONTRACT AND CONFLICTS BETWEEN CONTRACT DOCUMENTS

The purpose of this Supplemental Contract is to add new terms and conditions to the Contract and to modify or eliminate certain terms and conditions set forth in Contract #17-7261 or the Contractor's Proposal.

Generally, as to the Owner and Contractor, in the event of any conflict between or dispute as to any terms and conditions set forth in Contract #17-7261, Owner's Specifications and Plans, Contractor's Proposal, this Supplemental Contract, and Owner's Job Order and/or Change Orders, this Supplemental Contract, Owner's Specifications and Plans, and Owner's Job Order shall govern. As between this Supplemental Contract, Owner's Specifications and Plans, and Owner's Job Order, this Supplemental Contract and then Owner's Specifications and Plans shall govern. As between Contract #17-7261 and Contractor's Proposal, Contract #17-7261 shall govern.

Notwithstanding any provision to the contrary, as to the Owner and Contractor, in the event of any conflict between or dispute as to the Scope in Contract #17-7261 and the Scope of Work in Contractor's Proposal the Scope of Work in Contractor's Proposal shall govern.

3. REPRESENTATIONS OF THE CONTRACTOR

In order to induce the Owner to execute the Contract and recognizing that the Owner is relying thereon, the Contractor, by executing the Contract, makes the following express representations to the Owner:

(A) The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project;

(B) The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;

(C) The Contractor has received, reviewed and carefully examined all of the documents which make up the Contract, including, but not limited to, the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

4. OWNER'S REPRESENTATIVE AND PROJECT ENGINEER

The Owner's representative is the Director of El Paso County Public Works Director, Norma Rivera Palacios ("Owner"). Her office and mailing address is 800 E. Overland, Suite 200, El Paso, Texas, 79901. The phone number is 915.546.2015; facsimile is 915.546.8194.

The Project Engineer assigned to this Project is a representative of the Public Works Administration, Lidia Arias, Civil Engineer (the "Engineer"). In the event the Owner should find it necessary or convenient to

replace the Engineer, the Owner shall retain a replacement Engineer and the role of the replacement Engineer shall be the same as the role of the Engineer. Unless otherwise directed by the Owner in writing, the Engineer will perform those duties and discharge those responsibilities allocated to the Engineer in this Supplemental Contract. The duties, obligations and responsibilities of the Engineer shall include, but are not limited to, the following:

- (A) Unless otherwise directed by the Owner in writing, the Engineer shall act as the Owner's agent from the effective date of this Supplemental Contract until final payment has been made, to the extent expressly set forth in this Supplemental Contract;
- (B) Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Engineer;
- (C) When requested by the Contractor in writing, the Engineer shall render interpretations necessary for the proper execution or progress of the work;
- (D) The Engineer shall draft proposed Change Orders;
- (E) The Engineer shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor;
- (F) The Engineer shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of the Contract. If the Engineer deems it appropriate, the Engineer shall be authorized to call for extra inspection or testing of the work for compliance with requirements of the Contract;
- (G) The Engineer shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Engineer, are properly owing to the Contractor as provided in the Contract;
- (H) The Engineer shall, upon written request from the Contractor, perform those inspections required in Paragraph 9 herein;
- (I) The Engineer shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of the Contract consistent with the intent of the Contract;
- (J) THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THE CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE OWNER.

5. INTENT AND INTERPRETATION

With respect to the intent and interpretation of the Contract, the Owner and the Contractor agree as follows:

- (A) The Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations,

understandings, negotiations, or agreements. The Supplemental Contract supersedes any proposal documents;

(B) Anything that may be required, implied or inferred by the documents which make up the Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;

(C) Nothing contained in this Supplemental Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Contractor;

(D) When a word, term, or phrase is used in the Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "included", or "including", as used in the Contract, shall be deemed to be followed by the phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make-up the Contract, shop drawings, and other submittals and shall give written notice to the Owner and the Engineer of any conflict, ambiguity, error or omission which the contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the Owner or the Engineer of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the contractor's compliance with the Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construct, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up the Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large-scale plans and small-scale plans, the large-scale plan shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

6. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The documents which make up the Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one (1) copy

of the Contract upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the Owner's prior written authorization.

7. CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the work required, implied or reasonably inferable from the Contract including, but not limited to, the following:

(A) Construction of the Project;

(B) The furnishing of any required surety bonds and insurance;

(C) The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, appurtenances, fixtures, appliances, facilities, tools, transportation, storage, fuel, or additional light, required for construction and all necessary building permits and other permits required for the construction of the Project. **CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR IN FURTHERANCE OF THE CONTRACT;**

(D) The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the Owner upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

8. TIME FOR CONTRACTOR'S PERFORMANCE

(A) The Contractor shall commence the performance of the Contract on or before a date specified in a written "Notice to Proceed" of the Owner and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Final Completion of the Project within one hundred twenty-two (122) consecutive calendar days.

(B) The Contractor shall pay the Owner the sum of **One Thousand Two Hundred and Twenty-Six Dollars and No Cents (\$1,226.00)** per day for each and every calendar day of unexcused delay in achieving Substantial Completion of the Project. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing the Contract. This estimate takes into account a number of estimated costs that will stem from any delay, including, without limitation, certain County personnel expenses, lost revenues to the County, and inconveniences to the public. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(C) The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Engineer, the Project is at a level of completion in strict compliance with the Contract such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion;

(D) All limitations of time set forth herein are material and are of the essence of the Contract.

9. FIXED PRICE AND CONTRACT PAYMENTS

(A) The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of all its obligations hereunder the fixed price of **Four Hundred Thirty-Five Thousand One Hundred Fourteen Dollars and No Cents (\$435,114.00)**. The price set forth in this Subparagraph 9(A) shall constitute the Contract Price, which shall not be modified except by Change Order pursuant to Texas law and as provided in this Supplemental Contract;

(B) **Within ten (10) calendar days** of the effective date hereof, the Contractor shall prepare and present to the Owner and the Engineer the **Contractor's Schedule of Values** apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Engineer or the Owner requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of the Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Engineer and the Owner.

(C) The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph 9. On or before the **fifteenth (15th) day** of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the **last** day of the month. Said Payment Request shall be in such format and include whatever supporting information as may be required by the Engineer, the Owner, or both. Therein, the Contractor may request payment for **ninety-five percent (95%)** of that part of the Contract Price allocable to the Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with the Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by the Contract. The Engineer shall approve in writing the amount which, in the opinion of the Engineer, is properly owing to the Contractor. **The Owner shall make payment to the contractor within thirty (30) days following the Engineer's written approval of each Payment Request.** The amount of each such payment shall be the amount approved for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by the Contract. The Engineer's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in Subparagraph 9(F) herein below. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all subcontractors, materialmen, suppliers or others having lien rights, wherein said subcontractors, materialmen, suppliers or others having lien rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any

liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner;

(D) When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future;

(E) Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with the Contract;

(F) The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion of or the entire amount previously paid to the Contractor due to:

(1) The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of the Contract;

(2) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;

(3) The Contractor's rate of progress being such that, in the Owner's opinion, substantial or final completion, or both, may be inexcusably delayed;

(4) The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;

(5) Claims made, or likely to be made, against the Owner or its property;

(6) Loss caused by the Contractor;

(7) The Contractor's failure or refusal to perform any of its obligations to the Owner.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 9(F), the Contractor shall promptly comply with such demand;

(G) If within thirty (30) days from the date payment to the Contractor is due, the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days' written notice of its intent to cease work to the Owner. Any undisputed sum not paid when due shall bear interest calculated on an annual basis pursuant to Chapter 2251 of the Texas Government Code as follows. The interest rate shall be the sum of one percent and the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on Saturday or Sunday. Interest begins to accrue on the thirty-first (31) day after the undisputed amount is due. Interest on an overdue payment stops accruing on the date the County mails or electronically transmits the payment.

(H) When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Engineer in writing and shall furnish to the Engineer a listing of those matters yet to be finished. The Engineer will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Engineer will so notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. If the Engineer, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by the Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, and less the reasonable costs as determined by the Owner for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims;

(I) When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will perform a final inspection of the Project. If the Engineer confirms that the Project is complete in full accordance with the Contract and that the Contractor has performed all of its obligations to the Owner hereunder, the Engineer will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Contract. If the Engineer is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment;

(J) If the Contractor fails to achieve **final completion** of the Project within **fifteen (15) calendar days** of the date of Substantial Completion, the Contractor shall pay the Owner the sum of **One Thousand Two Hundred and Twenty-Six and No Cents (\$1,226.00) per day** for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing the Contract. This estimate takes into account a number of estimated costs that will stem from any delay, including, without limitation, certain County personnel expenses, lost revenues to the County, and inconveniences to the public. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages;

(K) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Engineer:

(1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;

(2) If required by the Owner, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;

(3) If applicable, consent(s) of surety to final payment;

(4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

(L) The Owner shall, subject to its rights set forth in Subparagraph 9(F) above, make final payment of all sums due the Contractor within ten (10) days of the Engineer's execution of a final Approval for Payment.

10. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

(A) If appropriate, the Owner shall furnish to the Contractor, prior to the execution of the Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey;

(B) The Owner shall obtain all required authorizations, approvals, easements, and the like excluding the building permit and other permits or fees required of the Contractor by the Contract, or permits and fees customarily the responsibility of the Contractor.

(C) The Owner will provide the Contractor one copy of the complete Contract. The Contractor will be charged, and shall pay the Owner, a reasonable fee per additional copy of the Contract which it may require.

11. CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the work as required herein, the Owner may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within **seven (7) calendar days** of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the cost of performing such work by the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

12. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in the Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

(A) The Contractor is again reminded of its continuing duties set forth in Subparagraph 5(G) which are by reference hereby incorporated in this Subparagraph 12(A). The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract

without first providing written notice to the Engineer and Owner, the Contractor shall be responsible for such work and pay the cost of correcting same;

(B) All work shall strictly conform to the requirements of the Contract, including the lawful disposal of all hazardous material and other materials resulting from demolition;

(C) The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor, including subcontractors;

(D) The Contractor hereby warrants that all labor furnished under the Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of the Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;

(E) The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work.
CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS, AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR(S) IN FURTHERANCE OF THE CONTRACT;

(F) The Contractor shall employ and maintain at the Project site only competent supervisory personnel. **Key supervisory personnel assigned by the Contractor to this Project are as follows:**

Name	Function
Jose A. Risco	Project Manager, (915) 877-3333

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 12(F) as though such individual had been listed above;

(G) The Contractor, within **ten (10) calendar days** of commencing the work, shall provide to the Owner and the Engineer, and comply with, the **Contractor's schedule for completing work**. Such schedule shall be in a form acceptable to the Owner. The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Engineer. Strict compliance with the requirements of this Subparagraph 12(G) shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of the Contract;

(H) The Contractor shall keep an updated copy of the Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Engineer at all regular business hours. Upon final completion of the work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner;

(I) Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless such shall have been

approved in writing by the Engineer. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Engineer or the Owner shall not be evidence that work installed pursuant thereto conforms with the requirements of the Contract. The Owner and the Engineer shall have no duty to review partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the Owner or the Engineer;

(J) The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

(K) At all times relevant to the Contract, the Contract shall permit the Owner and the Engineer and their representatives to enter upon the Project site and to review or inspect the work without formality or other procedure.

(L) The Contractor shall at all times carry out its contractual duties in compliance with all federal, state, and local laws, rules, regulations, and orders. The Contractor shall comply at all times with all applicable federal, state, and local agency guidelines and recommendations relating to employee and community health and safety, including but not limited to, recommendations and guidelines promulgated by the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC), the Texas Department of State Health Services, and the City of El Paso Health Authority. The County has the right to inspect the Contractor's performance at any time without advance notice. If the County, in its sole determination, determines the Contractor, or any of its subcontractors or agents, is not performing its duties in compliance with this Subparagraph 12(L), the County may, in addition to exercising any or all other rights and remedies available to it, terminate this Contract for cause as detailed in Subparagraph 20(B).

13. INDEMNITY

THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE OWNER HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, LOSS, COST AND EXPENSE OF EVERY TYPE WHATSOEVER INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, IN CONNECTION WITH THE CONTRACTOR'S PERFORMANCE OF THE CONTRACT, PROVIDED THAT SUCH CLAIMS, LIABILITY, DAMAGE, LOSS, COST OR EXPENSE IS DUE TO SICKNESS, PERSONAL INJURY, DISEASE OR DEATH, THE UNLAWFUL DISPOSAL OF CONSTRUCTION MATERIALS, CHEMICALS, OR DEBRIS, OR TO LOSS OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THERE FROM, TO THE EXTENT CAUSED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THE CONTRACTOR MAY BE LIABLE, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIM, DAMAGE, LOSS, COST OR EXPENSE IS CAUSED IN PART BY THE OWNER.

13. MISCELLANEOUS TERMS

Owner is a tax exempt political subdivision of the State of Texas that will not be liable for any taxes from which it is exempt. Owner's Tax Identification Number is 746000762.

Nothing in any of the terms and conditions which comprise the Contract modifies or waives any governmental immunity, lien or indemnity prohibition, defense, or limitation of liability enjoyed by Owner, its elected officials, or employees at common law or under other Texas law. Any indemnity or hold harmless provisions imposed on Owner in any of the Contract's terms and conditions are deleted and invalid. Parties understand and agree that, pursuant to Texas Constitution art. XI, section 7, executory indemnity obligations

cannot be paid from current revenues and neither a tax nor interest and sinking fund has been set, adopted, or established for the payment of this obligation.

Parties understand and acknowledge Owner is subject to the Texas Open Meetings Act and Public Information Act, Chapters 551 and 552 of the Texas Government Code, respectively, which may require the disclosure of information despite any confidentiality, proprietary, or other provisions to the contrary in the Contract terms and conditions between the parties.

As concerns any payments and interest, the Texas Prompt Payment Act at Texas Government Code Sec. 2251.001 et seq. applies to Owner and the Contract between the parties. Owner shall not be liable for any Contractor collection costs and attorney's fees.

For any and all disputes arising out of the Contract, both parties retain all rights and remedies available to them under Federal and State law.

The Contract terms and conditions may not be amended or modified except in writing and executed by both parties to the Contract and authorized by their respective governing bodies.

If applicable, pursuant to Texas Government Code Section 2271.002, Contractor verifies it does not boycott Israel and will not boycott Israel as defined in Section 2271.001(1), for the duration of the Contract.

Contractor agrees to honor Contract #17-7261 pricing until satisfactory completion of the Project regardless of whether Contract #17-7261 is renewed or terminated.

14. CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the Owner are subject to the following terms and conditions:

(A) All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Engineer. Such claim shall be received by the Owner and the Engineer no later than **seven (7) calendar days** after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

(B) The Contractor and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor;

(C) In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within **seven (7) calendar days** after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph 14(C) shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition;

(D) In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall strictly comply with the requirements of Subparagraph 14(A) above and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;

(E) In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction;

(F) In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting on the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not capable of being reasonably anticipated, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Engineer. A task is critical within the meaning of this Subparagraph 14(F) if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of Subparagraph 14(A) above. If the Contractor fails to make such claim as required in this Subparagraph 14(F), any claim for an extension of time shall be waived.

(G) The notice provisions contained in this Section 14 are the mechanism for perfecting a request by the Contractor for an adjustment of compensation, contract deliverables, and/or time for completion. The notice provisions are separate and apart from the "notice of a claim for damages as a condition precedent to the right to sue on the contract" as provided in Texas Civil Practice and Remedies Code § 16.071(a).

15. SUBCONTRACTORS

Upon execution of this Supplemental Contract, the Contractor shall identify to the Owner and the Engineer, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract termination as set forth herein below.

16. CHANGE ORDERS

One or more changes to the work within the general scope of the Contract may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with Texas law and the following terms and conditions:

(A) Change Order shall mean a written order to the Contractor executed by the Owner and the Engineer after execution of this Supplemental Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;

(B) Any change in the Contract Price resulting from a Change Order shall be determined as follows:

(1) By mutual agreement between the Owner and the Contractor as evidenced by (a) the change in the Contract Price being set forth in the Change Order, (b) such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and (c) the Contractor's execution of the Change Order; or

(2) If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual cost incurred or savings

achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct job-site overhead and profit but shall not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format and with such content and detail as the Owner or the Engineer requires.

(C) The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractors' agreement to the ordered changes in the work, the Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order;

(D) The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Owner, the Engineer, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

17. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

(A) In the event that the Contractor covers, conceals or obscures its work in violation of the Contract or in violation of a directive from the Owner or the Engineer, such work shall be uncovered and displayed for the Owner's or Engineer's inspection upon request, and shall be reworked at no cost in time or money to the Owner;

(B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 17(A) above, it shall, if directed by the Owner or the Engineer, be uncovered and displayed for the Owner or Engineer's inspection. If the uncovered work conforms strictly with the Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor;

(C) The Contractor shall, at no cost in time or money to the Owner, correct work rejected by the Owner or by the Engineer as defective or failing to conform to the Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof;

(D) In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of two (2) years following final completion upon written direction from the Owner;

(E) The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

18. TERMINATION BY THE CONTRACTOR

If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) calendar days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under the Contract by written notice to the Owner and the Engineer. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under the Contract for convenience pursuant to Subparagraph 20(A) hereunder.

19. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

(A) The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to ninety (90) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;

(B) In the event the Owner directs a suspension of performance under this Paragraph 19, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such costs paid to subcontractors;
- (2) preserving and protecting work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance thereon;
- (4) performing in a later, or during a longer, time frame than that contemplated by the Contract.

20. TERMINATION BY THE OWNER

The Owner may terminate the Contract in accordance with the following terms and conditions:

(A) The Owner may, for any reason whatsoever, terminate performance under the Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

(1) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;

(2) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;

(3) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(a) Contract prices for labor, materials, equipment and other services accepted under the Contract;

(b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct job-site overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 20(A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 20(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

(B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of the Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph 20(B) and it is subsequently determined by Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 20(A) and the provisions of Subparagraph 20(A) shall apply.

21. INSURANCE

The Contractor shall have and maintain insurance in accordance with the requirements as specified in Contract #17-7261, attached hereto in **Exhibit 1**, and incorporated herein by reference.

22. SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price within FIVE (5) calendar days of execution of contract. If the 5th calendar day is a Saturday, Sunday, or County holiday, Contractor may furnish the bonds to Owner on the next County business day. Each bond furnished by the Contractor shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably acceptable to the Owner.

23. PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Engineer for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority, and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recording, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

24. PREVAILING WAGE RATES AND APPRENTICESHIP PROGRAM

(A) The Contractor is aware that and hereby agrees that not less than the prevailing wage rates adopted by the El Paso County Commissioners Court on October 17, 2016 for Highway/Heavy Construction and for Building Construction Trades, in effect on the date of the Contract, shall be paid to all workers on the Project. A copy of the Prevailing Wage Rates and a copy of the Definitions for Heavy/Highway and Building Labor Classifications are attached hereto as **Exhibit 5**, and Exhibit 5 is incorporated herein by reference and are a part of the Contract for all purposes.

(B) Contractor agrees to comply with Tex. Gov't Code Sections 2258.001 through 2258.058 and acknowledges that it understands that it will pay to the Owner the sum specified in Tex. Gov't Code Section 2258.023, as amended, (presently \$60.00 per day or part of a day, per worker), in the event a worker is paid less than said prevailing wage rates set forth in the Contract.

(C) The Contractor agrees to keep records showing the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work and the actual per diem wages paid to each worker. The Contractor further agrees that such records shall be open at all reasonable hours to inspection by the County through its officers and agents.

(D) Contractor agrees to comply with the County's Apprenticeship Program requirement for each apprenticeship trade specified by the County, according to the requirements of the County's adopted apprenticeship program as more specifically described in **Exhibit 6**, which Exhibit is incorporated herein by reference thereto and made a part of the Contract for all purposes.

(E) The Contractor shall post the prevailing wage rate schedules and prevailing wage rate definitions made part of the Contract at each work site in a prominent location readily accessible to the workers through the duration of the project. In addition, the Contractor shall post a notice to be provided by the Owner's Representative, the Director of Public Works, regarding Prevailing Wage Rates and the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.

(F) Upon a determination by the County that there is good cause to believe that a contractor has violated Chapter 2258 of the Texas Local Government Code, including the County's requirement to maintain specified Apprenticeship Programs, the County shall withhold any amount due under the contract, up to and including the entire contract price, which the Commissioners Court or its agent, in the exercise of reasonable discretion, determines is sufficient to 1) cover the costs to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the prevailing wage rate and 2) cover the costs of penalties under Section 2258.023 and 3) to ensure compliance with Chapter 2258 for the duration of the project.

(F) Payroll Records: At the time the Contractor submits its applications for progress payments to the project Engineer, the Contractor shall provide a certified payroll for all employees during the period of that pay request.

(G) No worker shall be discharged by the Contractor or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint or instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the prevailing wage rate laws, the apprenticeship program or the provisions of the Contract.

(H) The Contractor and subcontractors shall allow expeditious jobsite entry by the Owner, and its designees, agents and representatives displaying and presenting proper identification credentials to the jobsite superintendent or his/her representative. While on the jobsite the Owner and its designees, engineers, agents and representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. The Contractor and subcontractors shall allow project employees to be interviewed at random for a reasonable duration by the Owner and its designees, agents and representatives to facilitate compliance determinations regarding the prevailing wage rate payment provisions and apprenticeship program provisions of the Contract.

(I) In the event a particular work element of the project calls for a certain employee classification and skill that is not listed in the prevailing wage rate schedules in the contract, the Contractor shall notify the Owner's Representative, the Director of El Paso County Public Works Department, who shall investigate the matter and make a recommendation to the Commissioners Court to make a special wage rate determination as required.

(J) In accordance with the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program Requirements adopted in 2008, a copy of which is attached hereto as part of **Exhibit 6**, the Contractor and all subcontractors must comply with the following:

1. must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations;
2. must hire registered apprentices enrolled in a DOL certified apprenticeship program;
3. may not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;
4. must pay wage rates and benefits package for apprentices as determined by the apprenticeship program/DOL;
5. must comply with DOL requirements for the ratio of apprentices to journeymen;
6. must hire apprentices in all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.

(K) The Contractor shall provide the names of all apprentices on the project, verification of their status as registered apprentices, and documentation as to their proper wage rates and journeyman to apprentice ratios as determined by the apprenticeship program.

(L) The County reserves the right to terminate the Contract for cause if the Contractor and/or subcontractors shall breach any of these provisions regarding the payment of prevailing wages or the apprenticeship program.

(M) The Contractor shall cause these and any other appropriate prevailing wage rate and apprenticeship program provisions to be inserted in all subcontracts relative to the work to bind the subcontractors to the same prevailing wage rate and apprenticeship program provisions as are applicable to the Contractor.

(N) The Contractor shall verify that all persons working on this Project, whether Contractor's employees or subcontractor's employees have valid work permits issued by the United States government. Contractor shall maintain copies of work documentation in his office, available for inspection during normal working hours for all employees working on this site.

25. APPLICABLE LAW

The law is hereby agreed to be the law of the State of Texas and venue shall lie in El Paso County, Texas.

26. SUCCESSORS AND ASSIGNS

Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of the Contract. The Contractor shall not assign the Contract without prior written consent of the Owner.

27. FORCE MAJEURE

A Force Majeure Event is an unpredictable or unanticipated event that makes a Party's further performance under this agreement impossible. A Force Majeure Event means an Act of God; an epidemic, pandemic, or other natural disaster declared by a governmental authority with appropriate jurisdiction over the matter; governmental rules, regulations, or orders issued in response to an epidemic, pandemic, or natural disaster; civil disorder, disturbances, riots, or war; utility-related closings; or any similar event beyond the reasonable control of such Party. **Contractor acknowledges the County Judge's authority to issue a disaster declaration under Texas law and waives any conflict of interest.**

The non-performing Party must give reasonably prompt written notice, to the other Party, of its inability to perform due to a Force Majeure Event, and such notice shall state the event and reason for such non-performance. Notwithstanding any provision to the contrary in this Contract, when an inability to perform has been declared under this paragraph, Contractor shall immediately cease performance of the Project and take steps to ensure public safety by improving the worksite(s) to reasonably similar or better condition than when the Project began. Each Party is responsible for its own demobilization and storage costs under this provision. The County is only liable for payment for Contractor's satisfactory performance completed up to the date of written notice and the reasonable amount necessary to secure the site(s) for public safety. This paragraph 27 shall survive termination of the Contract.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT HAS READ THIS ENTIRE CONTRACT, INCLUDING (WITHOUT LIMITATION) THIS PROVISION, AND HAS TAKEN APPROPRIATE MEASURES, AT ITS OWN EXPENSE, TO MITIGATE ITS OWN FINANCIAL RISKS UNDER THIS CONTRACT. SUCH MITIGATION MAY INCLUDE (BY WAY OF EXAMPLE ONLY) THE PROCUREMENT OF A POLICY OF INSURANCE THAT MITIGATES CONTRACTOR'S RISK OF A FORCE MAJEURE EVENT AS DEFINED ABOVE.

IN WITNESS WHEREOF THE PARTIES EXECUTE THIS SUPPLEMENTAL CONTRACT:

OWNER

THE COUNTY OF EL PASO

By: _____
Ricardo A. Samaniego
El Paso County Judge

Date _____

By: _____
Norma Rivera Palacios
Director of Public Works
El Paso County, Texas

CONTRACTOR

JORDAN FOSTER CONSTRUCTION, LLC

By: _____
Name: _____
Title: _____
(Signor must be authorized to bind entity)

Date _____

APPROVED AS TO FORM ONLY:

Assistant County Attorney

EXHIBIT 1

Contract # 17-7261

And

RFP Award Summary

EXHIBIT 2

Owner's Specifications and Plans And Contractor's Proposal

EXHIBIT 3

Contractor's Performance and Payment Bonds

EXHIBIT 4

Contractor's Insurance Certificates

EXHIBIT 5

Prevailing Wage Rates – Heavy/Highway and Building And Definitions for Heavy/Highway and Building Labor Classifications

2016 PREVAILING WAGE RATES BUILDING

CLASSIFICATION	BASE WAGE	BENEFITS	HOURLY PREVAILING WAGE RATE	(8 HOURS) PER DIEM WAGE RATE
Automatic Fire Sprinkler Fitter, Certified	26.85	0.00	26.85	214.80
Block, Brick, and Stone Mason	17.97	0.00	17.97	143.76
Carpenters – Acoustical Ceiling Installation	15.17	0.00	15.17	121.36
Carpenter – Rough	16.55	0.00	16.55	132.40
Carpenter – All Other Work	14.98	0.00	14.98	119.84
Caulker / Sealers	11.29	0.00	11.29	90.32
Cement and Concrete Finishers	14.90	0.00	14.90	119.20
Commercial Truck Driver	14.75	0.00	14.75	118.00
Communication/Security Technician	16.50	2.12	18.62	148.96
Crane and Heavy Equipment Operator	24.19	3.43	27.62	220.96
Door & Hardware Specialist	12.00	1.35	13.35	106.80
Drywall and Ceiling Tile Installers	12.64	0.00	12.64	101.12
Drywall Finishers & Tapers	14.00	0.00	14.00	112.00
Electrician	23.36	3.40	26.75	214.00
Elevator Installers and Repairs	31.35	15.10	46.45	371.60
Fence Erectors – Include with Skilled Labor	10.00	0.00	10.00	80.00
Floor Layers – Carpet and Resilient	12.87	0.00	12.87	102.96
Floor layers- Specialty	13.00	0.00	13.00	104.00
Floor Layers - Wood	11.50	0.00	11.50	92.00
Glaziers	15.86	1.00	16.86	134.88
Hazardous Materials Removal Workers	10.00	0.00	10.00	80.00
Heating, Air Conditioning and Refrigeration Service Technician	31.14	12.43	43.57	348.56
Insulation Workers – Mechanical	31.26	11.96	43.22	345.76
Irrigator – Landscape, Certified	15.28	0.00	15.28	122.24
Laborer	11.88	0.01	11.89	95.12
Locksmith	12.00	1.35	13.35	106.80
Mechanic	17.00	0.00	17.00	136.00
Painters - Building	11.77	0.00	11.77	94.16
Paper Hanger	14.00	0.00	14.00	112.00
Pipelayers	15.00	0.00	15.00	120.00
Pipe Fitters and Steamfitters	23.53	9.02	32.55	260.40
Plaster, Stucco, Lather and EIFS Applicator	14.21	0.01	14.22	113.76
Plumber/ Medical Gas Installer	25.72	7.23	32.95	263.60
Reinforcing Iron and Rebar Workers	19.62	1.60	21.22	169.76
Roofers	16.00	0.00	16.00	128.00
Sheet Metal Workers	27.16	0.00	27.16	217.28
Structural Iron and Steel Workers / Metal Building Erector	25.57	13.24	38.81	310.48
Tile Setters	13.86	0.00	13.86	110.88



2016 PREVAILING WAGE RATES HEAVY / HIGHWAY

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Asphalt Distributor Operator	14.64	0.00	14.64	117.12
Asphalt Paving Machine Operator / Spreader Box Operator	14.20	0.00	14.20	113.60
Asphalt Raker	12.99	0.00	12.99	103.92
Backhoe Operator	15.95	0.00	15.95	127.60
Concrete Finishers (Paving and Structures)	13.88	0.00	13.88	111.04
Crane Operator, Lattice Boom	17.50	0.00	17.50	140.00
Crane Operator, Hydraulic	17.50	0.00	17.50	140.00
Electrician	23.09	0.00	23.09	184.72
Excavator Operator	16.10	0.00	16.10	128.80
Form Builder/Setter	15.02	0.00	15.02	120.16
Form Setter (Paving and Curb)	12.86	0.00	12.86	102.88
Front End Loader	14.82	0.00	14.82	118.56
Laborer	11.89	0.00	11.89	95.12
Laborer (Skilled)(Utility)	13.65	0.00	13.65	109.20
Mechanic	17.50	0.00	17.50	140.00
Motor Grader Operator (Fine)	17.54	0.00	17.54	140.32
Pipe Layer	12.94	0.00	12.94	103.52
Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	17.00	0.00	17.00	136.00
Rock Mason	12.00	0.00	12.00	96.00
Roller Operator	13.70	0.00	13.70	109.60
Servicer	14.33	0.00	14.33	114.64
Truck Driver, Single Axle	13.19	0.00	13.19	105.52
Truck Driver, Tandem Axle	15.32	0.02	15.34	122.72
Utility Operator Grade 1	12.00	0.00	12.00	96.00
Utility Operator Grade 2	13.95	0.00	13.95	111.60
Welder, Certified/ Structural Steel Welder	13.83	0.00	13.83	110.64

APPROVED 10/17/2016

2016 BUILDING DEFINITIONS

	Automatic Fire Sprinkler Fitter, Certified	Installation, testing, inspecting and certifying of automatic fire suppression systems in any and all types of structures. Sprinkler Fitters specialize in piping associated with fire sprinkler systems. These types of systems are required to be installed and maintained in accordance with strict guidelines, usually National Fire Protection Association (NFPA) Standards, in order to maintain compliance with building and fire codes. Sprinkler Fitters work with a variety of pipe and materials including plastic, copper, steel, cast iron, and ductile iron. The fire suppression piping may contain water, air, antifreeze, fire retardant foam, gas or chemicals for hood systems. Sprinkler systems installed by Sprinkler Fitters can include but not limited to underground supply, standpipes, fire pumps as well as overhead piping systems.
	Brickmasons and Blockmasons	Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct or repair walls, partitions, arches, sewers, and other structures. Exclude "Stonemasons". Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Grounds-keeping Workers".
	Carpenters – Acoustical Ceiling Installation	Construct, erect, install, or repair the structure for acoustical ceiling tile.
	Carpenter – Rough	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames. May also install cabinets, and siding. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways.
	Carpenter – All Other Work	Construct, erect, install or repair cabinets and other fixtures or structures requiring a high level of workmanship. Includes Cabinetmakers and Bench Carpenters – Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut or shape lumber or to fabricate parts for wood products. Perform related duties such as trim work.
	Caulker / Sealers	Applies water proofing agents or caulk to a variety of structures and materials
	Door & Hardware Specialist	Installs doors, hardware and accessories.
	Drywall and Ceiling Tile Installers	Apply plasterboard or other wallboard to ceilings or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of sound-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes metal stud framing. Exclude "Carpet Installers", "Carpenters – Acoustical Ceiling Installation", and "Tile and Marble Setters".
	Drywall Finishers & Tapers	Seal joints between plasterboard or other wallboard to prepare wall surface for painting or papering.

	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems. Includes installation of photovoltaic solar panels.
	Electronic Technician	Set-up, rearrange, or remove switching and dialing equipment used in central offices. Service or repair telephones and other communication equipment on customers' property. May install equipment in new locations or install wiring and telephone jacks in buildings under construction. Install, program, maintain, and repair security and fire alarm wiring and equipment. Ensure that work is in accordance with relevant codes. Exclude "Electricians" who do a broad range of electrical wiring.
	Elevator Installers and Repairers	Assemble, install, repair, or maintain electric or hydraulic freight or passenger elevators, escalators, or dumbwaiters.
	Fence Erectors - Include with skilled labor	Erect and repair metal and wooden fences and fence gates around highways, industrial establishments, residences, or farms, using hand and power tools. Excludes rock & stone fences.
	Floor Layers – Carpet and Resilient	Apply blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative coverings to floors. Lay and install carpet from rolls, tiles or blocks on floors. Install padding and trim flooring materials. Installs variety of soft floor materials including vinyl and PCP. Exclude wood floors and specialty floors.
	Floor Layers - Specialty	Prepares surface, installs and finishes specialty floor material such as that found in a gymnasium.
	Floor Layers - Wood	Install, scrape and sand wooden floors to smooth surfaces using floor scraper and floor sanding machine, and apply coats of finish.
	Fork Lift Operator	Person certified to operate a fork lift. (Industrial Forklift Operator is in Group 2 in the Heavy Schedule).
	Glaziers	Install glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops.
	Hazardous Materials Removal Workers	Identify, remove, pack, transport, or dispose of hazardous materials, including asbestos, lead-based paint, waste oil, fuel, transmission fluid, radioactive materials, contaminated soil, etc. Specialized training and certification in hazardous materials handling or a confined entry permit are generally required. May operate earth-moving equipment or trucks. Includes mold.
	Heating, Air Conditioning and Refrigeration Service Technician	Repair and service heating, central air conditioning, or refrigeration systems, including oil burners, hot-air furnaces, and heating stoves. (Installation of systems are performed by sheet metal worker). Includes HVAC mechanic.
	Insulation Workers - Floor, Ceiling, and Wall - Include with trade	Line and cover structures with insulating materials. May work with batt, roll, or blown insulation materials. May spray material to seal, insulate, or soundproof sections of structure.

	Insulation Workers – Mechanical	Apply insulating materials, adhesive and any other bonding materials to pipes, ductwork, tanks, boilers, expansion tanks, chiller tanks, grease ducts, valves, fittings, roof drains, or other mechanical systems in order to help control temperature.
	Irrigator- Landscape, Certified	Certified to install watering systems in various sizes and grades of lawn in order to maintain sufficient pressure and to insure even dispersal of water.
	Laborer, Common	A general term used on construction work covering many unskilled occupations. Performs unskilled manual duties in all phases of construction. May use tools and other necessary equipment. Does not ordinarily perform work permitting exercise of independent judgment.
	Laborer, Skilled	Performs manual duties in all phases of construction. May use simple tools and other necessary equipment. May assist other workers by performing a variety of duties such as furnishing materials tools and supplies and holding materials or tools during installation. May work on different phases or areas of a project or with different crafts. Is often transferred from job to job. May direct the work of the common laborer. Has the ability to work without close supervision. Degree of independent judgment required varies with the task performed. Includes tenders and hod carriers.
	Landscaping and Grounds-keeping Workers – include with Common Labor	Landscape or maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler repair, and installation of mortarless segmental concrete masonry wall units.
	Lather	Installs light iron and metal furring such as rods, channels, and other bars or systems to which metal lath, rock lath, or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails, and other metals plastering accessories which are covered and/or serve as ground or guard.
	Locksmith	Self explanatory.
	Manlift Operator - Include with trade	Self-explanatory.
	Masons, Cement and Concrete Finishers	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints. Classify installers of mortarless segmental concrete masonry wall units in "Landscaping and Groundskeeping Workers".
	Mason, Rock	Constructs partitions, fences, walks, etc., using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls. cutting or placing of rock in mortar or other similar material.

Mason, Stone	Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using stone, marble, granite, slate and artificial stone. Cutting, grouting, and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair stone retaining wall, cutting or placing of stone in mortar or other similar material.
Mechanic	Maintains and repairs construction tools and equipment.
Medical Gas Installer, Certified	Assemble, install, alter, and repair pipelines or pipe systems that carry medical gases or liquids. Specialized training and certification required.
Metal Building Erector	Assembles prefabricated metal buildings according to blueprint specification, using hand tools, power tools, and hoisting equipment. Erects frame of building, using hoist. Bolts steel frame members together. Attaches wire and insulating materials to framework. Bolts sheet metal panels to framework. Reads blueprint to determine location of items, such as doors, windows, ventilators, and skylights and installs items, using cutting torch, wrenches, and power drill. Trims excess sheet metal, using cutting torch, power saw, and tin snips.
Millwright	Self-explanatory.
Painters - Building	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. May remove old paint to prepare surface prior to painting. May mix colors or oils to obtain desired color or consistency. Exclude "Paperhangers."
Paper Hanger	Measures, cuts, and hangs wallpaper.
Pipelayers	Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints.
Pipe Fitters and Steamfitters	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes pressurized lines and flow lines for gas, air, and oil found in industrial settings. Includes persons, not certified, who install fire sprinklers.
Plaster and Stucco Applicator	Apply interior or exterior plaster, cement, stucco, or similar materials. May also set ornamental plaster. Applies interior and exterior plastering of stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Installs metal corner beads when stuck by using plastic materials.
Plumbers	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems.
Reinforcing Iron and Rebar Workers	Position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Includes post-tensioning. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters.

	Roofers	Cover roofs of structures with shingles, tile, slate, asphalt, aluminum, wood, metal and related materials. May spray roofs, sidings, and walls with material to bind or seal sections of structures. Includes metal and membrane roofs.
	Sheet Metal Workers	Fabricate, assemble, install, and repair sheet metal products and equipment, such as ducts, control boxes, drainpipes, architectural sheet metal, and furnace casings. Work may involve any of the following: setting up and operating fabricating machines to cut, bend, and straighten sheet metal; shaping metal over anvils, blocks, or forms using hammer; operating soldering and welding equipment to join sheet metal parts; inspecting, assembling, and smoothing seams and joints of burred surfaces. Include sheet metal duct installers who install prefabricated sheet metal ducts used for heating, air conditioning, or other purposes.
	Structural Iron and Steel Workers	Raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. Exclude "Reinforcing Iron and Rebar Workers".
	Tile and Marble Setters	Apply hard tile and marble to walls, floors, and ceilings. Includes Terrazzo.
	Truck Drivers, Heavy and Tractor-Trailer (Greater than 26,000 GVW)	Drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license.
	53-3033.00 - Truck Drivers, Light or (Under 26,000 GVW)	Drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "Couriers and Messengers".

- Welder - Receives rate prescribed for craft performing operation to which welding is incidental.

2016 HEAVY / HIGHWAY DEFINITIONS

1	Asphalt Distributor Operator	Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and make adjustments to equipment as needed. Performs other related duties.
2	Asphalt Paving Machine Operator/Spreader Box Operator	Operates paving machine that spreads and levels asphaltic concrete on highway. Controls movement of machine, raises and lowers screed, regulates width of screed. Operates spreader box by adjusting hopper and strike-off blade so that gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease, service and make adjustments to equipment as needed. Performs other related duties.
3	Asphalt Raker	Distributes asphaltic materials evenly over road surface by hand-raking and brushing material to correct thickness; may control screed to regulate width and depth of materials; directs Laborers (skilled and unskilled) when to add or take away material to fill low spots or to reduce high spots.
4	Backhoe Operator	Operates a rubber-tired machine mounted with a backhoe bucket on one end and a loader bucket on the other end. Used for excavating ditches and structures, laying pipe and precast concrete structures, carrying material in the loader bucket, and general excavation and backfill. May also be equipped with hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
5	Concrete Finisher (Paving and Structures)	Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures. Operates bridge deck finishing machine. Forms and finishes edges and joints. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.
6	Crane Operator, Lattice Boom	A worker who operates a lattice boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
7	Crane Operator, Hydraulic	A worker who operates a hydraulic telescoping boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

8	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems, works on overhead distribution systems and underground distribution systems. Includes installation of photovoltaic solar panels.
9	Excavator Operator	Operates a crawler or rubber-tired machine mounted with an excavator bucket. Used for excavating ditches and structures, laying pipe and precast concrete structures, loading trucks and placing rock riprap. May also be equipped with various hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
10	Form Builder/Setter	Works from plans to build, assemble, fit together, align, plumb, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is being placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties. Includes guardrail installation.
11	Form Setter (Paving and Curb)	Fits together, aligns and sets to grade metal and wooden forms for placement for concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter and curb. Performs other related duties.
12	Front End Loader	Operates a rubber-tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
13	Laborer	A general term used on construction work covering many unskilled classifications requiring work of a physical nature. Performs a variety of work ranging from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, under the supervision of qualified personnel. Cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, assists pipelayers, works with dirt crew keeping construction layout stakes out of the way of dirt-moving equipment. May fine grade excavation and ditches, shovels hot asphalt material. May use power tools and other necessary equipment in demolition work under the supervision of qualified personnel. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers. Installs and maintains erosion control. Performs other related duties.

14	Laborer (Skilled) (Utility)	Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. Directs laborers in pouring concrete. Erects trench shoring and bracing. Installs, operates, and maintains watering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. Is more or less a general utility construction worker. May be a second step in learning a skill. Includes Concrete/Granite Pump Operator, Concrete Saw Operator, Fence Erector, Flagger, and Sign Erector. Performs other related duties.
15	Mechanic	Assembles, assist set up, adjusts and maintains and repairs all types of construction equipment and trucks. May perform the duties of a welder in repair of equipment. Performs other related duties.
16	Motor Grader Operator (Fine)	Operates motor grader. Performs many of the same duties of Motor Grader, Rough, but in addition performs finish grade work to bluetops or other close specification control. This work is subject to strict inspection and must conform closely to specifications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
17	Pipe Layer	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
18	Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. Erects and places reinforcing steel and fabricated structural steel members, such as girders, plates, diaphragms, lateral bracing, and unites them permanently to form a completed structural steel unit, including reinforcing members. Fastens steel members together by welding or bolting. May include dismantling and erecting large units of equipment. Gives direction to reinforcing steel worker apprentice or utility laborers. Performs other related duties.
19	Rock Mason	Constructs partitions, fences, walls, using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls, cutting or placing of rock in mortar or other similar material.
20	Roller Operator	Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact and smooth bituminous and flexible base materials and compact earth fills, subgrade, and all other types of materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

21	Servicer	Drives a truck which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service for preventive maintenance records. . May require a Commercial Driver's License if driving truck on public highways. Performs other related duties.
22	Truck Driver, Single Axle	Drives a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
23	Truck Driver, Tandem Axle	Drives a tandem axle powered vehicle. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
24	Utility Operator Grade 1	Clam, ditching machine, side booms (except those in Grade 2), operator on dredges, cleaning machine, coating machine, , blending machine, water-kote machine, equipment welder, track tractor, derrick, dragline, shovel, motor grader rough grade, Crawler tractor, foundation drill operator, crawler and truck mounted, and piledriver.
25	Utility Operator Grade 2	Pipe, gin truck or winch truck with poles when used for hoisting, side boom (cradling rock drill), tow tractor, farm tractor road boring machine, fork lift (industrial type), pot fireman (power agitated), straightening machine, boring machine, bombardier (track or tow rig), , hydrostatic testing operator, scraper, stalking machine, plant mix pavement roller operator, plant mix pavement, pneumatic motor operator. Concrete paving curing, float, texturing machine, subgrade trimmer, slip-form machine, milling machine, self-propelled sweeping machine, trenching machine, directional drill, , trenching, screening plant, and joint sealer. Off Road Hauler, Pavement Marking Machine Operator Reclaimer/Pulverizer Operator, Slurry Seal or MicroSurfacing Machine Operator.
26	Welder, Certified/ Structural Steel Welder	Certified by the American Welding Society to perform structural steel welding. Operates welding equipment. Welds structural steel girders and diaphragms. May weld permanent metal deck forms. Cuts, lays-out, fits and welds metals or alloyed metal parts to fabricate or repair equipment. Welds the joints between lengths of pipe for oil, gas or other types of pipelines. May assist in welding of permanent metal deck forms. Performs other related duties.

EXHIBIT 6

Apprenticeship Order and List of Required Apprenticeship Programs

**ORDER OF THE COMMISSIONERS COURT OF EL PASO
COUNTY REGARDING APPRENTICESHIP PROGRAM
REQUIREMENTS**

Whereas, the County of El Paso supports the adoption of an apprenticeship program for all county building construction projects in the amount of \$50,000 and higher and desires the inclusion of language mandating participation in apprenticeship programs certified by the U.S. Department of Labor (DOL) in all County building construction contracts; and

Whereas, the purpose of the apprenticeship program is to require that only journeymen and apprentices registered in an apprentice program certified by DOL perform work on county building construction projects in order to ensure both quality construction work as well as provide training opportunities; and

Whereas, a DOL certified apprenticeship program requirement for local building construction projects is consistent with the state prevailing wage rate law pursuant to Chapter 2258, Texas Government Code.

NOW THEREFORE BE IT RESOLVED, that the County of El Paso adopts the El Paso County Apprenticeship Program requiring the following of all building contractors and their subcontractors on County Building Construction Projects:

1. must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, except when there is a state statute requiring certification for an occupation which has inconsistent requirements;
2. must hire registered apprentices enrolled in a DOL certified apprenticeship program;
3. may not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;
4. must pay wage rates and benefits package for apprentices as determined by apprenticeship program/DOL;
5. must comply with DOL requirements for the ratio of apprentices to journeymen;
6. must hire apprentices in all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.

BE IT FURTHER RESOLVED that the County Purchasing Agent is hereby directed to include notice of the County apprenticeship requirements in all specifications for bids on building constructions projects in the amount of \$50,000 or higher.

APPROVED on this the 23rd day of June, 2008.

/s/

ANTHONY COBOS
EL PASO COUNTY JUDGE

El Paso County
2008 Required Apprenticeship Programs

1. Acoustical Carpenter
2. Bricklayer and Mason
3. Cabinet Maker
4. Carpenter
5. Cement Mason
6. Drywall Application
7. Electrician
8. Electronic Systems Technician
9. Elevator Constructor & Repairer
10. Floor Layer
11. Glazier
12. HVAC
13. Insulation Worker
14. Locksmith
15. Operating Engineer
16. Painters
17. Pipefitter
18. Plasterer
19. Plumber
20. Protective Signal Installer
21. Roofers
22. Sheet Metal Worker
23. Structural Steel/Ironworker
24. Tile Setter