SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

1. DESCRIPTION OF WORK

The project will consist of a Community Center in Sargent, TX for Matagorda County.

The CONTRACTOR shall furnish all labor, materials, equipment, tools, services and supervision necessary to perform all the work shown on the Drawings and described in the Specifications and shall deliver the work complete in all respects and in full accordance with the Contract Documents. All incidental services and materials which may be reasonably inferred as necessary to accomplish the intended end result shall be provided by the CONTRACTOR whether or not specifically shown on the Drawings or itemized in the Specifications.

2. CONSTRUCTION SEQUENCE

Within ten (10) days after receiving a written "Notice to Proceed" the CONTRACTOR will be expected to pursue continuous progress of the overall Project from beginning of the work to completion. The CONTRACTOR will, in general, be left to schedule his work as he sees fit in so far as the OWNER remains satisfied that an orderly progress is being made on the project to the extent of finishing within the stated contract time.

The CONTRACTOR will, however, be required to coordinate the sequencing of this work with the OWNER and various utility companies, and any other individual or entity which may suffer inconvenience or damage as a result of a lack of cooperation in the construction.

3. TIME OF COMPLETION

Construction time is to start ten (10) days after receipt of a written "Notice to Proceed". All items of work contemplated in these Specifications and the accompanying drawings are to be substantially completed within the time stipulated on the Bid Proposal by the CONTRACTOR.

4. LIQUIDATED DAMAGES FOR DELAYS

The CONTRACTOR agrees that a delay in substantial completion of the project beyond the total number of days anticipated for substantial completion plus such extensions to the allotted time as may be provided for in the General Conditions shall cause a damage to the OWNER and that the OWNER may withhold, permanently, from the CONTRACTOR'S total compensation a sum of five hundred dollars ($500.00) per calendar day as the stipulated damages for such delay.

5. PROJECT MEETINGS

Prior to starting work, the CONTRACTOR shall attend a pre-construction conference to review schedules, to establish procedures for processing applications for payment, and to establish a working understanding between OWNER, ENGINEER and CONTRACTOR. Representatives of all parties shall be in attendance. Other meetings will be scheduled during the construction as need dictates.

6. ADDENDA

All addenda issued prior to the bid date and time, shall be bound with, and made a part of, the Contract Documents.

7. GUARANTEES

The successful bidder under the terms of this contract shall provide the OWNER with a one-year guarantee against defective materials and workmanship for a period of one year from the date of issue of certificate of acceptance. Neither final acceptance nor final payment or any provision in the contract documents will relieve CONTRACTOR of above guarantee. Failure to repair or replace defect upon notice entitles OWNER to repair or replace same and recover reasonable cost thereof from the CONTRACTOR and/or his surety.

8. PERMITS AND RIGHT-OF-WAY

The OWNER will provide right-of-way for the purpose of construction without cost to the CONTRACTOR by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the CONTRACTOR prior to the initiation of construction on easements through private property, or upon areas of public dedication, to familiarize himself with the requirements of the pertinent easement or permit and to abide by all of the stated terms of such easements or permits. The CONTRACTOR shall give notice of intent to begin construction on privately owned property or permitted areas as required by the relevant easement or permit but in no case less than 48 hours before commencing work.

9. MATERIALS AND EQUIPMENT

Incorporate into work only new materials and equipment of domestic manufacture unless otherwise designated. Store these materials and equipment in manner to protect them from damages.

10. REPAIR OF DAMAGE

Driveways, culverts, yards or items of private or public ownership, if damaged during the course of construction of this project, shall be, to the greatest extent practicable, repaired or replaced to the condition of such items before their being damaged.

11. SITE MAINTENANCE AND CLEANUP

Maintain work site during construction neat and free of trash, rubbish or other debris. In cleanup operations, remove from site temporary structures, rubbish and waste materials, and leave site in a neat and presentable condition throughout. Dispose of excavated material beyond that which is needed to bring site to required final elevations.

12. MEASUREMENT AND PAYMENT

Payment for this project shall be on the basis of the unit prices for the various items on the Bid Proposal and all such unit prices shall include the cost of all labor, materials, fabrication equipment, superintendence profit and overhead as may be required to complete the project in accordance with the plans and specifications. The contractor will be required to perform all work as may be reasonably inferred as necessary for completion of the work.

13. COMPENSATION, PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the OWNER. Each insurance carrier shall be licensed to operate in the State of Texas and listed with the Texas State Board of Insurance.

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

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

Persons providing services on the project ("subcontractor" in para. 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

b. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

c. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

d. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

f. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of

any change that materially affects the provision of coverage of any person providing services on the project.

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

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

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.00(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially effects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

i. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all

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

j. The Contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

B. Contractor's General Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts:

Workmen's Compensation:	Comply in amount with all applicable Texas Statues.
Public Liability:	$500,000 for injuries to 1 person. $1,000,000 for each occurrence.
Property Damage:	$1,000,000.
Automobile Property Damage:	$1,000,000.
Automobile Public Liability:	$500,000 for injuries to 1 person. $1,000,000 for each occurrence.

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

C. Proof of Carriage of Insurance: The Contractor shall furnish the OWNER with certificates showing the type, amount, class of operations covered, effective date and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificated will not be canceled or materially altered, except after thirty (30) days written notice has been received by the Locality."

D. For the terms covered under this contract, the Owner and John D. Mercer & Associates, 118 E. Main, Edna, TX 77957, shall be named as additional insured with respect to general liability.

14. RETAINAGE

The OWNER will retain from the CONTRACTOR'S monthly estimate of production and request for payment an amount equal to the following:

- 10% of the invoiced amount for total contract amounts less than $400,000 or
- 5% of the invoiced amount for total contract amounts greater than or equal to $400,000

These amounts shall be retained by the OWNER until final acceptance of the total project, and then paid to the CONTRACTOR.

15. PAYMENT FOR MATERIALS ON SITE

CONTRACTOR shall present to the OWNER with his monthly estimate of production and request for payment a list of all material delivered to the project site, but not installed, with the total invoice cost of that material and the OWNER shall pay to the CONTRACTOR the invoice cost of such material as has been verified by the ENGINEER to be "on site", less retainage. "On site" shall mean on or immediately adjacent to the work area or point of material installation, or a central storage yard or office area which has been set up for the project in the immediate project area. This does not include material in transit to the job site, material stored in yards or areas located in other towns, or materials stored in a manufacturer's warehouse, even though CONTRACTOR may have been invoiced for such material.

16. STATE SALES TAX

The OWNER qualifies as an exempt organization under the Limited Sales Excise Tax Rules and Regulations of the State of Texas. Since the OWNER and the CONTRACTOR shall be exempt from the state sales tax, the state sales tax shall not be included in the Bid. Prior to the execution of the Contract, the CONTRACTOR shall obtain a Limited Sales Tax Permit and shall show evidence of this permit when signing the Contract. The CONTRACTOR shall then issue Resale Certificates in lieu of payment of the sales tax, on material purchased for incorporation into the project. These instructions are in strict compliance with the State Sales Tax Act, Section I, Chapter 20, Title 112A, Taxation General, Revised Civil Statues of Texas, 1925, and the Comptroller's Rulings interpreting said Act. The CONTRACTOR is assumed to be fully aware of the sales tax regulations and agrees to cooperate fully with the OWNER in claiming its lawful exemption from the state sales tax.

17. WAGE RATES

During the phase of construction services, the following activities are performed:

- This project is subject to the Texas Prevailing Wage Rates as described in Texas Government Code, Chapter 2258. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- Workers employed by or on behalf of the OWNER shall be paid (1) not less than the general prevailing wage of per diem wages for work of a similar character in the locality in which the work is performed, and (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- The contractor or subcontractor(s) who violates this section shall pay to the OWNER on whose behalf this contract is made the amount of $60 for each calendar day or part thereof that the employee is paid less than the prevailing wage rate.
- The contractor and its subcontractor(s) shall keep a record 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 record shall be open at all reasonable hours to inspection by the officers and agents of the OWNER.

18. MATERIALS TESTING

The OWNER will provide for the initial testing of materials to be incorporated into the project to such extent as may be desired including the testing of concrete samples taken at the time of concrete placement. The CONTRACTOR shall be responsible for supplying samples of materials as may be required for testing.

19. WATER FOR CONSTRUCTION

Water used for the mixing of concrete, jetting or flooding trenches, or testing, or any other purposes incidental to this project, will be furnished by the CONTRACTOR. If water is obtained from the OWNER'S water supply, the CONTRACTOR shall make the necessary arrangements for securing and transporting such water and shall take such water in a manner and at such times that will not produce a harmful drain or decrease pressure in the OWNER'S water system. There will be no charge to CONTRACTOR for water used in the construction of this Project.

20. LINES AND GRADES

The ENGINEER will set control stakes, both horizontal and vertical, but detailed construction staking shall be the full responsibility of the CONTRACTOR.

21. LOCATION OF AND DAMAGE TO EXISTING UTILITIES

The CONTRACTOR shall be solely responsible for all above ground utilities, structures, and appurtenances in regard to protection and replacement or repair of same. The CONTRACTOR shall also be solely responsible for visible below ground utilities, structures and appurtenances that may be accurately located by removing manhole covers, valve box covers, and other access point coverings, with reasonable effort on the part of two workmen, using hand tools for such removal and inspection. The cost of protecting, replacing, or repairing the utilities, structures, and appurtenances covered by this paragraph shall be borne solely by the CONTRACTOR and shall be included in the prices bid for the various affected items in the Contract.

The CONTRACTOR shall notify all private and public utilities 48 hours prior to performing any work in the vicinity of said utilities. Such 48-hour notice shall not include Saturdays, Sundays and Holidays.

The CONTRACTOR shall not be held responsible for the cost of protecting, repairing, or replacing any underground utility, structure, or appurtenance which is (l) not shown on the plans nor locatable as specified in the preceding paragraph, (2) shown on the plans in such a way that it was reasonable to assume that it would not interfere with the work to be done by the CONTRACTOR and/or replacement by the CONTRACTOR, and (3) could not reasonably be located or anticipated to interfere with the work to be done by the CONTRACTOR prior to the actual performance of the work.

The ENGINEER shall determine all questions or reasonableness in regard to the preceding paragraphs. The preceding paragraphs shall not, in any way, be construed to include subsurface soil conditions including but not limited to rock formations and buried boulders or other natural features occurring above or below the surface of the ground.

Payment for restoration, repair, replacement and protection of utilities by the OWNER to the CONTRACTOR shall be made on the basis of "cost of the work" plus the "CONTRACTORS fee" being as defined in Article II of the General Conditions. The CONTRACTOR and the ENGINEER shall keep accurate records of all such force account work performed and shall agree in writing to same at the end of each day of work performed.

This section of the specifications is intended to relieve the CONTRACTOR of financial responsibility for all unforeseen interferences with the work to be performed under the contract which are caused by man made underground utilities, structures, and appurtenances where they could not reasonably be investigated and discovered prior to date and time of the bid letting for the work to be performed under the Contract.

"Reasonable" shall be as defined in this section and according to the rules of law and equity.