

\*\*\*\*\*

*List of Changes:*

- 02-04-2005: *Added new Paragraph 3.25.1.3 concerning strict liability. Edited Paragraph 3.25.1.1 accordingly. Edited Paragraph 9.6.1.4 to remove the words "retainage of".*
- 08-15-2006: *Revised many references to Section(s) to read Paragraph(s). Added Small Business Enterprise (SBE) requirement to Paragraphs 3.5.3, 3.5.3.1, 3.5.3.2 and 3.5.3.3.*
- 08-17-2006: *Added new Paragraphs 5.2.4, 5.2.5, 9.2.1 and 9.4.2 concerning prompt payment provisions.*
- 10-10-2006: *Added new Paragraphs 9.7.1.8, 9.7.1.9 concerning prompt payment provisions. Changed 9.8.1 to "20 days," and added language to 9.8.2 concerning "7 calendar days" and payment disputes.*
- 03-10-2008: *Revised Table 1 after 11.2.11 (Installation Floater), and expanded Paragraph 11.5.1 on Maintenance Bonds.*
- 09-10-2008: *Revised 5.2.5 [sic] on page 17 to read 5.2.4.*
- 10-24-2008: *Revised many sections to include or amend numbering.*
- 08-01-2009: *Amended 1.1.6., definition of City Engineer. Amended 2.2 to say "Duties" and added 2.2.2 stating that the contract imposes no implied duty on City. Added 3.5.4 concerning Contractor Participation in the Pay or Play Program. Added 3.28 pertaining to Contractor Debt. Amended 4.1.2 to prohibit the City Engineer from delegating signature authority under 4.4. Amended 4.1.11 stating that City owes no duty to Contractor not stated in contract. Amended 4.3.2 to delete second sentence concerning City Engineers decision as a condition precedent to litigation. Amended 4.6 to require both parties to wave claims, attorney fees, and interest. Amended 11.2.6 to require Contractor to notify the City of any Insurance Policy cancelation or modification. Amended 11.2.8 to exempt Workers' Compensation coverage from certain documentation requirements. Amended Table 1 after 11.2.11 to specify automobile coverage requirements. Added 11.3.3 to address content requirements on Certificates of Insurance. Added 13.3.2 to extend joint and several liability to any series, affiliate, subsidiary, or successor to which Contractor assigns or transfers assets. Amended throughout to standardize references to Sections (x.x), Paragraphs (x.x.x), and Subparagraphs (x.x.x.x and below).*
- 01-15-2010: *Amended Sections 4.4 and 4.6 concerning written decisions, findings of fact, and hearings by the City Engineer, precedent to litigation, and interest under Chapter 2251 of the Texas Local Government Code. Removed Section 4.5, "NON-BONDING MEDIATION," and renumbered and renamed Section 4.6 as Section 4.5, "CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST."*
- 05-01-2010: *Amended Paragraph 1.1.5 to change "municipal corporation" to "home rule municipality". Amended Subparagraph 3.9.1.1 to reflect change from Low Sulfur Diesel Fuel (500 ppm) to Ultra Low Sulfur Fuel (15 ppm).*
- 12-07-2010: *Amended Subparagraph 14.1.1.5 to mirror change in Subparagraph 3.9.1.1; Low Sulfur Diesel Fuel was changed to Ultra Low Sulfur Fuel.*
- 12-09-2010: *Amended Section 4.5 (and Table of Contents) by adding "Interim Payment Waiver & Release" language from Document 00850. Amended Section 11.3 to include new insurance requirements.*
- 12-10-2010: *Inserted phrase into definition of Claim (Paragraph 1.1.7) defining what a Claim can constitute.*

- 
- 01-14-2011: Insertion of terms "Business Enterprise" and "Business Enterprise Policy" into definition section (Section 1.1) and insertion of those terms in Section 3.5, as appropriate, and deletion of old Paragraph 3.5.3.
- 01-18-2011: Renaming of Section 4.5; renumbering of Table of Contents due to introduction of "Interim Payment Waiver & Release" as a separate section (Section 4.6).
- 01-31-2011: Edit of Section 4.6, "Interim Payment Waiver & Release," to reflect language suggestions of Litigation Division of Legal Dept.
- 02-09-2011: Edit of language in definitions of "Business Enterprise" and "Business Enterprise Policy"
- 10-12-2011: Amended Section 8.2, related to delays and extensions of time, to strengthen language suggested in 2011 Construction Law CLE.
- 10-19-2011: General reformatting of entire document for consistency; updating of header re: date; insertion of "Mayor's Office of Business Opportunity," as appropriate, to reflect name change.
- 10-27-2011: Added a definition for "Mayor's Office of Business Opportunity"; amended Paragraph 8.2.2 to refer to Subparagraph 4.3.6.2; replaced MWBE with "Business Enterprise," where appropriate; added "persons, or entities" to Section 5.1 to broaden applicable provisions; updated issue date to proposed Issue date of November 1, 2011.
- 10-31-2011: edited definition of "Business Enterprise."
- 07-01-2013: Edited Paragraph 3.5.3 to remove the binding arbitration requirement for contractor and subcontractor claims, per change in Office of Business Opportunity policy.
- 07-25-2013: Removed Paragraph 4.5.1, regarding conditions precedent to suit.
- 11-01-2014: Changed Paragraph 3.5.2 to reflect a move away from arbitration to mediation to resolve subcontractor disputes; removed requirement for City Engineer's decision before a suit may be brought from Paragraph 4.5.2; included language in Paragraph 5.1.3 requiring submission of written contracts with Subcontractors within 30 days of Notice to Proceed issuance; changed Section 11.2 to reflect required insurance coverages updated for new fiscal year; added more explicit language regarding the City's Additional Insured status in Paragraph 11.2.4 ("Insured Parties") and the City's waiver of subrogation requirement in Paragraph 11.2.7 ("Subrogation").
- 01-01-2015: Changed the Automobile Insurance requirement from \$2,000,000 to \$1,000,000.
- 07-01-2015: Changed language in Article 11 to reflect new insurance requirements.
- 07-10-2015: Edited Article 9 and Article 14 to make electronic submission of certified payrolls mandatory.
- 08-14-2015: Edited Article 11 to reflect new standard insurance language for City contracts.
- 07-01-2016: Edited Paragraph 3.5.4 to bring Pay or Play provisions up to date; updated Section 11 to make current required insurance coverages for FY2017.
- 05-19-2017: Reinserted Paragraph 4.5.1, regarding conditions precedent to suit, and retitled Section 4.5, "Condition Precedent to Suit; Waiver of Attorney Fees and Interest."
- 11-27-2017: Inserted new Section 13.13, "Anti-Boycott of Israel", as per Texas House Bill 89, effective September 1, 2017. Inserted new Section 13.14, "Zero Tolerance for Human Trafficking and Related Activities", as per City of Houston Executive Order 1-56, "Zero Tolerance for Human Trafficking in City Service Contracts and Purchasing," effective immediately upon signature in October 2017.
- 05-10-2019: Amended the "Governing Laws" provision to reflect new Legal Department language.
- 12-31-2019: Added new Section 3.29 to add Senate Bill 943-mandated contract provision, and renumbered as required.
- 03-30-2021: Amended Section 11.2 to update the required insurance amounts.

- 
- 08-10-2021: *Amended Section 14.2 to further delineate the need to explicitly submit and substantiate a Claim. Amended Article 13 to introduce new "Compliance with Certain State Law Requirements" section.*
- 03-01-2022: *Amended Paragraph 1.1.4 and Section 3.5 to reflect change in the Office of Business Opportunity's policy allowing for MWBE Prime Contractors to count their work towards meeting the contract's MWBE goal.*
- 03-07-2022: *Added new Paragraph 1.1.15, "Contract Year," and renumbered the remaining definitions, as well as amending Subparagraph 3.5.3.3 to delete the definition of "contract year" in that Paragraph.*
- 08-08-2023: *Deleted Paragraph 1.1.15, "Contract Year," because the new MWBE language contains the definition of "Contract Year"; amended title of Section 3.5 to read "Labor; Minority and Women Business Enterprise Compliance."; updated Section 3.5 to reflect new language regarding MWBE.*
- 09-09-2024: *Completed wide-ranging revision of Document 00700 in collaboration with outside counsel.*
- 10-24-2024: *Reinserted Sections 11.4, 11.5, 11.6, and 11.7 in Article 11, which had been unintentionally deleted in the September 2024 edit.*

\*\*\*\*\*



Document 00700

**GENERAL CONDITIONS**

OCTOBER 28, 2024 EDITION

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. THE CITY
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS AND SUPPLIERS
6. CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. SAFETY PRECAUTIONS
11. INSURANCE AND BONDS
12. WARRANTIES AND CORRECTION OF THE WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

---

ARTICLE 1 – GENERAL PROVISIONS	5
1.1 DEFINITIONS .....	5
1.2 EXECUTION, CORRELATION AND INTENT.....	9
1.3 OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY .....	10
1.4 INTERPRETATION.....	11
ARTICLE 2 – THE CITY	11
2.1 LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES .....	11
2.2 DUTIES OF THE CITY.....	11
2.3 AVAILABILITY OF LAND AND USE OF SITE .....	11
2.4 THE CITY'S RIGHT TO STOP THE WORK .....	12
2.5 THE CITY'S RIGHT TO CARRY OUT WORK.....	12
ARTICLE 3 – CONTRACTOR	12
3.1 RESPONSIBILITIES.....	12
3.2 REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR .....	12
3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.....	13
3.4 SUPERINTENDENT .....	13
3.5 LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.....	13
3.6 PREVAILING WAGE RATES.....	15
3.7 LABOR CONDITIONS .....	15
3.8 DRUG DETECTION AND DETERRENCE .....	16
3.9 MATERIALS & EQUIPMENT .....	16
3.10 PRODUCT OPTIONS AND SUBSTITUTIONS.....	17
3.11 CASH ALLOWANCES .....	18
3.12 TITLE AND RISK OF LOSS.....	18
3.13 TAXES .....	18
3.14 PERMITS, FEES, AND NOTICES .....	19
3.15 CONSTRUCTION SCHEDULES .....	19
3.16 DOCUMENTS AND SAMPLES AT THE SITE.....	19
3.17 MANUFACTURER'S SPECIFICATIONS.....	19
3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES .....	19
3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES.....	21
3.20 CUTTING AND PATCHING .....	21
3.21 CLEANING.....	21
3.22 SANITATION.....	21
3.23 ACCESS TO WORK AND TO INFORMATION .....	21
3.24 TRADE SECRETS.....	21
3.25 INDEMNIFICATION .....	22
3.26 RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT .....	22
3.27 INDEMNIFICATION PROCEDURES .....	23
3.28 CONTRACTOR DEBT .....	23
3.29 PRESERVATION OF CONTRACTING INFORMATION .....	24
ARTICLE 4 – ADMINISTRATION OF THE CONTRACT	24
4.1 CONTRACT ADMINISTRATION .....	24
4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT .....	25
4.3 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST .....	25
ARTICLE 5 – SUBCONTRACTORS AND SUPPLIERS	25
5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK .....	25
5.2 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS .....	26
ARTICLE 6 – CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS	26

---

6.1	THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS ..	26
6.2	COORDINATION .....	26
6.3	MUTUAL RESPONSIBILITY .....	27
6.4	THE CITY'S RIGHT TO CLEAN UP .....	27
ARTICLE 7 – CHANGES IN THE WORK .....		27
7.1	CHANGES .....	27
7.2	WORK CHANGE DIRECTIVES .....	28
7.3	ADJUSTMENTS IN CONTRACT PRICE .....	29
7.4	MINOR CHANGES IN THE WORK .....	30
7.5	CONCEALED OR UNKNOWN CONDITIONS .....	30
7.6	CONTRACTOR REQUESTED CHANGES .....	30
7.7	REVIEW AND DETERMINATION BY CITY ENGINEER .....	31
ARTICLE 8 – TIME .....		31
8.1	PROGRESS AND COMPLETION .....	31
8.2	DELAYS AND EXTENSIONS OF TIME .....	32
ARTICLE 9 – PAYMENTS AND COMPLETION .....		33
9.1	UNIT PRICE WORK .....	33
9.2	ESTIMATES FOR PAYMENT, UNIT PRICE WORK .....	33
9.3	STIPULATED PRICE WORK .....	33
9.4	APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK .....	33
9.5	CERTIFICATES FOR PAYMENT .....	34
9.6	COMPUTATIONS OF CERTIFICATES FOR PAYMENT .....	34
9.7	DECISIONS TO WITHHOLD CERTIFICATION .....	34
9.8	PROGRESS PAYMENTS .....	35
9.9	DATE OF SUBSTANTIAL COMPLETION .....	35
9.10	PARTIAL OCCUPANCY OR USE .....	37
9.11	FINAL COMPLETION AND FINAL PAYMENT .....	37
9.12	LIQUIDATED DAMAGES .....	38
ARTICLE 10 – SAFETY PRECAUTIONS .....		39
10.1	SAFETY PROGRAMS .....	39
10.2	POLLUTANTS AND POLLUTANT FACILITIES .....	39
10.3	SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY .....	39
10.4	EMERGENCIES .....	40
ARTICLE 11 – INSURANCE AND BONDS .....		40
11.1	GENERAL INSURANCE REQUIREMENTS .....	40
11.2	INSURANCE TO BE PROVIDED BY CONTRACTOR .....	40
11.3	PROOF OF INSURANCE .....	45
11.4	PERFORMANCE AND PAYMENT BONDS .....	46
11.5	MAINTENANCE BONDS .....	46
11.6	SURETY .....	46
11.7	DELIVERY OF BONDS .....	47
ARTICLE 12 -- WARRANTIES AND CORRECTION OF THE WORK .....		47
12.1	WARRANTIES .....	47
12.2	ACCEPTANCE OF NONCONFORMING WORK .....	50
ARTICLE 13 – MISCELLANEOUS PROVISIONS .....		50
13.1	GOVERNING LAW AND VENUE .....	50
13.2	SUCCESSORS .....	50
13.3	BUSINESS STRUCTURE AND ASSIGNMENTS .....	50
13.4	WRITTEN NOTICE .....	50

---

13.5	RIGHTS AND REMEDIES .....	50
13.6	TESTS AND INSPECTIONS.....	50
13.7	INTEREST .....	51
13.8	PARTIES IN INTEREST .....	51
13.9	ENTIRE CONTRACT .....	51
13.10	WRITTEN AMENDMENT.....	51
13.11	COMPLIANCE WITH LAWS .....	51
13.12	SEVERABILITY.....	51
13.13	COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS .....	51
13.14	ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES.....	52
ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT .....		52
14.1	TERMINATION BY THE CITY FOR CAUSE .....	52
14.2	TERMINATION BY THE CITY FOR CONVENIENCE .....	53
14.3	SUSPENSION BY THE CITY FOR CONVENIENCE .....	54
14.4	TERMINATION BY CONTRACTOR .....	54



---

**ARTICLE 1**  
**GENERAL PROVISIONS**

1.1 **DEFINITIONS.**

- 1.1.1 **Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.
- 1.1.2 **Applicable Law:** All laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, codes, rules, regulations, permits, and interpretations of any Governmental Authority having jurisdiction over the Parties, the Project, the Work, the Contract, and each other document delivered hereunder or in connection herewith.
- 1.1.3 **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
- 1.1.4 **Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").
- 1.1.5 **Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article V.
- 1.1.6 **Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.
- 1.1.7 **Change Order:** Written instrument prepared by the City and signed by Director or his designee and Contractor, specifying the following:  
1.1.7.1 a change in the Work;  
1.1.7.2 a change in Contract Price, if any; and  
1.1.7.3 a change in Contract Time, if any.  
The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.
- 1.1.8 **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.
- 1.1.9 **City Engineer:** The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.
- 1.1.10 **City Indemnified Parties:** The City and its officials, officers, directors, representatives, agents, employees, consultants and separate contractors.
- 1.1.11 **Conditions of the Contract:** General Conditions and Supplementary Conditions.

- 
- 1.1.12 **Construction Manager:** Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by Director in writing.
- 1.1.13 **Contract:** The Agreement, documents enumerated in and incorporated into the Agreement, Modifications, and amendments.
- 1.1.14 **Contract Price:** The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.
- 1.1.15 **Contract Time:** The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.
- 1.1.16 **Contractor:** Person or firm identified as such in the Agreement including its successors and its authorized representatives.
- 1.1.17 **Date of Commencement of the Work:** Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.
- 1.1.18 **Date of Substantial Completion:** Date that construction, or portion thereof designated by Director, is certified by Director to be substantially complete.
- 1.1.19 **Defect Correction Period:** The period during which the Contractor shall be obligated to replace or correct deficiencies in Products and/or the Work, which period shall be one year following the Date of Substantial Completion and acceptance of the Project, or discrete phase thereof, subject to an Extended Defect Correction Period as provided in Paragraph 12.1.7, unless the applicable manufacturer or Subcontractor, if any, provides a longer correction period, in which event the longer correction period shall apply.
- 1.1.20 **Design Consultant:** Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.
- 1.1.21 **Director:** The Director of the City Department for which this Work is being performed, or any person designated in writing by such a Director to perform one or more of the Director's duties under this Contract.
- 1.1.22 **Documents:** notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.
- 1.1.23 **Drawings:** Graphic and pictorial portions of the Contract that define the character and scope of the Work.
- 1.1.24 **Extra Unit Price:** Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.
- 1.1.25 **Force Majeure:** catastrophic storms or floods, tornadoes, hurricanes, earthquakes, unusually severe weather, and other acts of God, wars, civil disturbances, acts of government in its sovereign capacity that were not requested, promoted, or caused by the

---

affected Party, terrorist attacks, revolts, riots, insurrections, hostilities, strikes (excluding strikes of a Party's employees), sabotage, commercial embargoes, epidemics or pandemics, quarantine restrictions, fires, explosions, changes in Applicable Law, discovery of Pollutants or Pollutant Facilities at the site; provided that the act or event:

- (i) delays or renders impossible the affected Party's performance of its obligations under this Contract;
- (ii) is beyond the reasonable control of the affected Party, not due to its fault or negligence, and was not reasonably foreseeable; and
- (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence.

For avoidance of doubt, Force Majeure will not include any of the following:

- (a) economic hardship;
- (b) changes in market conditions;
- (c) late delivery or failure of equipment, unless the delay or failure is caused by Force Majeure;
- (d) labor availability, strikes of a Party's employees, or other similar labor actions; or
- (e) nonperformance or delay by Contractor or its Subcontractors, unless the nonperformance or delay is otherwise caused by Force Majeure.

1.1.26 **Furnish:** To supply, pay for, deliver to the site, and unload.

1.1.27 **General Requirements:** The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.

1.1.28 **Good Faith Efforts:** Steps taken to achieve an MBE, WBE, SBE, or PDBE goal or other requirements which, by their scope, intensity, and usefulness, demonstrate the bidder's responsiveness to fulfill the business opportunity objective, as well as the Contractor's responsibility to put forth measures to meet or exceed the MBE, WBE, SBE, or PDBE goal (Contract Goal). These steps apply from before a contract's award, through its duration, and after its conclusion, in the event the Contractor has been unsuccessful in meeting the Contract Goal. These efforts are required whether a Goal Oriented Contract or a Regulated Contract, as defined in the Office of Business Opportunity's Policy & Procedures Manual, available at <http://www.houstontx.gov/obo>.

1.1.29 **Good Industry Practice:** The generally accepted practices, methods, skill, care, techniques, and standards employed by experienced and skilled contractors with respect to the construction of work or facilities, or portions of work or facilities, like the Project described in the Contract, and good and workmanlike performance.

1.1.30 **Governmental Authority:** Any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. Notwithstanding the foregoing, Governmental Authority shall not include the Director or his designees, or the City Engineer.

1.1.31 **Inspector:** City's employee or agent authorized to assist with inspection of the Work.

1.1.32 **Install:** Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.

1.1.33 **Legal Holiday:** Day established by the City Council as a holiday.

1.1.34 **Major Unit Price Work:** An individual Unit Price item,  
1.1.34.1 whose value is greater than five percent of Original Contract Price,

- 
- 1.1.34.2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or
- 1.1.34.3 whose value is \$100,000, whichever is least.
- 1.1.35 **Minor Change in the Work:** A written change in the Work, ordered by Director, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.
- 1.1.36 **Modification:** Change Order, Work Change Directive, or Minor Change in the Work.
- 1.1.37 **Notice of Noncompliance:** A written notice by the City to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.
- 1.1.38 **Notice to Proceed:** A written notice by the City to Contractor establishing Date of Commencement of the Work.
- 1.1.39 **Office of Business Opportunity:** any reference to, or use of, the "Office of Affirmative Action" shall mean the Office of Business Opportunity, or any such future name to which it is changed.
- 1.1.40 **Original Contract Price:** The monetary amount originally stated in the Agreement.
- 1.1.41 **Parties:** Contractor and the City. When in singular form, refers to Contractor or the City.
- 1.1.42 **Pollutant:** Any materials subject to the Texas Solid Waste Disposal Act.
- 1.1.43 **Pollutant Facility:** Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).
- 1.1.44 **Product:** Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.
- 1.1.45 **Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.
- 1.1.46 **Project:** Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.
- 1.1.47 **Project Manager:** Director's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.
- 1.1.48 **Provide:** Furnish and Install, complete, ready for intended use.
- 1.1.49 **Samples:** Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.
- 1.1.50 **Shop Drawings:** Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.
- 1.1.51 **Specifications:** Documents consisting of written General Requirements and any other requirements for Products, standards, and workmanship for the Work, and performance of related services, including without limitation Divisions 01 through 50, and other specifications required by Director. All specifications are amended to include, under the

---

Measurement and Payment Section, the following sentence: "Work described as Incidental Work shall not be paid as a separate unit price item."

- 1.1.52 **Stipulated Price:** Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.
  - 1.1.53 **Subcontractor:** Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.
  - 1.1.54 **Substantial Completion:** The date when the Contractor meets the conditions listed in Section 9.9.
  - 1.1.55 **Superintendent:** Employee of Contractor having authority and responsibility to act for and represent Contractor.
  - 1.1.56 **Supplementary Conditions:** Part of Conditions of the Contract that amends or supplements General Conditions.
  - 1.1.57 **Supplier:** Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.
  - 1.1.58 **Surety:** Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.
  - 1.1.59 **Underground Facilities:** Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.
  - 1.1.60 **Unit Price:** An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantities incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.
  - 1.1.61 **Unit Price Quantities:** Quantities indicated in the Contract that are approximations made by the City for contracting purposes.
  - 1.1.62 **Work:** Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.
  - 1.1.63 **Work Change Directive:** A written change in the Work, ordered by Director, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.
- 1.2 **EXECUTION, CORRELATION, AND INTENT.**
- 1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.
  - 1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.

- 
- 1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.
  - 1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a Governmental Authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.
  - 1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, Design Consultant or Director from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or authority to undertake any actions contrary to provisions of the Contract.
  - 1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.
  - 1.2.7 Unless otherwise defined in the Contract, words which have well known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.
- 1.3 **OWNERSHIP AND USE OF DOCUMENTS; CONFIDENTIALITY.**
- 1.3.1 City-Provided Documents. All Documents provided to Contractor or any Subcontractor or Supplier by the City are and shall at all times remain the property of City or the City's consultants or other contractors. Contractor shall not make use of any Documents for any other project or for any purpose other than as necessary for completion of the Work or in connection with the Project. The City grants to the Contractor a limited, non-exclusive license to use the Documents, but only with respect to the Work and the Project. Contractor shall within 14 days following Final Completion of the Work or termination of this Contract delete, and cause all of its Subcontractors and Suppliers to delete, all Documents in electronic form, and return all Documents in paper form or any other medium of expression possessed by Contractor or any of its Subcontractors and Suppliers to the Director. Contractor shall, if requested by the City, certify to the City in writing that all of the Documents in any medium of expression provided to or through the Contractor have been deleted or returned to the Director. Contractor may, subject to its confidentiality obligations in this Contract, retain 1 record set of the Documents.
  - 1.3.2 Contractor shall include in all its contracts with Subcontractor and Suppliers all terms and conditions as necessary to bind Subcontractors and Suppliers to the terms of this Section 1.3.
  - 1.3.3 Ownership and Use of Work Product. Contractor acknowledges that during the course of, or as a result of, the performance of the Work, Contractor or its Subcontractors and Suppliers may create or have created for the Project certain Drawings, Specifications, Shop Drawings or similar documents, and the designs reflected in them ("Work Product"). Contractor grants, and shall cause its Subcontractors and Suppliers to grant, to the City an irrevocable, perpetual non-exclusive and royalty-free license to use, modify, and copy the Work Product, and any designs or Architectural Works reflected in the Work Product, for any purpose relating to the Project, its use or the Work.
  - 1.3.4 The ownership, vesting, assignment and licenses in this Section 1.3 are in addition to any other transfer of intellectual property rights to the City in the Contract or at law.
  - 1.3.5 Confidentiality: Contractor and its Subcontractors and Suppliers shall implement all such measures as reasonably necessary to prevent disclosure of any Documents and Work

---

Product, and the designs and Architectural Works reflected in them, to any person or entity not working for or through Contractor on the Work or the Project. The City and Contractor agree that in the event of any pending or actual violation of this confidentiality provision, that monetary damages would be inadequate and that the City shall be entitled to injunctive relief prohibiting or limiting disclosure of such confidential information without posting bond.

- 1.3.6 The terms of this Section 1.3 shall survive completion of the Work or termination of this Contract for any reason including, without limitation, Contractor's termination for cause.

1.4 ***INTERPRETATION.***

- 1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, the words "shall be" are included by inference where a colon (:) is used within sentences or phrases.
- 1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an," but an absent modifier or article is not intended to affect interpretation of a statement.

**ARTICLE 2**  
**THE CITY**

- 2.1 ***LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES.*** No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract.

2.2 ***DUTIES OF THE CITY.***

- 2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.
- 2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.
- 2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.
- 2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.
- 2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.

2.3 ***AVAILABILITY OF LAND AND USE OF SITE.***

- 2.3.1 The City will furnish, as indicated in the Contract, rights of way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.
- 2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.
- 2.3.3 In addition to land provided by the City under Paragraph 2.3.1, Contractor shall provide all land and access to land that may be required for use by Contractor for temporary

---

construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.

- 2.4 **THE CITY'S RIGHT TO STOP THE WORK.** If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Section 12.1, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a change in the Contract Price or Contract Time for Contractor for delay or disruption, or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, Director will give written notice to Contractor to resume performance of the Work.
- 2.5 **THE CITY'S RIGHT TO CARRY OUT WORK.**
- 2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.
- 2.5.1.1 When the City corrects deficiencies, Director will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.
- 2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.

### **ARTICLE 3**

### **CONTRACTOR**

- 3.1 **RESPONSIBILITIES.**
- 3.1.1 Contractor shall maintain an office with agent in the greater City of Houston area during the Contractor's performance under the Contract. Contractor shall file its street address with Director.
- 3.1.2 Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, Director may terminate the Contract under Section 14.1.
- 3.2 **REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR.**
- 3.2.1 Contractor shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Section 2.2 and shall immediately report, in writing, any errors, inconsistencies, or omissions to Director. If work is affected, Contractor shall obtain a written interpretation or clarification from Director before proceeding with the affected work. However, Contractor will not be liable to the City for failure to report an error, inconsistency, or omission in the Contract unless Contractor had actual knowledge or should have had knowledge of the error, inconsistency, or omission.
- 3.2.2 Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Contractor with the Contract, before commencing activities. Contractor shall immediately report, in writing, to Director



---

for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

- 3.2.3 Contractor shall make a reasonable attempt to understand the Contract before requesting interpretation from Director.

3.3 ***SUPERVISION AND CONSTRUCTION PROCEDURES.***

3.3.1 Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.

3.3.2 Regardless of observations or inspections by the City or City's consultants, Contractor shall perform and complete the Work in accordance with the Contract and submittals approved pursuant to Section 3.18. The City is not liable or responsible to Contractor or Surety for work performed by Contractor that is not in accordance with the Contract regardless of whether discovered during construction or after acceptance of the Work.

3.4 ***SUPERINTENDENT.***

3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor. The City may, by written notice, require Contractor to remove from the Work the Contractor's Superintendent to whom Director makes reasonable objection and replace the Contractor's Superintendent immediately.

3.4.2 Contractor shall notify the City in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if Director makes a reasonable objection in writing.

3.5 ***LABOR; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.***

3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom Director makes reasonable objection.

3.5.2 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs set out in this Contract and in the Supplementary Conditions, and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

3.5.3 For purposes of this Paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Contract and each anniversary thereof. If the term of this Contract exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year, Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE

---

participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy; and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with this Section of this Contract and Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

- 3.5.4 The OBO Director, in consultation with the Director may review, at any time during the Term of this Contract, the Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Contract, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:

3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:

3.5.4.1.1 Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;

3.5.4.1.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or

3.5.4.1.3 Take any other appropriate remedy.

The determination of the OBO Director is final.

3.5.4.2 Make a recommendation to the Director and the Chief Procurement Officer, to:

3.5.4.2.1 Withhold payment or reimbursement under this Contract;

3.5.4.2.2 Make a finding that Contractor is in default or has breached this Contract;

3.5.4.2.3 Determine not to renew this Contract;

3.5.4.2.4 Terminate for cause this Contract; or

3.5.4.2.5 Take any other appropriate remedy.

- 3.5.5 Contractor shall maintain records showing:

3.5.5.1 Subcontracts and supply agreements with Minority Business Enterprises;

3.5.5.2 Subcontracts and supply agreements with Women Business Enterprises;

3.5.5.3 Subcontracts and supply agreements with Small Business Enterprises (if any);

3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and

3.5.5.5 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

- 3.5.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing

in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.

After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

- 3.5.7 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE DIRECTOR SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE.

3.6 ***PREVAILING WAGE RATES.***

- 3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

- 3.6.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified in Division 00:

- 3.6.2.1 Federal Wage Rate General Decisions
  - 3.6.2.1.1 Highway Rates
  - 3.6.2.1.2 Building Rates
  - 3.6.2.1.3 Heavy Construction Rates
  - 3.6.2.1.4 Residential Rates
- 3.6.2.2 City Prevailing Wage Rates
  - 3.6.2.2.1 Building Construction Rates
  - 3.6.2.2.2 Engineering Construction Rates
  - 3.6.2.2.3 Asbestos Worker Rates

- 3.6.3 Each week Contractor shall submit to the City's Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Contract, for any day included in the Contract.

3.7 ***LABOR CONDITIONS.***

- 3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor shall utilize all possible means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Contractor.

- 3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify

---

the City in writing. No changes in Contract Price or Contract Time will be permitted for costs or delays or disruptions as a result of jurisdictional or labor disputes.

**3.8 DRUG DETECTION AND DETERRENCE.**

3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary.

3.8.1.1 The Executive Order applies to the City's contracts for labor or services except the following:

3.8.1.1.1 contracts authorized by Emergency Purchase Orders,

3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,

3.8.1.1.3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,

3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and

3.8.1.1.5 contracts with federal, state, or local governmental entities.

3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:  
3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and

3.8.1.2.2 a copy of Contractor's drug free workplace policy, and

3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).

3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of completion of the Contract. The first six-month period shall begin on Date of Commencement of the Work.

3.8.1.4 Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee workforce during performance of the Work.

3.8.1.5 Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Contractor is responsible for securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.

3.8.1.6 Failure of Contractor to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Section 14.1.

**3.9 MATERIALS & EQUIPMENT.**

3.9.1 Unless otherwise provided in the Contract, Contractor shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery,

tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting up, and completing the Work.

3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by the City, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 Contractor shall provide Products that are:

- 3.9.2.1 new, unless otherwise required or permitted by the Contract; and
- 3.9.2.2 of specified quality.

If required by the City, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right of way:

- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.

Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.3 Contractor shall obtain Director's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1. Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without Director's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

### 3.10 *PRODUCT OPTIONS AND SUBSTITUTIONS.*

3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.

3.10.3 Director will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.

3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that Contractor:

- 
- 3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;
    - 3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;
    - 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
    - 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;
    - 3.10.5.5 waives claim for additional costs or time extensions that may subsequently become apparent; and
    - 3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
  - 3.10.6 Director will not consider and will not approve substitutions when:
    - 3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
    - 3.10.6.2 acceptance will require revision to the Contract.
  - 3.10.7 Director may reject requests for substitution, and such decision will be in his/her sole discretion.
  - 3.11 **CASH ALLOWANCES.**
    - 3.11.1 Contract Price includes Cash Allowances as identified in the Contract.
    - 3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, Director must approve a Change Order for the additional costs.
  - 3.12 **WARRANTY OF TITLE AND RISK OF LOSS.**
    - 3.12.1 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. Transfer of title to Work will be without prejudice to City's right to reject Defective Work, or any other right in the Contract. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from the City, Contractor shall immediately take legal action necessary to remove Encumbrances.
    - 3.12.2 Notwithstanding passage of title as provided in Section 3.12, Contractor will bear the risk of loss and damage to the Work until the Date of Substantial Completion of the Work.
  - 3.13 **TAXES.**
    - 3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.
    - 3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.
    - 3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.
    - 3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

- 
- 3.14 **PERMITS, FEES, AND NOTICES.** Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:
- 3.14.1 necessary for proper execution and completion of the Work; and
  - 3.14.2 legally required at time bids are received.
- 3.15 **CONSTRUCTION SCHEDULES.**
- 3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for Director's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.
  - 3.15.2 Contractor shall give 24-hour written notice to Director before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.
  - 3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by Director, may be considered a material breach of the Contract.
  - 3.15.4 Each month, Contractor shall submit to Director a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.
  - 3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to Director for approval.
- 3.16 **DOCUMENTS AND SAMPLES AT THE SITE.**
- 3.16.1 Contractor shall maintain at the site, and make available to the City, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to Director prior to issuance of a Certificate of Final Completion as required in Paragraph 9.11.4.
  - 3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.
  - 3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.
- 3.17 **MANUFACTURER'S SPECIFICATIONS.**
- 3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to Director for resolution prior to proceeding with the affected work.
  - 3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.
- 3.18 **SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**

- 
- 3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.
- 3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.
- 3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.
- 3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.
- 3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.
- 3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.
- 3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.
- 3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.
- 3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.
- 3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.
- 3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.
- 3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.



3.19 **CULTURAL RESOURCES AND ENDANGERED SPECIES.**

3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify Director and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by Director.

3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify Director.

3.20 **CUTTING AND PATCHING.**

3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.

3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of Director and affected contractor.

3.21 **CLEANING.**

3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by Director, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for Director to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, Director may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.

Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.

3.22 **SANITATION.** Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Contractor.

3.23 **ACCESS TO WORK AND TO INFORMATION.**

3.23.1 Contractor shall provide the City, Design Consultant, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for the access.

3.23.2 If required by Director, Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 **TRADE SECRETS.** Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. Director will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients

---

of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of Director. The City will make its best efforts to protect confidentiality of proprietary information.

**3.25 INDEMNIFICATION.**

**3.25.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

**3.25.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.25.1.1 through 3.25.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

**3.25.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;**

**3.25.1.3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**3.25.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.**

**3.26 RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT.**

**3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**3.26.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE DIRECTOR'S PRIOR WRITTEN CONSENT.**

**3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:**

- 3.26.3.1 **OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR**
  - 3.26.3.2 **IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.**
- IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

**3.27 INDEMNIFICATION PROCEDURES.**

**3.27.1 Notice of Indemnification Claims.** If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:

- 3.27.1.1 a description of the indemnification event in reasonable detail,
- 3.27.1.2 the basis on which indemnification may be due, and
- 3.27.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

**3.27.2 Defense of Indemnification Claims.**

3.27.2.1 **Assumption of Defense.** Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

3.27.2.2 **Continued Participation.** If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:

- 3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
- 3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or
- 3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THE CONTRACT.**

**3.29 PRESERVATION OF CONTRACTING INFORMATION.**

3.29.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and the Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Contract, then for the duration of this Contract (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Contract that is in the custody or possession of Contractor. Upon the expiration or termination of this Contract, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Contract that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.29.2 If Contractor fails to comply with any one or more of the requirements of this Section, PRESERVATION OF CONTRACTING INFORMATION, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Contract. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

**4.1 CONTRACT ADMINISTRATION.**

4.1.1 Director will provide administration of the Contract and Director is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.2 Director may act through Project Manager, Design Consultant, or Inspector. When the term "Director" is used in the Contract, action by the Director is required unless Director delegates his authority in writing. When the term "City Engineer" is used in the Contract, action by the City Engineer is required and such authority may not be delegated. Notwithstanding anything to the contrary in the Contract, wherever the Contract states that the City Engineer will make a decision, the City Engineer's decision is final and binding on both Parties.

The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

4.1.3 The City and Design Consultant may attend project meetings and visit the site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

- 
- 4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.
  - 4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.
  - 4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Section 3.3, Section 3.18, and Article 12. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.
  - 4.1.7 Based on field observations and evaluations, Director will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.
  - 4.1.8 Contractor will assemble and provide Director all written warranties and related documents required by the Contract.
  - 4.1.9 Upon written request by Contractor or Director, City Engineer will resolve matters of interpretation of or performance of the Contract. City Engineer's decisions are final and binding on the Parties.
  - 4.1.10 Director or City Engineer may reject work which does not conform to the Contract.
  - 4.1.11 When Director considers it necessary to implement the intent of the Contract, Director may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.
  - 4.2 *COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT.* Except as otherwise provided in the Contract or when authorized by Director in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.
  - 4.3 *CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST.*
    - 4.3.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction in connection with this Contract.
    - 4.3.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.

## **ARTICLE 5**

### **SUBCONTRACTORS AND SUPPLIERS**

- 5.1 *AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK.*
  - 5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that the Director has made a reasonable and timely objection to.
  - 5.1.2 If the Director has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom the Director has no reasonable objection.

- 
- 5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Article 3 and Article 5 of this Document.
- 5.1.4 Contractor shall notify Director in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.
- 5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by Director a material breach leading to termination of the Contract.
- 5.2 **CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.**
- 5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.
- 5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.
- 5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.
- 5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Contract. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Contract.
- 5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the Director that Contractor has fulfilled the requirements of this Section.

## **ARTICLE 6**

### **CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

- 6.1 **THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.** The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.
- 6.2 **COORDINATION.**
- 6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.
- 6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the

---

Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.

- 6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.
- 6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to Director apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.
- 6.3 **MUTUAL RESPONSIBILITY.**
- 6.3.1 The responsible party bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.
- 6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.
- 6.4 **THE CITY'S RIGHT TO CLEAN UP.** If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by Director.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

- 7.1 **CHANGES.**
- 7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:
- 7.1.1.1 Change Order;
  - 7.1.1.2 Work Change Directive; or
  - 7.1.1.3 Minor Change in the Work.
- 7.1.2 The following types of Change Orders require City Council approval.
- 7.1.2.1 A single Change Order that exceeds five percent of Original Contract Price.
  - 7.1.2.2 A Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price.
  - 7.1.2.3 A Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.

In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Section is intended to permit an increase of the Contract Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute, if applicable.

- 7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.
- 7.1.4 No change in the requirements of this Contract, whether an addition to, deletion from, suspension of, or modification to this Contract, including any Work, will be the basis for an adjustment or any change in the Contract Price, Contract Time, any Work, Payment Schedule, or any other obligations of Contractor or right of City under this Contract unless and until the addition, deletion, suspension, or modification has been authorized by a Modification executed and issued in accordance with and in strict compliance with the requirements of Article 7 or Article 8. Contractor will not perform any change in the Work unless and until the Modification is authorized. No course of conduct, dealings, or oral agreement between the Parties, nor express or implied acceptance of additions, deletions, suspensions, or modifications to this Contract, including any Work, and no claim that City has been unjustly enriched by any addition, deletion, suspension, or modification to this Contract, whether or not there is in fact any unjust enrichment, will be the basis for the Contractor to seek an adjustment in the Contract Price, Contract Time, any Work, Payment Schedule, or any other obligations of Contractor under this Contract.
- 7.1.5 Modifications agreed pursuant to Article 7 or Article 8 will constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in the Modification and any supporting documents and will be deemed to compensate Contractor fully for the change. Accordingly, Contractor expressly waives and releases any and all claims (whether in contract, tort, or otherwise) and any and all right to make a claim or demand or to take any action or proceeding against City for any other consequences arising out of, relating to, or resulting from the change reflected in the Modification, whether the consequences result directly or indirectly from the change reflected in the Modification, including any claims or demands that any Modification or number of Modifications, individually or in the aggregate, have impacted the unchanged Work.
- 7.2 **WORK CHANGE DIRECTIVES.**
  - 7.2.1 To the extent permitted by law, a Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.
  - 7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by Director, or to complete the work in a reasonable period of time, may be determined by Director to be a material breach of Contract.
  - 7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.
  - 7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.
  - 7.2.5 Director, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is



entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

**7.3 ADJUSTMENTS IN CONTRACT PRICE.**

7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:

- 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
- 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
- 7.3.1.4 as provided in Paragraph 7.3.2.

7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by Director.

7.3.2.1 If Director determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as Director may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by Director shall constitute waiver of a claim.

7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:

- 7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
  - 7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
- 7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of Director;
- 7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
- 7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
- 7.3.2.2.6 allowances for overhead and profit as stated below.
  - 7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:

	<u>Overhead</u>	<u>Profit</u>
to Contractor for change in the Work performed by Subcontractors:	10 percent	0 percent
to first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent
to Contractor and Subcontractor for change in the Work performed by their respective firms:	10 percent	5 percent

7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are

---

applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

- 7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraph 7.3.1, Paragraph 7.3.2, Subparagraph 7.3.2.1, and Subparagraphs 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.
- 7.3.4 When Contractor agrees with the determination made by Director concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.
- 7.4 **MINOR CHANGES IN THE WORK.** A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to Director, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.
- 7.5 **CONCEALED OR UNKNOWN CONDITIONS.**
- 7.5.1 Concealed or unknown physical conditions include utility lines, other man made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities.
- 7.5.2 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from (i) those indicated by the Contract; or (ii) conditions which Contractor could have discovered through site inspection, geotechnical testing), or otherwise, then Contractor will give written notice to Director no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Change Order.
- 7.5.3 Director will promptly investigate concealed or unknown conditions. If Director determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, Director will notify Contractor in writing, stating reasons. If Director determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, Contractor may request a change in accordance with Section 7.6.
- 7.6 **CONTRACTOR REQUESTED CHANGES.**
- 7.6.1. At any time prior to rendering a written decision regarding the Contractor's requested changes and any threatened or actual litigation, the Director may refer the Contractor's claim to non-binding mediation. Should the Director's designee or the Contractor decide not to go to non-binding mediation, then such consideration of the Contractor's requested changes shall proceed according to this Section.
- 7.6.2 To the extent the Contractor believes the Work has changed and there is no Modification relating to the change, as a condition precedent to recovery, the Contractor must provide notice of the change to the Director no later than 10 Days after the commencement of the events giving rise to the change. The notice must include: (i) a description of the change; (ii) the estimated cost impact; and (iii) backup documentation necessary to support the

request. To the extent the Director believes there is a change to increase the Contract Price, the Director will issue a Modification in accordance with this Article 7. To the extent the Director does not believe there is a change, or the change has been submitted untimely, the Director has the sole discretion to deny the request or request additional information which must be provided by the Contractor no later than 10 Days from the Director's request.

- 7.6.3 The Contractor may only apply for a Modification if submitted in the required manner and provided that one or more of the events listed below occurred and was not caused, in whole or in part, by the Contractor:
- 7.6.3.1 delay in receiving a permit required for the Work to proceed from a government authority having jurisdiction over the Work, provided that the Contractor applied for the permit in a timely manner;
  - 7.6.3.2 change in Applicable Laws that could not have been reasonably foreseen by Contractor;
  - 7.6.3.3 the actual units of work installed exceed the original estimated quantity of any applicable Unit Price work;
  - 7.6.3.4 a request by the City to accelerate the Project Schedule;
  - 7.6.3.5 a request by the City to extend the Project Schedule;
  - 7.6.3.6 an order by the City to stop the Work;
  - 7.6.3.7 suspension of the Work by the City;
  - 7.6.3.8 termination of the Contract;
  - 7.6.3.9 an event of Force Majeure or City-caused delay to the extent permitted under Section 8.2;
  - 7.6.3.10 as permitted under Section 7.5;
  - 7.6.3.11 a suspension of the Work by the City, as provided in Section 14.3; or
  - 7.6.3.12 as otherwise expressly permitted by the Contract.

- 7.7 **REVIEW AND DETERMINATION BY CITY ENGINEER.** If Contractor does not agree with a decision of the Director under Article 7, Article 8, or otherwise pursuant to authority under the Contract, Contractor may request in writing that the City Engineer review the Director's decision provided that such request is made within 90 days following such Director decision. In such case, the City Engineer shall review the Director's decision and determine whether there has been a change as well as the method and amount of adjustment of the Contract Price and the Contract Time. City Engineer may request additional supporting data from Contractor. Contractor shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer. The City Engineer's decision shall be final and binding on both parties. Pending the City Engineer's determination, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract. Contractor's failure to timely submit a request for review as provided in this Section shall result in Director's decision being final and binding.

## **ARTICLE 8**

### **TIME**

- 8.1 **PROGRESS AND COMPLETION.**

- 8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.
- 8.1.2 Computation of Time: In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

- 
- 8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.
  - 8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.
  - 8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to Director for approval. Contractor's failure to submit updated schedule may, at Director's discretion, constitute a material breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.
  - 8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving Director 24-hour prior written notice and receiving written consent of Director.
- 8.2 ***DELAYS AND EXTENSIONS OF TIME.***
- 8.2.1 Contractor may request extension of Contract Time from the Director for a delay in performance of Work that arises from Force Majeure or City-caused delay to the extent the Contractor requests in writing the extension of time no later than 10 Days after the commencement of the delay. To the extent the Contractor timely requests an extension of the Contract Time under this Section, the Contract Time will be extended but only if the Contractor establishes a critical path delay, and any such extension shall not exceed the delay in the critical path of the Project Schedule.
    - 8.2.1.1 For any reason other than those listed in the change order provisions, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Contractor's work, except for an extension of time as provided in this provision.
    - 8.2.1.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract.
  - 8.2.2 Contractor may only request an extension of Contract Time for delay described in Paragraph 8.2.1 if:
    - 8.2.2.1 the delay is not caused by failure of Contractor or any of its Subcontractors or Suppliers to perform (or cause to be performed) or make progress for a cause not within its control;
    - 8.2.2.2 the cause of the delay was not reasonably anticipated and is beyond control of Contractor;
    - 8.2.2.3 the delay has been mitigated by all reasonably available efforts; and
    - 8.2.2.4 Contractor can fully document and prove the impact of the event on Contractor's critical path of planned Work in the Project Schedule.
  - 8.2.3 The Contractor's sole remedy for claimed delay, Force Majeure, loss of productivity or disruption of any nature (whether by a singular event or cumulative events), regardless of cause, shall be an extension of the Contract Time commensurate with the days of delay to the Project Schedule critical path caused by such delay as determined by the Director in Paragraph 8.2.1.

8.2.4 Adjustments to Contract Time are accomplished by Change Order.

**ARTICLE 9**  
**PAYMENTS AND COMPLETION**

9.1 ***UNIT PRICE WORK.***

9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.

9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.

9.1.3 The Contractor may not make a claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Paragraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed Work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.

9.1.4 Director may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.

9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

9.2 ***ESTIMATES FOR PAYMENT, UNIT PRICE WORK.***

9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to Director, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared, including evidence of electronic submission of certified payrolls.

9.2.2 Before final completion, Director will review and confirm with Contractor the actual final installed Unit Price quantities and the Director will make a final determination of the final installed quantities. If the Contractor disagrees with the Director's determination, the Contractor may request a City Engineer's decision in accordance with Section 7.7. City Engineer's determination of actual final installed Unit Price quantities will be final and binding upon the Parties, and included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities.

9.3 ***STIPULATED PRICE WORK.*** For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to Director a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as Director may require to substantiate its accuracy. This schedule, as approved by Director, is used as a basis for approval of Contractor's Applications for Payment.

9.4 ***APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK.***

9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to Director each month on a form acceptable to Director in accordance with

---

Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.

- 9.4.2 Applications for Payment must be supported by substantiating data as Director may require and must reflect retainages as provided below. Evidence satisfactory to the Director of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.

9.5 ***CERTIFICATES FOR PAYMENT.***

- 9.5.1 Director will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which Director determines is properly due, with copy to Contractor.

- 9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to Director to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.

- 9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

9.6 ***COMPUTATIONS OF CERTIFICATES FOR PAYMENT.***

- 9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:

- 9.6.1.1 that portion of Contract Price allocated to completed work as determined by:
- 9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or
- 9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;
- 9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;
- 9.6.1.3 less retainage of five percent;
- 9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;
- 9.6.1.5 less any previous payments by the City.

9.7 ***DECISIONS TO WITHHOLD CERTIFICATION.***

- 9.7.1 Director may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in Director's opinion, there is reason to believe that:

- 9.7.1.1 nonconforming work has not been remedied;
- 9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;
- 9.7.1.3 there is damage to the City or another contractor;
- 9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;

- 
- 9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
  - 9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
  - 9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.
  - 9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
  - 9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.
- 9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 9.7.3 Director may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.
- 9.8 **PROGRESS PAYMENTS.**
- 9.8.1 The City will make payment, in an amount certified by Director, within 20 days after Director has issued a Certificate for Payment.
- 9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Texas Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the Director each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**
- 9.8.2.1 The City may, upon request and at the discretion of Director, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.
  - 9.8.2.2 Contractor shall prepare and submit to Director a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.
- 9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.
- 9.9 **DATE OF SUBSTANTIAL COMPLETION.**
- 9.9.1 All of the following shall have occurred in order for the Contractor to achieve Substantial Completion, in addition to other prerequisites to Substantial Completion in the Contract:
- 9.9.1.1 the Work, or designated portion of the Work, has been completed in accordance with the requirements of the Contract, except for Work on the Punchlist to be finally completed;
  - 9.9.1.2 Director has verified upon inspection that the Punchlist contains all items needed for completion or correction;
  - 9.9.1.3 the Project is available for full operation and use and is capable of being safely and reliably operated in accordance with the requirements of the Contract and in accordance with Applicable Law;

- 
- 9.9.1.4 Contractor has obtained all City-required certificates of occupancies or certificates of compliances for such Work;
  - 9.9.1.5 Contractor has assigned and provided to City all Warranties in accordance with the Contract; and
  - 9.9.1.6 Contractor has performed all other obligations required under the Contract for Substantial Completion.
- The City Engineer shall determine when the Work, or designated portion of the Work, has achieved Substantial Completion, and their decision shall be final and binding.
- 9.9.2 When Contractor considers the Work, or a portion thereof designated by Director, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract.
    - 9.9.2.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Paragraph 9.9.5.
  - 9.9.3 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.
  - 9.9.4 Prior to Director issuing a Certificate of Substantial Completion, Contractor shall also provide:
    - 9.9.4.1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable;
    - 9.9.4.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and Director so confirms, Director may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion;
    - 9.9.4.3 complete necessary training to City's personnel; and
    - 9.9.4.4 delivery of:
      - 9.9.4.4.1 O&M and warranty manuals; and
      - 9.9.4.4.2 as-built drawings.
  - 9.9.5 When the Work, or designated portion thereof, is determined by Director to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, Director will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:
    - 9.9.5.1 the Date of Substantial Completion;
    - 9.9.5.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and
    - 9.9.5.3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.
  - 9.9.6 Unless otherwise provided by the Contract or in the Certificate of Substantial Completion, all general warranties and manufacturer's warranties required by the Contract shall commence on the later of:



- 
- 9.9.6.1 the Date of Substantial Completion; or  
9.9.6.2 if an item is not completed on the Date of Substantial Completion, the date of completion of the item.
- 9.9.7 After Date of Substantial Completion and upon application by Contractor and approval by Director, the City may make payment, reflecting adjustment in retainage, if any, as follows:  
9.9.7.1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.
- 9.9.8 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.
- 9.10 ***PARTIAL OCCUPANCY OR USE.***
- 9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.
- 9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.
- 9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.
- 9.11 ***FINAL COMPLETION AND FINAL PAYMENT.***
- 9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to Director that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.
- 9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. Director will, within 10 days, issue Certificate of Final Completion stating that to the best of Director's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.
- 9.11.3 Should work be found not in compliance with requirements of the Contract, Director will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the Director will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.
- 9.11.4 Contractor shall submit the following items to Director before Director will issue a Certificate of Final Completion:  
9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by Director, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;

- 
- 9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
  - 9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
  - 9.11.4.4 consent of Surety to final payment;
  - 9.11.4.5 copies of Shop Drawings, Product Data, Samples, and similar submittals; and
  - 9.11.4.6 copies of record documents, maintenance manuals, tests, inspections, and approvals.

Upon Director's issuance of a Certificate of Final Completion, Contractor may request increase in payment to 99 percent of Contract Price, less accrued liquidated damages.

- 9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, Director may, but is not obligated to:
    - 9.11.5.1 deduct liquidated damages accrued from monies held;
    - 9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
    - 9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.
  - 9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and Director so confirms, the City may, upon application by Contractor and certification by Director, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.
  - 9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to Director written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of claims.
  - 9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.
  - 9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at the time of final payment.
- 9.12 **LIQUIDATED DAMAGES.**
- 9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.
  - 9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

---

**ARTICLE 10**  
**SAFETY PRECAUTIONS**

- 10.1 ***SAFETY PROGRAMS.*** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to Director prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.
- 10.2 ***POLLUTANTS AND POLLUTANT FACILITIES.***
- 10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify Director, confirming the notice thereafter in writing.
- 10.2.2 If Director determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.
- 10.2.3 If Director determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.
- 10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.
- 10.3 ***SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY.***
- 10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:
- 10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;
- 10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.
- 10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.
- 10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act, TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).
- 10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).
- 10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

- 
- 10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to Director.
- 10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.
- 10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.
- 10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraph 10.3.1.2 and Subparagraph 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.
- 10.4 **EMERGENCIES.** In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

- 11.1 **GENERAL INSURANCE REQUIREMENTS.**
- 11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Section 3.25 and Section 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.
- 11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.
- 11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.
- 11.2 **INSURANCE TO BE PROVIDED BY CONTRACTOR.**
- 11.2.1 **Risks and Limits of Liability.** Contractor shall maintain the insurance coverages in the listed amounts, as set out in Table 1.
- 11.2.2 **Insurance Coverage.** At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance and other policy documents, as necessary, evidencing adequate coverage meeting the Contract requirements.
- 11.2.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas

and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by the City in City's sole discretion as to conformance with these requirements.

- 11.2.4 *Additional Insured.* The City shall be an Additional Insured under this Contract, and all policies except Worker's Compensation shall extend coverage to the City as an Additional Insured.
- 11.2.5 *Deductibles.* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.
- 11.2.6 *Notice.* CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 11.2.7 *Waiver of Subrogation.* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each insurance policy must provide a Waiver of Subrogation in favor of the City.
- 11.2.8 *Primary Insurance.* Each policy, except Workers' Compensation, must apply as primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.
- 11.2.9 *Liability for Premium.* Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.
- 11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage.* Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.
- 11.2.10.1 Definitions.
- 11.2.10.1.1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement ((DWC081, DWC082, DWC083, or DWC084), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.
- 11.2.10.1.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.
- 11.2.10.1.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers,

- 
- owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 11.2.10.2 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of Contractor providing services on the Work, for duration of the Work.
- 11.2.10.3 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.
- 11.2.10.4 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.
- 11.2.10.5 Contractor shall obtain from each person providing services on the Work, and provide to Director:
- 11.2.10.5.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
- 11.2.10.5.2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.
- 11.2.10.6 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.
- 11.2.10.7 Contractor shall notify Director in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.
- 11.2.10.8 Contractor shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.
- 11.2.10.9 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
- 11.2.10.9.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
- 11.2.10.9.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
- 11.2.10.9.3 provide 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 Work;

- 11.2.10.9.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
- 11.2.10.9.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
- 11.2.10.9.6 notify Director in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
- 11.2.10.9.7 contractually require each person with whom it contracts to perform as required by Subparagraph 11.2.10.1 through Subparagraph 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.
- 11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.
- 11.2.10.11 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from Director.
- 11.2.11 *Subcontractor Insurance Requirements:* Contractor shall provide on behalf of or require, as applicable, all Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability, and Automobile Liability coverage that meets all the requirements of Section 11.2, including the Additional Insured and Waiver of Subrogation requirements. Insurance limits shall be no less than the listed amounts, as set out in Table 1. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1

TABLE 1 REQUIRED COVERAGE	
Coverage	Limit of Liability
Workers' Compensation	<ul style="list-style-type: none"> <li>Texas Statutory Limits for Workers' Compensation</li> </ul>
Employer's Liability	<ul style="list-style-type: none"> <li>Bodily Injury by Accident \$500,000 (each accident)</li> <li>Bodily Injury by Disease \$500,000 (policy limit)</li> <li>Bodily Injury by Disease \$500,000 (each employee)</li> </ul>

Commercial General Liability: Including Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit (each occurrence), subject to general aggregate of \$2,000,000</li> <li>• Products and Completed Operations \$2,000,000 aggregate</li> </ul>
Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 each Occurrence/ aggregate</li> </ul>
Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> <li>• Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work</li> </ul>
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
Excess Coverage	<ul style="list-style-type: none"> <li>• \$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability</li> </ul>
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.2.12 Workers' Compensation and Employer's Liability Insurance, including occupational disease coverage, in accordance with the benefits afforded by the statutory worker's compensation acts applicable to the state, territory, or district of hire, supervision, or place of accident. Sole proprietorships with no employees falling within the jurisdiction of any statutory worker's compensation act must so certify to City in writing. In addition, the following requirement shall be met.

11.2.12.1 This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Worker's compensation insurance is required, and no "alternative" form of insurance is permitted.

11.2.13 Commercial General Liability shall cover liability arising from premises, ongoing operations, and completed operations. In addition, the following exclusions / limitations or their equivalents are prohibited to be included:

- 11.2.13.1 amendment of Insured Contract Definition;
- 11.2.13.2 any endorsement modifying the Employer's Liability exclusion;
- 11.2.13.3 Classification or Business Description;
- 11.2.13.4 Construction Defect Completed Operations;
- 11.2.13.5 Contractual Liability Limitation;
- 11.2.13.6 Damage to Work Performed by Subcontractors On Your Behalf;
- 11.2.13.7 Explosion, Collapse and Underground Property Damage Hazard;
- 11.2.13.8 "Insured vs. Insured" except Named Insured vs. Named Insured;
- 11.2.13.9 Known, Continuous or Progressive Injury or Damage;
- 11.2.13.10 limitation of Coverage to Designated Premises, Project or Operation;
- 11.2.13.11 Noncumulation;
- 11.2.13.12 Prior Injury or Prior Damage or Prior Work;
- 11.2.13.13 Punitive, Exemplary or Multiplied Damages (unless such endorsement has an exception where insurance for such damages is permitted by law);
- 11.2.13.14 Subsidence;
- 11.2.13.15 Work Height; and
- 11.2.13.16 any other exclusion or limitation reasonably unacceptable to City.



- 
- 11.2.14 Business Automobile Liability Insurance covering damages because of bodily injury or property damage caused by an accident and resulting from the ownership, maintenance, or use (i) of any auto, including owned, non-owned (including City vehicles if Contractor drives such vehicle), leased, rented, and hired autos, including coverage for loading and unloading, used in the performance of this Contract, and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws, with a combined single limit of not less than the amount stated in Table 1.
- 11.2.15 Excess/Umbrella Liability Insurance is acceptable to use in conjunction with primary coverage to meet required limits of insurance. This insurance shall follow form of the underlying coverages and/or it shall be excess over and be no less broad than all coverages and conditions described above, including but not limited to the required additional insured status, designated construction project(s) and/or location(s) general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations, and shall be primary to and not seek contribution from any other insurance or self-insurance (primary, umbrella, contingent, or excess) maintained by the City Indemnified Parties.
- 11.2.16 It is further expressly agreed by Contractor that any and all premiums and deductibles, and/or any other charges due with respect to the policies of insurance, shall be assumed by and for the account of Contractor. If Contractor elects to self-insure any insurance required in Table 1, City shall maintain all rights and obligations between themselves as if Contractor maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required in this Table 1. Contractor shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorneys' fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant to this Table 1. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.
- 11.2.17 City must be notified immediately upon knowledge of possible damage claims that might cause a reduction below 75% of any aggregate limit of any policy.
- 11.2.18 Contractor is fully responsible for loss and damage to its property on the Site, including tools and equipment, and shall take the necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its Subcontractor's property shall be the Contractor's and its Subcontractor's sole and complete means for recovery for any such loss. To the extent any loss is not covered by Contractor's insurance or subject to any deductible or co-insurance, the Contractor and its Subcontractors shall not be reimbursed for same. If the Contractor or its Subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its Subcontractors to waive, any claim for damage or loss to said property in favor of the City Indemnified Parties.
- 11.3 **PROOF OF INSURANCE.**
- 11.3.1 Prior to commencing services and at all times during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance accurately reflecting insurance coverage meeting requirements and that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with copies of Contractor's actual insurance policies. Failure of Contractor to provide Certificates of Insurance or copies of insurance policies, if requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

- 
- 11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth under Section 11.2. Failure of Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.
- 11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Article 11.
- 11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall:
- 11.3.4.1 be less than 12 months old;
  - 11.3.4.2 include all pertinent identification information for the Insurer, including the company name, policy number, NAIC number, and authorized signature;
  - 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicate the name and address of the Project Manager;
  - 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
  - 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
  - 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City as required by the Contract.
- 11.4 **PERFORMANCE AND PAYMENT BONDS.**
- 11.4.1 For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.
- 11.4.2 Bonds must be provided to the City within 10 days of Contractor's execution of the Contract. Contractor may not commence the Work prior to the effective date of insurance and Bonds required by this Article 11.
- 11.5 **MAINTENANCE BONDS – One-year Maintenance Bond.** Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during the Defect Correction Period. The Maintenance Bond must be for 100 percent of the Original Contract Price.
- 11.6 **SURETY.**
- 11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.
- 11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized,

accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

- 11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:
- 11.6.3.1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
  - 11.6.3.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.
- 11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.
- 11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.
- 11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.
- 11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.
- 11.7 **DELIVERY OF BONDS.** Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

## **ARTICLE 12**

### **WARRANTIES AND CORRECTION OF THE WORK**

- 12.1 **WARRANTIES.**
- 12.1.1 Contractor represents and warrants that the Work will (referred to individually as "Warranty" or collectively as "Warranties"): (i) be carried out consistent with Good Industry Practices; (ii) conform to the Contract, Applicable Codes and Standards, Applicable Law; and (iii) be performed in a good and workmanlike manner. Contractor further represents and warrants that any Products furnished by Contractor under this Contract are (a) in compliance with all Specifications; (b) new and have not been previously used; (c) approved for substitution, if applicable; (d) free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation. Work that does not conform to any of the Warranties is defective ("Defective") and contains a defect ("Defect"). Contractor's warranty excludes remedy for damage or defect caused after Substantial Completion by, normal wear and tear under normal usage, or claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.
- 12.1.2 All Work will be subject to inspection, by City or its representatives, at all times to determine whether the Work conforms to the requirements of this Contract. If required by the Director,

---

Contractor shall furnish satisfactory evidence as to kind, quality, and title of Products, and that Products conform to requirements of the Contract. Contractor shall furnish City with reasonable access to all locations where Work is in progress, including locations not on Site. If any Work is Defective prior to Substantial Completion, then Contractor will, at its own expense, promptly correct the Defective Work, whether by repair, replacement or otherwise. Contractor bears all correction costs of Defective Work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby. The decision of Director shall be final and binding as to whether the Work is conforming or Defective, and Contractor will comply with the instructions of City while pursuing any Dispute. If Contractor fails to repair or replace any Defective Work within one week, then City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) repair or replace the Defective Work and the reasonable expense for repair or replacement will be paid by Contractor or deducted from any amounts due.

- 12.1.3 *No Obligation to Inspect.* City's right to conduct inspections will not obligate City to do so. Neither the exercise of City of any the right, nor any failure on the part of City to discover or reject Defective Work, will be construed to imply an acceptance of the Defective Work or a waiver of the Defect.
- 12.1.4 *Cost of Uncovering and Disassembling Work.* Prior to Substantial Completion, City may request that Contractor uncover previously covered Work to permit City and its representatives to inspect the Work. If the uncovered Work is found to be Defective, then Contractor will correct the Defective Work and will bear the cost of uncovering and recovering the Defective Work, as well as the cost of repair or replacement of the Defective Work. All costs of access, including the cost of disassembling, dismantling, or making safe finished Work for the purpose of inspection, and reassembling the portions (and any delay associated therewith), will be borne by Contractor if Contractor did not provide City with an opportunity to inspect the Work or if the City has a reasonable belief that the Work is Defective.
- 12.1.5 *Correction of Work after Substantial Completion.* If, during the Defect Correction Period, any Work is found to be Defective, Contractor will, at its sole cost and expense, immediately and on an expedited basis, correct the Defective Work ("Corrective Work"). City will provide Contractor with access to the Project reasonably sufficient to perform its Corrective Work, so long as the access does not materially interfere with construction or operation of any portion of the Project or facilities and subject to any reasonable security or safety requirements of City. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.
- 12.1.6 *City Right to Correct or Complete Defective Work.* If Contractor fails to perform the Corrective Work within a reasonable period of time not to exceed 48 hours from receipt of a Notice of Noncompliance or other written notice, then City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) correct the Defective Work, and Contractor will be liable to City for all reasonable costs, losses, damages, and expenses incurred by City including compensation for any design consultant's additional services and expenses made necessary by such default, neglect, or failure in connection with correcting the Defective Work and arising out of or relating to the Defective Work and will pay City (directly or by offset, at City's sole discretion), an amount equal to the reasonable costs, losses, damages, and expenses; provided, however, if the Defective Work materially affects the construction, operation, or use of the Project or presents an imminent threat to the safety or health of any person and City knows of the Defective Work, City may (in addition to any other remedies that it has under this Contract, under Applicable Law, or in equity) correct the Defective Work without giving prior notice to Contractor, and, in that event, Contractor will be liable to City for all reasonable costs, losses, damages, and expenses incurred by City in connection with correcting the

---

Defective Work and arising out of or relating to the Defective Work and will pay City (directly or by offset, at City's sole discretion), an amount equal to the reasonable costs, losses, damages, and expenses.

- 12.1.7 *Extended Defect Correction Period for Corrective Work.* With respect to any Corrective Work performed, the Defect Correction Period for the Corrective Work will be extended for an additional one year from the date of the completion of the Corrective Work; provided, however, in no event will the Defect Correction Period for the Corrective Work be less than the original Defect Correction Period. The one-year correction period does not establish a duration for the Contractor's general warranty. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations or statute of repose.
- 12.1.8 *No Limitation.* Nothing contained in this Section will be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract. Establishment of the Defect Correction Period relates only to the specific obligation of Contractor to perform Corrective Work, and has no relationship to the time within which the obligation to comply with this Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to perform Corrective Work.
- 12.1.9 *Assignability of Warranties.* The Warranties made in this Contract will be for the benefit of City and its successors and assigns and the respective successors and assigns of any of them, and are fully transferable and assignable.
- 12.1.10 If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct Defective Work, the City may, by Notice of Noncompliance or other written notice, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. If Contractor corrects the defective or nonconforming work within the time established in the notice, Director will give written notice to Contractor to resume performance of the Work.
- 12.1.11 *City Right to Perform Work and Contractor Delay.* To address any delay in the Project Schedule that is caused by Contractor, City may at any time, but is not required to, supplement all or part of Contractor's workforce at Contractor's cost with City's own separate contractors and that work shall become part of the Work, and Contractor will have no right to make any claims against the other contractor or City related to the Work. Notwithstanding anything to the contrary in this Contract, City will at all times maintain the absolute right to issue a deductive change order and self-perform all or any portion of the Work.
- 12.1.12 Notwithstanding the City's right to correct or complete Defective Work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Contract.
- 12.1.13 The City shall have the right to reject Work that does not conform to the Contract. City shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither City's right to act under this Section nor any decision by City either to exercise or not to exercise such right shall give rise to any duty or responsibility of City to Contractor or to any other person or entity, or result in a waiver of any of City's rights or relieve Contractor of its obligations
- 12.1.14 Contractor bears cost of correcting Work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.

- 12.2 **ACCEPTANCE OF NONCONFORMING WORK.** Instead of requiring its removal and correction, if Director prefers to accept work which is not in accordance with requirements of the Contract, Director may do so only by issuance of Change Order. Director will determine Contract Price reduction. The reduction will become effective even if final payment has been made and the Contractor will be required to pay any amounts to City after final payment to the extent that final payment has been made.

### **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

- 13.1 **GOVERNING LAW AND VENUE.** This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas in State or Federal Courts.
- 13.2 **SUCCESSORS.** The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Section 13.2 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.
- 13.3 **BUSINESS STRUCTURE AND ASSIGNMENTS.**
- 13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets, without Director's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.
- 13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.
- 13.4 **WRITTEN NOTICE.**
- 13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or other Director approved method with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address and method stated in the Agreement for each Party ("Notice Address"). The notice is deemed delivered on the earlier of:
- 13.4.1.1 the date the Notice is actually received; or
- 13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle.
- 13.5 **RIGHTS AND REMEDIES.**
- 13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- 13.5.2 No act or failure to act by the City is a waiver of rights or duties afforded under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and signed by Director.
- 13.6 **TESTS AND INSPECTIONS.**

- 
- 13.6.1 Contractor shall give Director, Construction Manager, Commissioning Agent, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:
- 13.6.2.1 inspections or tests covered by Paragraph 13.6.3;
  - 13.6.2.2 those otherwise specifically provided in the Contract; or
  - 13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.1.2.
- 13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with Director's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.
- 13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.
- 13.7 **INTEREST.** No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.
- 13.8 **PARTIES IN INTEREST.** The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.
- 13.9 **ENTIRE CONTRACT.** The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.
- 13.10 **WRITTEN AMENDMENT.** Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.
- 13.11 **COMPLIANCE WITH LAWS.**
- 13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either Act.
  - 13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.
- 13.12 **SEVERABILITY.** If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.
- 13.13 **COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.**
- 13.13.1 **Anti-Boycott of Israel.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
  - 13.13.2 **Anti-Boycott of Energy Companies.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
  - 13.13.3 **Anti-Boycott of Firearm Entities or Firearm Trade Associations.** Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates

---

against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Contract, as defined by Section 2274.001 of the Texas Government Code.

13.13.4 *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Contract neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.

13.14 ***ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES.*** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Contract's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Contract.

#### **ARTICLE 14** **TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 ***TERMINATION BY THE CITY FOR CAUSE.***

14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:

- 14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- 14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- 14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically or filing bankruptcy;
- 14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
- 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Subparagraph 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then Director may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:

- 14.1.2.1 exercise rights under the Bond; or
- 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- 14.1.2.3 finish the Work by whatever reasonable method Director may deem expedient.



- 
- 14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by Director, Contractor shall:
- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
  - 14.1.3.2 place no further orders or subcontracts for Products or services;
  - 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
  - 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by Director, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
  - 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of Director;
  - 14.1.3.6 take action as may be necessary, or as Director may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest;
  - 14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices; and
- 14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.
- 14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by Director in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.
- 14.2 ***TERMINATION BY THE CITY FOR CONVENIENCE.***
- 14.2.1 Director may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with seven days' written notice.
- 14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by Director, Contractor shall conform to requirements of Paragraph 14.1.3.
- 14.2.3 After receipt of the Notice of Termination, Contractor shall submit and substantiate to the City its termination change order request, in forms required by Director. The change order request will be submitted and substantiated to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by Director in writing. If Contractor fails to submit its termination change order request within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.
- 14.2.4 Director will determine, on the basis of information available to Director, the amount due, if any, to Contractor for the termination as follows:
- 14.2.4.1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

- 
- 14.2.4.2 Reasonable termination expenses, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work, reasonable cost of preservation and protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.

No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of Contractor alleged to be damaged by the termination.

- 14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which Director may wish to purchase and retain.

- 14.2.6 Contractor shall cooperate with Director during the transition period.

- 14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 ***SUSPENSION BY THE CITY FOR CONVENIENCE.***

- 14.3.1 Director may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as Director may determine.

- 14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

- 14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work, in accordance with Section 7.3. No adjustment will be made to the extent that:

- 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or

- 14.3.3.2 adjustment is made or denied under another provision of the Contract.

14.4 ***TERMINATION BY CONTRACTOR.***

- 14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:

- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;

- 14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or

- 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Section 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

No termination will be effective for the above reasons if Contractor delivers written notice to Director describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.

- 14.4.2 If the Contract is terminated pursuant to this Section 14.4, Contractor shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

[END OF DOCUMENT]