

## HORIZON CITY

### CONTRACT GENERAL PROVISIONS

#### **1. CONTRACT AND CONTRACT DOCUMENTS**

A. Quantities in Bid Form. The quantities of the work and materials set forth in the bid form or on the plans approximately represent the work to be performed and materials to be furnished; and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the Contractor only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications; and it is understood that the quantities may be increased or decreased by a properly authorized change order as hereinafter provided, without in any way invalidating the bid prices.

B. The Plans, Specifications, Drawings, and Addenda relating to a Public Works project shall also form part of the contract. Where conflicts/differences exist among any of these documents, the Contractor has a duty to and shall consult with and obtain written clarification from the City.

C. Priority of Contract Documents. In case of conflict between contract documents, priority of interpretation shall be in the following order: Standard Form of Agreement, Bid form and bid, Special Conditions (when applicable), General Provisions, Instructions to Bidders, project-specific technical specifications, project-specific plans, standard drawings, and referenced specifications.

#### **2. TYPE AND TERM OF THE CONTRACT**

This is an informally bid Contract under which the Town of Horizon City (“City”) is obtaining the supplies and/or services described in the Specifications from the successful bidder, hereinafter referred to as the Contractor, for the duration of the contract.

If this Contract includes construction or public work, as defined by state law, and the terms and conditions of the “Contract Special Conditions, Construction/Public Works Project” provisions have been made applicable, the terms and conditions set forth therein shall form part of this contract and the provisions of the “Contract Special Conditions, Construction/Public Works Project” shall apply and control when any of the provisions are in conflict with or inconsistent with the Contract General Provisions set forth herein.

Following award and execution of the contract, the Contractor shall commence work within 10 days from the date specified in a written Notice to Proceed to be issued by the Public Works Director or other designee of the Mayor (hereafter “Public Works Director”). No work shall commence prior to the issuance of such Notice to Proceed or before the required insurance has been obtained by the Contractor, with certificates filed with the Public Works Director evidencing the required coverage to be in force. Should the City unreasonably delay the issuance of the work order through no fault of the Contractor, the Contractor shall be entitled only to an extension of contract time through a properly executed change order, the contract amount to remain unchanged.

Upon receipt of the executed contract and evidence of insurance, a Notice to Proceed shall be issued indicating the date upon which the contract time shall start and the projected date of completion.

### **3. CONTRACTUAL RELATIONSHIP**

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Worker's Compensation Program.

### **4. PERFORMANCE OF THE WORK**

In addition to those matters elsewhere expressly made the responsibility of the Contractor, the Contractor shall have the full and direct responsibility for the performance and completion of the work under this contract and for any act or neglect of the Contractor, his agents, employees or subcontractors. He shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under which the work must be done are different from what were estimated or anticipated by him, or because of weather, floods, elements or other causes.

### **5. SUPERVISION AND CONTRACT PROCEDURES**

The Contractor shall supervise and direct all the work using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

Except where the Contractor is an individual and gives his personal superintendence to the performance of the work, the Contractor, for a public works or construction contract or when required to do so in the Specifications, shall provide a competent superintendent or general foreman on the work at all times during progress with full authority to act for him.

The Contractor shall carefully study and compare the contract documents and shall at once report to the Public Works Director any error, inconsistency or omission he may discover. The Contractor shall perform no portion of the work at any time without contract documents or, where required, approved shop drawings, product data or samples for such portion of the work.

The Contractor shall be responsible to the City for the acts and omissions of his employees, subcontractors and their agents, employees and subcontractors performing any of the work under a contract with the Contractor.

The Contractor shall not be relieved from his obligations to perform the work in accordance with the contract documents either by the activities or duties of the City in his administration of the contract, or by inspections, tests or approvals required or performed by persons other than the Contractor.

### **6. EMPLOYEES**

The Contractor shall provide an adequate staff for the coordination and expediting of his work. The Contractor shall employ only competent, efficient workmen for the performance of services or construction and shall not use on the work any unfit person or one not skilled in the work assigned to him; and shall at all times maintain good order and strict discipline among his employees.

Whenever the Public Works Director shall inform the Contractor in writing that, in his

opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the Public Works Director may orally require immediate removal of an employee for cause, to be followed by written confirmation.

The Contractor shall pay or cause to be paid, without cost or expense to the City, all Social Security, Unemployment, and Federal Income Withholding taxes of all employees and that all employees shall be paid wages and benefits as required by federal and state law.

## **7. CLEAN UP**

Contractor shall throughout the life of the contract keep any work and storage areas related to the provision of work or services under this contract, free of accumulations of waste materials, rubbish, trash and debris.

## **8. LABOR AND MATERIALS**

Unless otherwise provided in the contract documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

If needed, the Contractor shall be responsible for obtaining temporary electrical power to the Project site and providing the temporary distribution system necessary to accomplish the construction of the Project. The Contractor shall be responsible for all coordination necessary with the El Paso Electric Company to secure and maintain temporary electrical power to the Project site and to ensure that any power necessary for construction is available at the time needed by the Contractor. This responsibility includes but is not limited to, the locating of and accessing to the nearest existing power source, or in the alternate, the providing of generators as required for construction. All charges for temporary electrical power shall be borne by the Contractor, including but not limited to meter deposits for temporary power, connect/disconnect charges, permit charges, service terminal, (meter loops, meter sockets, service entrance switch) and all costs of electrical energy and meter charges.

Water used for jetting compaction, or any other purpose incidental to a Public Works Project, will be furnished by the Contractor and at his expense. The Contractor shall make the necessary arrangements for securing and transporting such water and shall take such water in a manner and at such times that it will not produce a harmful drain or decrease of pressure in a public water system. Water shall not be used in a wasteful manner. No person shall open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock or tap any water main belonging to the Horizon Regional Municipal Utility District or other provider of the water service to the hydrant or water main unless it has been authorized by such provider.

## **9. PAYMENT FOR LABOR AND MATERIAL; NO LIENS**

The Contractor for himself or any of his subcontractors shall pay all indebtedness which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect

his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however, that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds held by the City; and any subcontractor shall look solely to the Contractor and not the City for payment for any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

## **10. INVOICES AND PAYMENTS**

- A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoice covering more than one purchase order will not be accepted.
- B. Invoices will be itemized.
- C. Invoices will reflect the Bid Number and the Purchase Order Number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- G. Payments will be processed after confirmation that all materials have been received satisfactorily, that no unauthorized materials have been received and that the City has not received a notice of an unpaid claim(s) from a person who has furnished materials or labor in connection with the performance of the contract.
- H. Mail invoices to the Town of Horizon City, ATTN: Accounts Payable, 14999 Darrington Road, Horizon City, Texas 79928.
- I. Contractor shall advise the Accounts Payable Section of any changes in its remittance addresses.

## **11. PROVISIONS APPLICABLE TO A PROCUREMENT OF GOODS**

- A. Contractor to Package Goods. The Contractor will package goods according to good commercial practice. The Contractor will bear cost of packaging unless otherwise provided. Goods will be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The City's count or weight will be final and conclusive on shipments not accompanied by packing lists.
- B. Shipment Under Reservation Prohibited. The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- C. Delivery Terms and Transportation Charges. F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; the City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the City will have the right to designate what method of transportation will be used to ship the goods.
- D. Title and Risk of Loss. The title and risk of loss of the goods will not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery.
- E. Right of Inspection. The City will have the right to inspect the goods at delivery before accepting them.

- F. No Replacement of Defective Tender. Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Contractor may reasonably notify the City of his intention to cure and may then make a conforming tender within the contract time but not afterward.
- G. Place of Delivery. The place of deliver will be as set forth in the Solicitation. The terms of this contract are “no arrival, no sale.”

## **12. WARRANTY-PRICE**

- A. The price to be paid by the City that will be contained in the Contractor’s bid which the Contractor warrants to be no higher than the Seller’s current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor’s current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor’s actual expense.
- B. If during the life of the contract, the Contractor’s net prices to other customers for items are reduced below the prices contained herein, it is agreed that the benefits of such reduction shall be extended to the City.
- C. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

## **13. WARRANTY-PRODUCT**

Unless otherwise expressly provided in the contract drawings, if any, or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The Public Works Director or his designee shall judge and determine the Contractor's compliance with these requirements.

The Contractor warrants to the City that all materials and equipment furnished under this contract shall be new unless otherwise specified in the contract documents; and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the contract documents.

The Contractor will not limit or exclude any implied warranties and any attempt to do so will render this contract voidable at the option of the City. Contractor warrants that all goods furnished will conform to the specifications, drawings and descriptions listed in the Invitation to Bid, and the sample(s) furnished by Contactor, if any. In the case of a conflict between the specifications, drawings and descriptions, the drawings and descriptions will govern.

The rights and remedies of the City provided in this section are in addition to, and do not limit, any rights or remedies afforded to the City by law or any other provision of the contract

documents, or in any way limit the City's right to recovery of damage due to default under the contract.

#### **14. SAFETY WARRANTY**

Contractor warrants that the product sold to the City will conform to the standards promulgated by the US Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the product does not conform to OSHA standards, the City may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by the City will be at the Contractor's expense.

#### **15. INDEMNIFICATION**

**The Contractor or his insurer will INDEMNIFY, DEFEND AND HOLD the City and all of its officers, agents and employees, including any member of its governing body, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE OR LOSS OF PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RESULTING FROM CONTRACTOR'S WORK AND/OR ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS CONTRACT AND FROM ANY LIABILITY ARISING OUT OF OR RESULTING FROM THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.**

**With respect to the above INDEMNITY, CONTRACTOR OR HIS INSURER WILL PAY ALL JUDGMENTS FINALLY ESTABLISHING LIABILITY OF THE CITY IN ACTIONS DEFENDED BY CONTRACTOR PURSUANT TO THIS ARTICLE ALONG WITH ALL ATTORNEY'S FEES AND COSTS INCURRED BY THE CITY, INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY CONTRACTOR OR HIS INSURER, AND PREMIUMS ON ANY APPEAL BONDS. THE CITY, AT ITS ELECTION, WILL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST.**

**It is further agreed with respect to the above INDEMNITY, THAT CITY AND CONTRACTOR WILL PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY EVENT COVERED WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, CONTINGENTLY OR OTHERWISE, AFFECTS OR MIGHT AFFECT THE CONTRACTOR OR CITY, AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS; THE INDEMNITY HERE SHALL SURVIVE THE TERMINATION OF THE CONTRACT**

**FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK ON THE PROJECT. THE CITY WILL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO THE CONTRACTOR'S PROPERTY FROM ANY CAUSE.**

## **16. INSURANCE**

Unless excepted or otherwise specified in the Specifications, Contractor, for the duration of this contract, shall carry in a solvent company authorized to do business in the State of Texas and satisfactory to the City, comprehensive general liability insurance in the following amounts:

\$500,000.00 – Per Occurrence

\$500,000.00 – General Aggregate

\$500,000.00 – Products/Completed Operations-Occurrence & Aggregate

The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work or products, with evidence of same filed with Public Works Director. With respect to the above-required insurance, the Town of Horizon City and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

Town of Horizon City

Public Works Director

14999 Darrington Road

Horizon City, Texas 79928

Please refer to Bid Number and Title in all correspondence.

## **17. SUBCONTRACTS**

The Contractor shall not make any subcontract for performing any portion of the work included in the contract without written notice to and the consent of the Public Works Director. Upon request by the Public Works Director, the Contractor shall promptly furnish all information tending to establish that any proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this contract. The Public Works Director shall not unreasonably withhold consent for approval of a subcontract. The Public Works Director's approval or disapproval of any subcontractor or of a particular process or material will not relieve the Contractor of his responsibility for performance of work as called for under the contract documents, and shall not provide a basis for any claim of additional time or money on the part of the Contractor. Such approval shall not be construed to create any contractual relationship between the subcontractor and the City. In no event shall the contract price be increased as a result of the rejection of any subcontractor.

If the use of a subcontractor is permitted, the Contractor shall either require each subcontractor to procure and maintain during the life of his subcontract, subcontractor's

insurance of the same types and in the same minimum amounts required by the contract or Contractor may insure the activities on his policy or policies.

If the Public Works Director determines that any proposed subcontractor is unacceptable, he shall so notify the Contractor, who may thereupon submit another proposed subcontractor unless the Contractor decides to do the work himself. Disapproval by the Public Works Director of any proposed subcontractor shall not provide a basis for any claim by the Contractor.

If an approved subcontractor fails to properly perform the work undertaken, he shall be removed from the job upon request of the Public Works Director, following notification to the Contractor in writing of the request for removal and the reason therefor. Each subcontract entered into shall provide that the provisions of this contract shall apply to such subcontractor and his officers and employees in all respects as if he and they were employees of the Contractor. The Public Works Director's decision not to disapprove of any subcontract shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible for the acts, omissions, negligence or defaults of his subcontractors and of such subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of his subcontract.

The Contractor agrees to bind each subcontractor, and each subcontractor agrees to be bound by the terms of the contract documents insofar as applicable to his work. The Contractor and each subcontractor jointly and severally agree that nothing in the contract documents or otherwise shall create or be deemed to create any rights in favor of a subcontractor against the City; nor shall be deemed or construed to impose upon the City any obligation, liability or duty to a subcontractor; or to create any contractual relation whatsoever between a subcontractor and the City.

The provisions contained herein shall likewise apply to any sub-subcontracts.

## **18. ASSIGNMENTS**

The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the Public Works Director.

The Contractor shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this contract or his claim thereto without the prior written consent of the surety company and the written approval of the Public Works Director.

The approval of the Public Works Director of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments.

The approval by the Public Works Director of any assignment, transfer or conveyance shall not operate to release the Contractor or surety hereunder from any of the contract and bond obligations, and the Contractor shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of his assignees, their agents and employees, as if they were his own.

## **19. COMPLIANCE WITH LAWS - GOVERNING LAWS**

This contract shall be governed by the laws and court decisions of the State of Texas, and legal venue for any court action filed pertaining to this contract shall exclusively lie in El Paso County, Texas.

The Contractor shall fully comply with all local, state and federal laws, including all



codes, ordinances and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

The Contractor shall be solely responsible for and in complete compliance with the Immigration Reform and Control Act of 1986, concerning the control of unlawful employment of aliens, the requirements for compliance to which statute are contained in Section 274A (8 U.S.C. 1324) (Public Law 99-603), and to which statute reference shall be made by the Contractor to insure compliance.

The Contractor shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions.

All work required under this contract shall comply with all requirements of law, regulation, permit or license. If the Contractor finds that there is a variance, he shall immediately report this to the Public Works Director for resolution.

## **20. RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as anticipatory repudiation of the contract.

## **21. TERMINATION**

A. Termination for Convenience. The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the Public Works Director directs.

B. Termination for Default. If the Contractor fails to comply with any provision of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this contract.

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Public Works Director describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this contract as of such date.

C. Additional Remedies. If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to

a buyer pursuant to the UNIFORM COMMERCIAL CODE including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

## **22. FORCE MAJEURE**

In the event any party to this contract is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this contract, excluding the obligation to make the payments required under this contract, then the obligations of such party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or damage to machinery or equipment, which are not within the control of the party claiming such inability and such problem could not have avoided by the exercise of due diligence and care. It is understood and agreed that any force majeure shall be remedied with all reasonable dispatch.

## **23. SERVICE OF NOTICES**

The City and the Contractor shall each designate addresses where all notices, directions or other communication may be delivered, or to which they may be mailed. Unless otherwise designated, notices to the Contractor shall be directed as set forth in the Bidder Information Sheet. Notices to the City shall be directed to:

Town of Horizon City  
ATTN: Public Works Director  
14999 Darrington Road  
Horizon City, Texas 79928

Actual delivery of any such notice, direction or communication to the aforesaid places, or depositing it in a postpaid wrapper addressed thereto in any post office regularly maintained by the United States Postal Service shall be conclusively deemed to be sufficient service thereof upon the above persons as of the date of such delivery or deposit.

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally, or, if the Contractor be a corporation, upon any officer or director thereof.

## **24. UNLAWFUL PROVISIONS DEEMED STRICKEN**

If this contract contains any unlawful provisions not an essential part of the contract and which shall not appear to have been a controlling or material inducement to the making thereof, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful part shall be considered stricken from the contract without affecting the remainder of the contract.

## **25. VENUE AND GOVERNING LAW**

The parties agree that venue for any legal proceeding shall be in El Paso County, Texas. In any such proceeding brought to enforce the terms of this contract, the City shall be entitled to attorney's fees, court costs, expert witness fees and consultant's fees in the event the City prevails in said proceeding. This contract shall be interpreted under the law of the State of Texas.

## **26. SUCCESSORS AND ASSIGNS**

Subject to the limitations upon assignment and transfer herein contained, this contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

## **27. CONFLICT OF INTEREST**

Contractor certifies that he has not and shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City.

## **28. HEADINGS**

The titles and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this contract.

If a court of competent jurisdiction determines that any term of the contract associated with an accepted bid is invalid or unenforceable to any extent under applicable law, the remainder of the contract associated with an accepted bid (and the application of this agreement to other) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

## **29. ADVERTISING**

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

## **30. AVAILABILITY OF FUNDS**

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available, the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty or removal charges incurred by the City.