

**HORIZON CITY**  
**CONTRACT SPECIAL CONDITIONS**  
**CONSTRUCTION/PUBLIC WORKS PROJECT**

**ITEM 1.0 DEFINITIONS**

“Owner” or “City” means the public governmental agency (Town of Horizon City, Texas) identified throughout the contract documents and as specifically identified in the contract. The term “Owner” or “City” means the Owner and designated representatives, as provided in Item 15.1. The terms “Owner” and “City”, as used herein, shall mean the Town of Horizon City, and the use of the terms is interchangeable. Public Works Director shall mean the Director or other designee of the Mayor.

**ITEM 2.0 CORRELATION AND INTENT OF DOCUMENTS**

The contract documents are complementary and what is called for by any one shall be as binding as if called for by all. The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the Contractor undertakes to do in full compliance with the contract documents. It is not intended to mention every item of work in the specifications which can be adequately shown on drawings nor to show on drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings, if any, or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the Contractor whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms, conditions or obligations contained in the contract documents.

2.1 CONTRACT DRAWINGS AND SPECIFICATIONS: The Owner shall furnish the Contractor, without charge, a copy of the contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and/or specifications shall be accessible at all times to the Owner at the job site.

Any drawings that may be part of the project are intended to agree with the specifications. Should discrepancies occur between drawings and specifications, the Contractor should not work without first seeking clarification from the Owner's representative, the Engineer, in accordance with Item 2.3 hereof.

2.2 SUPPLEMENTAL DRAWINGS AND SPECIFICATIONS: In order to carry out the intent of the contract documents and to assist the Contractor in performing his work, the Owner, after the execution of the contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the contract documents and reasonably inferable therefrom. Therefore, no extra

costs shall be allowed by the Owner on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the contract documents, incurring extra costs, unless the Contractor has first brought the matter, in writing, to the Owner's attention for adjustment before proceeding with the work covered by such.

If the Public Works Director, as the Owner's representative, shall decide that there is no departure from the requirements of the contract documents, the Contractor shall then proceed with the work as shown, specified or directed. If the Public Works Director, as the Owner's representative, shall decide that extra work is involved, he shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued in accordance with Item 12 herein. The Owner, however, shall make the final determination if extra work is involved and if a change order is justified.

**2.3 ALTERATION OF PLANS AND SPECIFICATIONS:** The Owner reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract. Such changes shall be issued by the Public Works Director.

**2.4 ERRORS AND CORRECTIONS IN DRAWINGS AND SPECIFICATIONS:** The Contractor shall carefully study and compare the contract, contract documents, conditions of the contract, drawings and specifications, addenda and modifications. The Contractor shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications; and the Owner shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the contract documents. In case of any errors, omissions or discrepancies in the drawings or specifications, the Contractor shall promptly submit the matter to the Public Works Director, in writing, as the Owner's representative, who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the Contractor without this determination and instruction shall be at the Contractor's own risk and expense. The work is to be made complete as intended by the contract documents. The Contractor shall verify all dimensions before laying out the work and he will be held responsible for any subsequent error which might have been avoided by the above-described check, study and comparison. Owner expressly disclaims all implied warranties, including that commonly known as the "Spearin doctrine," that the drawings and specifications are sufficient to construct the project.

**2.5 EXISTING STRUCTURES/CONDITIONS:** The plans may show the general locations of all known surface and subsurface structures. The locations of many gas mains, water mains, conduits, sewers, other utilities, etc., however, are unknown, and the Owner assumes no responsibility for failure to show any or all these structures on the plans or to show them in their exact locations. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades; or require the building of special work, provisions for which are not made in the plans and bid; in which case the provisions in these specifications for extra work shall apply.

By executing the contract for a Public Works project, the Contractor represents that he has visited the site of the work, has fully familiarized himself with the local and on-site conditions under which the work is to be performed and has correlated his observation with the requirements of the contract documents. In addition, if the Project will require excavation and compaction, the Contractor represents that he has satisfied himself as to the subsurface conditions at the site.

The Contractor shall coordinate the construction schedule with all utilities and all other affected agencies.

The Contractor will notify all utility agencies affected, and endeavor to have all necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable.

The Contractor shall not be required to pay for the relocation or adjustment to any water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction that are to be relocated or adjusted are to be moved, unless specifically required in the contract documents.

It is understood and agreed that the Contractor has considered in the bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconvenience, or damage sustained due to any interference from the said utility appurtenances or the operation of moving them.

### **ITEM 3.0 CONTRACTOR'S RESPONSIBILITIES.**

3.1 **PROGRESS SCHEDULE:** When required in the Specifications, the Contractor, immediately after being awarded the contract, and before submittal of the first payment estimate, shall prepare and submit for the Owner's approval an estimated progress schedule for the work. The progress schedule shall be related to the entire project to the extent required by the contract documents, and shall provide for expeditious and reasonable execution of the work. The progress schedule shall be updated upon request by the Owner and shall be revised as required by conditions of the work, subject to the approval of the Owner. The Owner may provide a process within the schedule by which the Contractor will be paid in progress payments.

3.2 **PERFORMANCE OF THE WORK:** The Contractor shall begin the work to be performed under this contract as specified in the Notice to Proceed, and shall conduct the work in such a manner and with sufficient equipment, material and labor as is necessary to insure its completion within the working time. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the Contractor, and it shall be the Contractor's responsibility to execute the work in the most expeditious manner. Work shall be done only during the regular and commonly accepted and prescribed working hours. No work shall be done on nights, Saturdays, Sundays or regular holidays unless permission is given by the Public Works Director.

The rate of progress shall be such that the whole work shall be performed and the premises cleaned up in accordance with the contract within the working time that may be established in the Invitation to Bid, unless an extension of time is made in the manner hereinafter specified.

#### **ITEM 4.0 PROTECTION OF WORK AND OF PERSONS AND PROPERTY**

4.1 PROTECTION OF WORK: During performance and up to date of final acceptance, the Contractor shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the Contractor shall promptly replace or repair such work, whichever the Owner shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the Owner's approval of or failure to prohibit means and methods of construction used by the Contractor. All risk of loss or damage to the work shall be borne solely by the Contractor until final completion and acceptance of all work by the Owner, as evidenced by the Owner's issuance of a certificate of acceptance.

4.2 PROTECTION OF PERSONS AND PROPERTY: The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site. No separate compensation shall be paid to the Contractor for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise needed for the protection of persons or property.

The Contractor shall assume all duties owed by the Owner to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on or adjacent to any street, alley or public place, the Contractor shall, at his own cost and expense, furnish, erect and maintain such barricades, fences, lights and danger signals, and shall provide such flagmen and shall take such other precautionary measures for the protection of persons or property and of the work as are necessary. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work area or any work under construction. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and flagmen to protect it, and whenever evidence is found of such damage, the Owner may order the damaged portion immediately removed and replaced by the Contractor at Contractor's cost and expense. The Contractor's responsibility for maintenance of barricades, signs, lights and flagmen shall not cease until the project has been accepted by the Owner.

If the Owner discovers that the Contractor has failed to comply with the applicable federal and state law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the Owner may order the Contractor to take such additional precautionary measures as required by law to be taken to protect persons and property.

In addition, the Contractor shall be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such damage, the Owner may order the damaged portion immediately removed and replaced by and at the cost and expense of the Contractor.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas State Department of Highways and Public Transportation.

**4.3 PROTECTION OF UTILITIES.** It is the responsibility of the contractor disturbing the earth's surface to notify the operators of the underground facilities that there is planned work in the area near those lines. Before digging, blasting, drilling, grading, pipe positioning and moving earth, it is imperative that the Contractor call the Texas Excavation Safety System (TESS) at 1-800-344-8377. However, the Contractor's responsibilities are not fulfilled solely by placement of a phone call to the notification center about intended excavation; this is merely the first step in the location process. The directions and procedures outlined in the following paragraphs must also be adhered to.

Prior to commencing work, the Contractor shall make arrangements to protect the properties of water, sewer, gas, cable, telephone, and power companies, or other property from damage that could result in considerable expense, loss, or inconvenience. After the markings have been made, excavators are expected to maintain a minimum clearance of two feet (24 inches) plus the width of the line between marked and unexposed facilities and the cutting edge or point of any power-operated excavating or earth-moving equipment. **IF EXCAVATION IS REQUIRED WITHIN THIS DISTANCE HORIZONTALLY OF ANY MARKED UTILITY, THE EXCAVATION SHOULD BE PERFORMED VERY CAREFULLY WITH HAND TOOLS AND WITHOUT DAMAGE.** The depth of underground facilities varies due to changing soil conditions and other variables. It is the responsibility of the excavator to determine the facility's exact depth and location by safe and acceptable means within the marked facility area.

When excavation operations approach the estimated location of underground installations, the exact location of the installations shall be determined by safe and acceptable means. While the excavation is open, underground installations shall be protected, supported or removed as necessary to safeguard employees.

The Contractor shall cooperate with the utility owners in the removal and rearrangement of any underground or overhead utility lines or facilities to minimize interruption to service and duplication of work by the utility owners.

In the event utility services are interrupted as a result of accidental breakage, the Contractor shall promptly notify the proper authorities and cooperate with them until service has been restored. Work undertaken around fire hydrants shall not commence until provisions for continued

service have been made and approved by the local fire authority. The Contractor shall, at no additional cost to the Owner, be responsible for the replacement of any above or below ground utility lines damaged from any of the Contractor's operation during the period of the contract. The Contractor shall comply with all federal, state and local governmental rules, regulations, laws and ordinances governing any work done under this paragraph.

#### 4.4 ENVIRONMENTAL PROTECTION.

4.4.1 The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. Necessary precautions shall be taken to prevent pollution of land, soils, streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful and hazardous materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

Fording of live streams shall not be permitted unless the Contractor's plan for such operation meets the approval of the Project Engineer and results in minimum siltation to the stream. Unless approved by the Project Engineer, mechanized equipment shall not be operated in live streams except as required to construct channel changes and temporary or permanent structures that are part of the contract.

When work areas or pits are located in or adjacent to live streams, such areas shall be separated from the main stream by a dike or barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Water from aggregate washing or other operations containing sediment shall be treated by filtration, settling basins, or other means sufficient to reduce the sediment content to not more than that of the stream or lake into which it is discharged.

4.4.2 Texas Pollutant Discharge Elimination System (TPDES) Requirements. TPDES Construction General Permit, Permit No. TXR150000 was approved, signed and became effective on March 5, 2013. The Texas Pollutant Discharge Elimination System (TPDES) program implements the federal National Pollutant Discharge Elimination System (NPDES) program in the state of Texas. The EPA Region 6 (located in Dallas) has administered the Phase I storm general permit for construction activities disturbing 5 or more acres within the state of Texas until the TPDES permit has been issued. On March 5, 2003 the TCEQ became the permitting authority for these discharges. This general permit also covers storm water discharges from Phase II construction activities that disturb at least 1 acre and less than 5 acres. Further information may be obtained from the Executive Director's Response to Comments and the TXR 150000 Fact Sheet.

Large Construction Activity -Construction activities including clearing, grading and excavation that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does

not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Large construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right of ways, and similar maintenance activities. Construction projects that started after the issuance of the TPDES general permit and that will disturb 5 or more acres must be authorized under TPDES General Permit issued on 3/5/13 prior to commencement or construction activities.

- Obtain a copy of the TCEQ CGP (TPDES Permit No. TXR 150000).
- Develop and implement a storm water pollution prevention plan (SWP3) and submit a copy of SWP3 as per Section 8 of Ordinance No. 0192 - Storm Water Discharge from Construction Activities to the Town of Horizon City Public Works Department for review and approval.
- Complete and submit the (NOI) Notice of Intent form to the TCEQ State agency prior to the commencement of construction. Submit a copy of (NOI) form to the Town of Horizon City Public Works Department.
- Submit a Notice of Termination (NOT) once the site has reached final stabilization. NOTE: This is a condition precedent to obtaining Final Payment under these contract documents. Submit a copy of the State NOT (Notice of Termination) form to the Town of Horizon City Public Works Department.

Small Construction activity -Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre to less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development of sale if the larger common plan will ultimately disturb equal to or greater than (1) and less than (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Small construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

- Obtain a copy of TECQ CGP (TPDES Permit No. TXR 150000).
- If construction site does not qualify for the time frame required for Attachment 1 of the General Permit for small construction sites, then, the operator needs to develop and implement a storm water pollution prevention plan (SWP3) and submit the SWP3 to the Town of Horizon City Public Works Department for review and approval.
- Complete and post the Construction Site Notice Attachment I or Attachment II of the General Permit. Submit a copy to the Town of Horizon City Public Works Department.
- Before construction begins: (1) If the site qualifies, complete and submit a Low Rainfall Erosivity Waiver Form to TCEQ. Submit a copy to Town of Horizon City Public Works Department. (2) Complete and post the Construction Site Notice Attachment I or Attachment II of the General Permit. Submit a copy to the Town of Horizon City Public Works Department for review.

Small sites. For construction projects that will disturb less than one (1) acre and overall common plan is less than one (1) acre, no permit is required. TCEQ or the Town of Horizon City can also designate construction activities disturbing less than one acre for inclusion in the

construction General Permit based on the potential for contributing to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

NOTE: If the construction activity develops into a larger project, then permit coverage may be required at that time based on the total number of acres that will be disturbed: 5 or More Acres or 1 to Less Than 5 Acres.

## **ITEM 5.0 INSURANCE**

5.1 CONTRACTOR'S LIABILITY INSURANCE: Without limiting any of the other obligations or liabilities of the Contractor, the Contractor and each subcontractor, at their own expense, shall, during the term of the contract, purchase and maintain the hereinafter stipulated minimum insurance with companies duly authorized to do business in the State of Texas and satisfactory to the Owner. Certificates for each of Contractor's policies and each subcontractors' workers compensation policy shall be delivered to the Public Works Director for approval before any work is started:

(a) Workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the Owner; employer's liability insurance of not less than \$100,000 for each accident. See 5.3 for greater detail.

(b) Comprehensive general liability insurance, including independent contractor's liability, completed operations/products liability, premises/operations liability, contractual liability and vehicle liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or subcontractor's) liability for bodily injury to or death, and for damage to property of third parties, with the following limits for each occurrence:

Liability Bodily Injury	\$1,000,000.00 each person
Property Damage	\$1,000,000.00 each occurrence
General Aggregate	\$2,000,000.00
Vehicle Liability, Combined Single Limit	\$1,000,000.00

The products/completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with Owner. Where work is being performed in connection with an existing facility owned or leased by the Owner, the policy shall include fire legal liability of not less than \$100,000 per occurrence.

(c) Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with minimum limits of \$250,000 per person and \$500,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for property damage, or a combined single limit of \$500,000, such insurance to include coverage for loading and unloading hazards.

5.2 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS: Each insurance policy to be furnished by Contractor under 5.1(b) and (c) shall include the following conditions by endorsement to the policy, proof of which shall be noted on the certificate of insurance provided to the Owner:

- (a) the Owner shall be named as an additional insured;
- (b) the Owner shall be provided with a waiver of subrogation in its favor;
- (c) the Owner shall be provided with 30 days written notice prior to the cancellation, nonrenewal or reduction in coverage (all “endeavor to” and similar language of reservation must be stricken from the cancellation section of certificate).

Concerning insurance to be furnished by Contractor, it is a condition precedent to acceptability thereof that:

- (a) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Contractor. The Owner's decision thereon shall be final; and
- (b) all policies are to be written through companies duly authorized to transact that class of insurance in the State of Texas.
- (c) the term “Owner” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Owner and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Owner;
- (d) the policy phrase “other insurance” shall not apply to the Owner where the Owner is an additional insured on the policy.
- (e) Owner shall be included as an additional insured under the commercial general liability policy of Contractor using ISO additional insured endorsement CG 20 10 11 85, or a substitute providing equivalent coverage.

Contractor agrees to the following:

- (a) Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
- (b) companies issuing the insurance policies and Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor;
- (c) approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Contractor (or any subcontractors) shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Contractor from liability; and
- (d) no special payments shall be made for any insurance that the Contractor and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

The insurance requirements set out in this section are independent from all other obligations of Contractor under this contract and apply whether or not required by any other provision of this contract.

### 5.3 WORKER'S COMPENSATION REQUIREMENTS:

Texas Workers' Compensation Commission

Figure 1: 28 TAC §110.110 (c) (7)

Workers' Compensation Insurance Coverage.

A. Definitions:

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

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

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

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

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

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

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

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

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

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

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

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

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

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all its employees providing services on the project, for the duration of the project;
- (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
  - (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes

and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

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

## **ITEM 6.0 MATERIALS AND WORKMANSHIP; WARRANTIES AND GUARANTEES**

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, as the Owner's designated representative shall judge and determine the Contractor's compliance with these requirements.

A. "Or Equal" Clause. Whenever a material or article required is specified or shown on the plans, by using the name of a proprietary product or of a particular manufacturer or vendor, any material or article which the Public Works Director determines shall perform adequately the duties imposed by the general design or which the Public Works Director deems to be of similar appearance (in case where appearance is of importance) shall be considered equal and satisfactory, provided the material or article so proposed is of equal substance and function. Authorization for any substitution of materials or articles must be obtained by the Contractor from the Public Works Director before proceeding with such substitution.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans and specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the Public Works Director shall accomplish or cause to be accomplished such redesigns and alterations. The Contractor shall bear all reasonable costs associated with redesign and alteration efforts performed by the Public Works Director.

B. Materials and Equipment. The Contractor shall be free to secure the approved materials, equipment and articles from sources of his own selection. However, if the Public Works Director finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work, the Public Works Director shall have the right to require the original source of supply changed by the Contractor. The Contractor shall have no claim for extra cost or damage because of this requirement.

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. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, and shall be promptly repaired or replaced by the Contractor at the Contractor's sole cost upon demand of the Public Works Director. If required by the Public

Works Director, the Contractor shall furnish evidence as to the kind and quality of materials and equipment.

C. Workmanship. Neither the final certificate of payment nor any provisions in the contract documents, nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting there from which shall appear within a period of one (1) year from the date of final acceptance of the work unless a longer period is specified, The City will give notice of observed defects with reasonable promptness.

D. Subcontractors and Manufacturers' Warranties. All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner without the necessity of separate transfer or assignment thereof; provided, that if directed by the Public Works Director, the Contractor shall assign such warranties and guarantees in writing to the City.

E. Corrected Work Warranty. Any work repaired or replaced, pursuant to this section, shall be subject to the provisions of this section to the same extent as work originally performed.

F. Rights and Remedies. 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.

## **ITEM 7.0 MEANS AND METHODS OF CONSTRUCTION**

Unless otherwise expressly provided in the contract drawings, specifications or addenda, the means and methods of construction shall be such as the Contractor may choose; subject, however, to the Owner's right to prohibit means and methods proposed by the Contractor which in the Owner's judgment:

- (a) shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
- (b) shall cause unnecessary or unreasonable inconvenience to the public; or
- (c) shall not produce finished work in accordance with the requirements of the contract documents; or
- (d) shall not assure the work to be completed within the time allowed by the contract.

The Owner's approval of the Contractor's means or methods of construction, or the Owner's failure to exercise his right to prohibit such means or methods, shall not relieve the Contractor of his responsibility for the work or of his obligation to accomplish the result intended by the contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the Contractor against the Owner. Where the contract drawings, specifications or addenda do not require the use of specific means or methods of construction, the Contractor shall submit his proposed plan of procedure to the Public Works Director sufficiently in advance to permit a reasonable time for determining the adequacy and safety of the proposed plan. Failure to submit the proposed plan within a reasonable time shall not create a cause of action for damages for resulting delay in the

work or be a cause of extension of working time for completion on the work.

7.1 CONSTRUCTION STAKES: When necessary, the Owner shall furnish and set all lines, grades, bench marks, centerlines and measurements necessary to the proper performance and control of the work contracted for under these specifications. The Owner shall furnish the Contractor with all necessary information relating to the lines and grades. Such stakes or markings as the Owner may establish either for his own use or the Contractor's guidance shall be preserved by the Contractor until authorized by the Owner to be removed. The Contractor shall be charged for the cost of replacing stakes which he has disturbed. Each Contractor shall verify all grades, centerlines, levels, benchmarks, lines and measurements or other dimensions as indicated on the drawings or specifications. Contractor shall report any errors or inconsistencies to Public Works Director before commencing the work.

7.2 SANITARY PROVISIONS: The Contractor shall establish and enforce among his employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private; and such regulations as are required by the Owner shall be put into immediate force and effect by the Contractor. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the Contractor in such a manner and at such points as shall be approved by the Owner; and their use shall be strictly enforced by the Contractor. All sanitary laws and regulations of the State of Texas and the Owner's jurisdiction shall be strictly complied with.

7.3 PUBLIC CONVENIENCE AND SAFETY: Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the Public Works Director. The Contractor shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the Public Works Director, the Contractor may make arrangements satisfactory to the Owner for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the Owner. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

The Owner reserves the right to remedy any neglect on the part of the Contractor with regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the Contractor, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the Owner shall be deducted from the monies due or to become due the Contractor. The Contractor shall notify the Owner when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The Contractor shall, when directed by the Owner, keep any street or streets in condition for unobstructed use by emergency services or by essential departments of Owner. Where the

Contractor is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams or around structures, his responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

Where the work passes over or through private property, the Owner shall provide such right-of-way. The Contractor shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of their property along or adjacent to the work. The Contractor shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the contract documents, or caused by agents or employees of the Owner) by reason of any negligent act or omission on the part of the Contractor, his employees, agents or subcontractors, or at any time due to defective work or materials, or due to his failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

When and where any such danger or injury is done to public or private property on the part of the Contractor, he shall restore or have restored at his own cost and expense such property to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding or otherwise restoring as may be directed, or he shall make good such damage or injury in a manner acceptable to the property owner or the Public Works Director. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Owner may, upon 48 hours' written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the Contractor under this contract; or where sufficient contract funds are unavailable for this purpose, the Contractor or his surety shall reimburse the Owner for all such costs.

## **ITEM 8.0 WORKING AREA; COORDINATION WITH OTHER CONTRACTORS**

The Contractor shall confine his equipment, storage of materials and construction operations to the area shown on the contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the Owner, and shall not unreasonably encumber the site or public right-of-way with his construction equipment, plant or materials. Materials stored for extended periods shall be protected from weather conditions in a manner satisfactory to the Public Works Director.

Such area shall not be deemed for the exclusive use of the Contractor. In the event other contractors are doing work in the same area simultaneously with this project, the Contractor shall coordinate his proposed construction with that of the other contractors. Other contractors of the Owner may enter upon and use such portions of the area and for such times as determined by the Owner are necessary for all purposes required by their contracts. The Contractor shall give to such other contractors all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the Contractor for his use shall be provided by him at his own cost and expense.

## **ITEM 9.0 CLEANUP**

During construction of the work, the Contractor shall, at all times, keep the site of the work and adjacent premises as free from material, debris, and rubbish, as is practicable and shall remove same from any portion of the site, if, in the opinion of the Public Works Director, such material, debris, or rubbish constitutes a nuisance or is objectionable.

All excavated earth in excess of that required for backfilling shall be removed from the job site and disposed of in a satisfactory manner, except in locations where, in the judgment of the Public Works Director, it can be neatly spread over the adjacent area.

Upon completion of the work and before final acceptance and final payment shall be made, the Contractor shall completely clean and remove from the site of the work, surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Public Works Director and at Contractor's sole cost.

The Contractor shall thoroughly clean all equipment and materials installed by him and shall deliver over such materials and equipment undamaged in a bright, clean, polished and new appearing condition.

## **ITEM 10.0 OWNER'S RIGHT TO TEMPORARILY SUSPEND WORK**

10.1 REASONS FOR SUSPENSION: The Owner shall have the right by written order to temporarily suspend the work, in whole or in part, whenever, in the judgment of the Owner, such temporary suspension is required:

- (a) in the interest of the Owner generally;
- (b) due to government or judicial controls or orders which make performance of this contract temporarily impossible or illegal;
- (c) to coordinate the work of separate contractors at the job site;
- (d) to expedite the completion of a separate contract even though the completion of this particular contract may be thereby delayed;
- (e) because of weather conditions unsuitable for performance of the work;
- (f) because the Contractor is proceeding contrary to contract provisions or has failed to correct conditions considered unsafe for workmen.

The written order of the Owner to the Contractor shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the Owner's written order, the Contractor shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the providing of suitable drainage about the work and erection of temporary structures where necessary. The Contractor shall not suspend the work without written direction from the Owner and shall proceed with the work promptly when notified by the Owner to resume operations.

The Contractor shall promptly suspend such part or parts of the work when either he or the City is ordered to do so by a judicial decree, and he will not be entitled to additional compensation by virtue of such Court Order. Neither will he be liable to the Owner for a delay caused in fact by the work being suspended by such court order.

The Public Works Director, shall have the authority to suspend the work, wholly or in part, for such period or periods as he deems necessary due to weather conditions as are considered unfavorable for the suitable prosecution of the work or due to failure on the part of the Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed; he shall provide suitable drainage about the work and erect temporary structures where necessary. The Contractor shall not suspend work without written authority by the Public Works Director, and shall proceed with the work promptly when notified by the Public Works director to resume operations.

**10.2 NO ADDITIONAL COMPENSATION:** No additional compensation shall be paid to the Contractor for such suspension under Item 10.1 (f) above or otherwise where same is caused by the fault of the Contractor or as a result of Item 1.10.2(d) below. Where such temporary suspension is not due to the fault of the Contractor, he shall be entitled to:

- (a) an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the Owner; and
- (b) the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the Owner as being beyond the contract requirements, such costs, if any, to be determined on the basis set forth in Item 13 herein; and
- (c) where the Contractor elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the Owner under the provision of Item 13.
- (d) Notwithstanding any other provisions of the contract documents, including the General and Special Conditions, no adjustment shall be made to the contract sum and the Contractor shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment to the contract time hereunder, including those caused by the acts, omissions, failures or negligence of the Owner.

## **ITEM 11.0 DELAYS; EXTENSION OF TIME; LIQUIDATED DAMAGES**

The Contractor shall be entitled to an extension of working time under this contract only when claim for such extension is submitted to the Owner in writing by the Contractor within seven days from and after the time when any alleged cause of delay shall occur; and then only when such time is approved by the Owner. In adjusting the contract working time for the

completion of the project, unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to inability to obtain supplies and materials, acts of God, or the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions or delays of subcontractors due to such causes beyond their control may be taken into consideration at the reasonable discretion of the Owner.

If the satisfactory execution and completion of the contract should require work and materials in greater amounts or quantities than those set forth in the contract, requiring more time for completion than the anticipated time, then the contract working time may be increased by written change order that is properly executed as set forth herein, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the Contractor.

No adjustment to working time shall be made if, concurrently with the cause for delay, there existed a cause for delay due to the fault or negligence of the Contractor, his agents, employees or subcontractors; and no adjustment shall be made to the contract price and the Contractor shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in adjustment to the working time hereunder, including delays caused by the acts or negligence of the Owner. Notwithstanding any other provisions in the contract documents, all claims for extension of working time must be submitted in accordance with Item 11, and no act of the Owner shall be deemed a waiver or entitlement of such extension.

**11.1 LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE ON TIME:** The time of completion is the essence of this contract. For each calendar day that the work is not yet substantially complete after the time specified in the bid and the contract, or the increased time granted by the Owner, including extensions relating to additional work or materials, then the Contractor does agree, as a part of the consideration for awarding of the contract, the sum per calendar day given in the following schedule, and unless otherwise specified in the special provisions, the sum shall be deducted from the monies due the Contractor:

From More Than	For Amount of Contract To and Including	Amount of Liquidated Damages Per Calendar Day
\$0	\$25,000	\$ 63
\$25,000	\$50,000	\$ 105

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work. The said amounts are fixed and agreed upon by and between Owner and Contractor because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amounts are agreed to be the amount of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Contractor under this contract; and if said monies be insufficient to cover the amount owing, then the Contractor or his surety shall reimburse the

Owner in the amounts set forth above for each additional calendar day beyond the original contract time period. This period shall include the original calendar days allotted therefore, which shall include the original calendar days set forth in the contract and any extension, in writing, granted by the Owner. However, should the Contractor reject the Owner's determination of liquidated damages due, or should any legal action against the Owner incidental to this contract be instituted by the Contractor, his agents or assigns, then this paragraph shall not be construed so as to prevent the Owner from seeking full recovery for the cost of repairing or replacing defective work; the cost of completing the project; the diminution in value of Owner's property caused by defective or non-conforming work; the cost of extended supervision of the project by Owner; and Owner's administrative expenses caused by delay, (all of which are to be considered in the assessment of liquidated damages), in addition to all liquidated damages due. Contractor shall receive no additional compensation for completion of work earlier than scheduled.

## **ITEM 12.0 CHANGE OR MODIFICATION OF CONTRACT**

The requirement of written approval of changes is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alteration or additions to the work, and no claim that Owner has been unjustly enriched by any alteration or addition to the work, whether or not there is in fact any such unjust enrichment, should be the basis for any claim to an increase in the contract amount or change in the contract time.

**12.1 INCREASED OR DECREASED QUANTITIES OF WORK:** The Owner reserves the right to make changes in the quantities of the work, as may be considered as not waiving or invalidating any conditions or provisions of the contract. The Contractor shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

The Owner reserves the right to decrease the work under this contract. Payment to the Contractor for the contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the contract, except as provided below. No claims for any extra work or materials shall be allowed unless the work is ordered in writing by the City or City's designated representative acting officially for the City, in accordance with applicable state law, and the price is stated in such order. The City reserves the right to review the actual time utilized by the Contractor in the completion of the additional work of the change order at the termination of the project. City shall then adjust time granted per change order to reflect the actual time required by the Contractor for the completion of each change order.

When the quantity of work to be done or of materials to be furnished under any item of the contract is less than 75 percent of the quantity stated in the contract, then either party to the contract, upon demand, shall be entitled to negotiate for revised consideration of the work performed.

Any revised consideration shall be paid for as is hereinafter provided under Item 13. The foregoing notwithstanding, the total original contract amount shall not be increased more than 25

percent.

**ITEM 13 PAYMENT FOR REVISED QUANTITIES OF WORK AND EXTRA WORK.**

No payment for revised quantities of work and extra work shall be made to the Contractor unless an appropriate change order prepared by the Public Works Director is approved by the Mayor or other authorized representative of the Owner. Any such change order shall comply with the following procedures:

A. In addition to the Public Works Director, the Contractor shall sign all change orders to verify and confirm the terms and conditions established by change orders; however, should the Contractor refuse to sign a change order, this shall not relieve him of his obligation to execute the proposed change (order) to the best of his ability in accordance with the provisions of this article. Each change order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order.

B. No revised quantities of work or extra work (except under emergency conditions) or changes shall be made or shall any substitutions, changes or additions to or omissions or deviations from the requirements of the drawings and specifications be made unless pursuant to a written change order signed by the Owner and the Mayor or other authorized representative of the Owner, it being expressly understood that the Owner shall not be liable for the cost of revised quantities of work or extra work, or any substitution, change, addition, omission or deviations from the requirements of the drawings and specifications unless the same shall have been authorized in writing by the Owner and the Engineer. The provisions of this paragraph shall control in event of inconsistency between such provisions and other provisions of this article. The method of determining the costs or credit for a change shall be in accordance with the provisions of Section A above.

13.1 The revised quantities of work and extra work done by the Contractor as authorized and approved by the Public Works Director shall be paid for in the manner hereinafter described; and the compensation thus provided shall be accepted by the Contractor as payment in full for all labor, materials, tools, equipment and incidentals and all superintendents' and timekeepers' services, all insurance and all other overhead expense incurred in the performance of the revised quantities of work and extra work.

13.2 Payment shall not exceed the authorization given by the Owner to the Public Works Director for the administrative award of informal bids and payment for revised quantities of work and extra work shall be made by one of the following methods:

- (a) Method "A" - by unit prices agreed on in writing by the Public Works Director and approved by the Mayor before said extra work is commenced, subject to all other conditions of the contract.
- (b) Method "B" - by lump sum agreed on in writing by Public Works Director and the Contractor and approved by the Mayor before said revised quantities of work and extra work are commenced, subject to all other conditions of the contract.

(c) Method "C" - by actual field cost of the work plus 15 percent as described herein below, agreed on in writing by the Public Works Director and the Contractor, and approved by the Mayor before said revised quantities of work or extra work is commenced, subject to all other conditions of the contract.

In the event revised quantities of work or extra work is to be performed and paid for under Method "C", the actual field cost of the work shall include the wages of all workmen, foremen, timekeepers, mechanics and laborers, the cost of materials, supplies, trucks, rental on machinery and equipment, only for the time actually employed or used on such extra work, plus all power, fuel, lubricants, water and similar operating expenses and rateable proportion of premiums on public liability and workers' compensation and all other insurance required by law or ordinances. The Public Works Director shall direct the form in which the accounts of actual field cost shall be kept and shall specify in writing the method of doing work, and the type and kind of machinery and equipment to be used. The 15 percent of the actual field cost to be paid the Contractor shall cover and compensate him for profit, overhead, general supervision and field office expense, and all other elements of cost and expense not embraced within the actual field cost as herein specified. The Contractor shall give the Public Works Director access to all accounts, bills and vouchers relating thereto.

#### **ITEM 14.0 DISPUTED WORK AND CLAIMS FOR ADDITIONAL COMPENSATION**

If the Contractor is of the opinion that (a) the work is not necessary or required to accomplish the result intended by this contract; or (b) any work ordered to be done as contract work by the Owner is extra work or additional work and not contract work; or (c) any determination or order of the Owner violates the terms and provisions of this contract, the Contractor shall promptly, either before proceeding with such work or complying with such order or determination, notify the Owner in writing of his contentions with respect thereto and request a final determination thereof.

The Contractor's request for increase in the contract sum for any reason other than work performed under emergency conditions shall be made far enough in advance of required work to allow the Owner a minimum of thirty (30) days to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates and/or bids and to negotiate, execute and distribute a change order for the required work.

Such determination of the Owner shall be given in writing to the Contractor. If the Owner determines that the work in question is extra work and not contract work, or the determination or order complained of requires performance by the Contractor beyond that required by the contract or violates the terms and provisions of the contract, thereupon the Owner shall cause either (a) the issuance of a written order covering the extra work as provided for in Item 13 hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the contract.

If the Owner determines that the work in question is contract work and not extra work, or that the determination or order complained of does not require performance by the Contractor beyond that required by the contract or violate the terms and provisions of the contract, he shall

direct the Contractor to proceed, and the Contractor must promptly comply. In order to reserve his right to claim compensation for such work resulting from such compliance, however, the contractor must, within 20 calendar days after receiving the Owner's determination and direction, notify the Owner in writing that the work is being performed, or that the determination and direction is being complied with, under protest.

If the Contractor fails to so appeal to the Owner for a determination or, having so appealed, should the Contractor thus fail to notify the Owner in writing of his protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages therefor. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the Contractor due to a court order against the Owner, or due to the Owner's failure to secure right-of-way at the time required or because of a conflict of a utility with the work shall not be a cause for additional compensation for damages sustained by the Contractor, but may be a cause for extension of contract working time only.

In addition to the foregoing requirements, the Contractor shall, upon notice from the Owner produce for examination and audit at the Contractor's office, by the representatives of the Owner, all his books and records showing all of his acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the Contractor may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the Contractor, the Owner shall be released from all claims arising under, relating to or by reason of this contract, except for the sums to be due under the payment provisions of this contract. It is further stipulated and agreed that no conduct on the part of the Owner or any agent or employee of the Owner shall ever be construed as a waiver of the requirements of this section, which such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the contract documents; and in any action against the Owner to recover any sum in excess of the contract amount the Contractor must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the Owner, upon demand therefor, shall also produce for inspection by the Contractor such records as the Owner may have with respect to such disputed work or work performed under protest pursuant to order of the Owner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

## **ITEM 15.0 AUTHORITY OF THE PUBLIC WORKS DIRECTOR**

The Public Works Director and other authorized representatives and agents of the Owner shall be permitted to inspect all work, materials, invoices of materials, payrolls, records of personnel and other relevant data and records. All work shall be performed in a good and workmanlike manner and to the satisfaction of the Owner. The Public Works Director shall decide all questions which arise as to the quality and acceptability of materials furnished, work

performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, mutual rights between contractors under these specifications and suspension of the work. He shall determine the amount and quality of work performed and materials furnished. His estimate in such event shall be a condition precedent to the right of the Contractor to receive money due him under the contract.

It is hereby covenanted and agreed between two parties of this contract that the Owner's representative shall review and determine all disputes, controversies or claims of either party in relation to this contract or its performance. Such determination shall be made in writing by the Owner's representative within a reasonable time and shall be final and conclusive upon both the Contractor and the Owner. It is further covenanted and agreed between the two parties to the contract that the determination by the Owner's representative shall be a condition precedent to the right of any legal action at law or in equity that either party may have against the other.

## **ITEM 16.0 INSPECTION AND TESTS**

The Contractor shall furnish the Owner with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the Owner may be ordered removed and replaced at the Contractor's expense.

**16.1 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK:** All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the Contractor's risk and shall be considered unauthorized and, at the option of the Owner, may not be measured and paid for; and may be ordered removed at the Contractor's expense. Upon failure of the Contractor to repair satisfactorily or remove and replace, if so directed, rejected, unauthorized or condemned work or materials, immediately after receiving notice from the Owner, the Owner shall, after giving written notice to the Contractor, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor. Alternatively, the Owner may, at its option, declare the Contractor in default.

### **16.2 FINAL INSPECTIONS:**

(a) The Public Works Director, as the Owner's representative, shall make final inspection of all work included in the contract as soon as practicable after the work is completed and ready for acceptance. If the work is not acceptable to the Public Works Director at the time of such inspection, he shall inform the Contractor as to the particular defects to be remedied before final acceptance shall be made.

(b) The contract will be considered fulfilled, save as provided in any maintenance stipulations or by law, when all the work has been completed, the final inspection made

by the Public Works Director, and final acceptance and final payment by the Owner.

#### **ITEM 17.0 NO WAIVER OF RIGHTS OR ESTOPPEL**

The Owner, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefor from:

- (a) showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the Contractor or any other person under this contract, or from showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect, or improperly made in any particular, or that the work or the materials or any parts thereof, do not in fact conform to the contract requirements; and
- (b) from demanding the recovery from the Contractor of any overpayments made to him, or such damages as the Owner may sustain by reason of the Contractor's failure to perform each and every part of this contract in strict compliance with its terms; or both.

The duties and obligations imposed on the Contractor by the contract documents and the rights and remedies available thereunder to the Owner shall be in addition to and not a limitation of any such duties, obligations, rights and remedies otherwise imposed or available by law.

#### **ITEM 18.0 CONTRACTOR DEFAULT: OWNER'S RIGHT TO SUSPEND WORK AND ANNUL CONTRACT**

The work or any portion of the work under contract shall be suspended immediately on written order of the Owner declaring the Contractor to be in default. The contract may be annulled by the Owner for any good cause or causes, among others of which special reference is made to the following:

- (a) failure of the Contractor to start the work within 10 days from date specified in the written work order issued by the Owner to begin the work;
- (b) reasonable belief that the progress of the work being made by the Contractor is insufficient to complete the work within the specific time;
- (c) failure of the Contractor to provide sufficient and proper equipment, materials or construction forces for properly executing the work;
- (d) reasonable belief that the Contractor has abandoned the work or discontinuance of the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so;
- (e) reasonable belief that the Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the work;
- (f) deliberate failure on the part of the Contractor to observe any requirements of these specifications or to comply with any orders given by the Public Works Director as provided for in these specifications;
- (g) failure of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Public Works Director;
- (h) reasonable belief of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Owner in the construction of work under contract;

- (i) repeated and flagrant violations of safe working procedures;
- (j) the filing by the Contractor of litigation against the Owner prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the Contractor shall discontinue the work or such part thereof as the Owner shall designate. Any termination not falling within the definition of "default" should be considered a termination for the convenience of the Owner.

In the event of default, the Owner shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the Contractor hereto agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the Contractor for the purpose of the work and to procure other tools, equipment and materials for the completion of the same; and to charge to the account of the Contractor the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the Owner out of such monies as may be due or may at any time thereafter become due the Contractor under and by virtue of the contract or any part thereof.

The Owner shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract, if the same had been completed by the Contractor, then in such case the Owner may pay to the Contractor the difference in the cost, provided that the Contractor shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the contract if the same had been completed by the Contractor, the Contractor and his surety shall pay the amount of the excess to the Owner on notice from the Owner for excess due including any costs incurred by the Owner, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the Owner by contract or otherwise under the provisions of this section, the Contractor shall continue the remainder of the work in conformity with the terms of the contract; and in such manner as not to hinder or interfere with the performance of workmen employed as above provided by the Owner or surety.

The right to terminate this contract for the convenience of the Owner is expressly retained by the Owner in accordance with Item 22 hereof.

#### **ITEM 19.0 SUSPENSION BY COURT ORDER AGAINST THE OWNER**

The Contractor shall suspend such part or parts of the work pursuant to a court order issued against the Owner and shall not be entitled to additional compensation by virtue of such court order; neither shall the Contractor be liable to the Owner in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the Contractor.

## **ITEM 20.0 CLAIMS AGAINST CITY AND ACTION THEREON**

No claim against the City under the contract or for breach of the contract or additional compensation for extra or disputed work shall be made or asserted against the City under the contract or in any court action except pursuant to the provisions of Items 13 and 14, and unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections.

20.1 PROGRESS PAYMENTS. If provided for within the progress schedule, the Owner shall make progress payments to the Contractor in accordance with Chapter 2251 of the Texas Government Code, and the requirements and provisions set forth in the progress schedule. Such payments by Owner will be based on the Owner-approved estimate of the work performed during the preceding calendar month under this contract.

20.2 FINAL INSPECTION AND ACCEPTANCE: Whenever the improvements provided for by the contract shall have been completely performed on the part of the Contractor, the Contractor shall notify the Public Works Director that the improvement is ready for final inspection. The Public Works Director shall then make such final inspection, and if the work is satisfactory and in accordance with the specifications and contract documents, the Contractor shall be issued a certificate of acceptance.

20.3 FINAL PAYMENT: Whenever the improvements provided for by the contract shall have been completely performed on the part of the Contractor, as evidenced in the certificate of acceptance, and all required submissions provided by the Owner, a final estimate showing the value of the work shall be prepared by the Owner as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of this final estimate, less any sums that have been previously paid, deducted or retained under the provisions of the contract, shall be paid the contractor within 30 days after the final acceptance, provided the Contractor has furnished to the Owner a consent of surety and satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. The acceptance by the Contractor of the final payment as aforesaid shall operate as and shall be a release to the Owner from all claims or liabilities under the contract, including all subcontractor claims, for anything done or furnished or relating to the work under the contract or for any act or neglect of said Owner relating to or connected with the contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the Contractor on any partial or final payment.

## **ITEM 21.0 PAYMENT WITHHELD**

In addition to express provisions elsewhere contained in the contract, the Owner may

withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the Owner's interest, or if it so elects, may withhold or retain all or a portion of any progress payment or refund payment on account of:

- (a) unsatisfactory progress of the work not caused by conditions beyond Contractor's control;
- (b) defective work not corrected;
- (c) Contractor's failure to carry out instructions or orders of the Owner or his representative;
- (d) a reasonable doubt that the contract can be completed for the balance then unpaid;
- (e) work or execution thereof not in accordance with the contract documents;
- (f) claim filed by or against the Contractor or reasonable evidence indicating probable filing of claims;
- (g) failure of the Contractor to make payments to subcontractor or for material or labor;
- (h) damage to another contractor;
- (i) unsafe working conditions allowed to persist by the Contractor;
- (j) failure of the Contractor to provide work schedules as required by the Owner;
- (k) use of subcontractors without the Public Works Director's approval; or
- (l) failure of the Contractor to keep current as-built record drawings at the job site, or to turn same over in completed form to the Owner.

When the above grounds are removed, payment shall be made for amounts withheld because of them, and Owner shall never be liable for interest on any delayed or late payment. **The Contractor agrees that he will indemnify and save the City harmless from all claims growing out of the lawful materialmen and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract,** in accordance with Texas Property Code Ann. 53.231 et. seq., when the City has received a notice of an unpaid claim(s) from a person who has furnished materials or labor in connection with the performance of a public works contract, the City after having served written notice on said Contractor, either pay unpaid claims of which the City has written notice thereof, or direct or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, in paying any unpaid claims, in accordance with Texas Property Code Ann. 53.231 et seq., the City shall be deemed the agent of the Contractor, and any payment so made by the City shall be considered as a payment made under the contract by the City to the Contractor.

## **ITEM 22.0 TERMINATION FOR CONVENIENCE OF THE OWNER**

22.1 NOTICE OF TERMINATION: The performance of the work under this contract may be terminated by the Owner in whole, or from time to time in part, in accordance with this section, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by mailing a notice of termination to the Contractor specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States

Mail by the Owner. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the Owner regarding such discretionary action.

22.2 CONTRACTOR ACTION: After receipt of a notice of termination, and except as otherwise directed by the Public Works Director, the Contractor shall:

- (a) stop work under the contract on the date and to the extent specified in the notice of termination;
- (b) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- (d) transfer title to the Owner and deliver in the manner, at the times, and to the extent, if any, directed by the Public Works Director:
  - (1) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
  - (2) the completed, or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Owner.
- (e) complete performance of such part of the work as shall not have been terminated by the notice of termination; and
- (f) take such action as may be necessary, or as the Public Works Director may direct, for the protection and preservation of the property related to its contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the Public Works Director a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Public Works Director. Not later than 15 days thereafter, the Owner shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Public Works Director upon removal of the items, or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

22.3 TERMINATION CLAIM: Within 60 days after notice of termination, the Contractor shall submit his termination claim to the Public Works Director in the form and with the certification prescribed by the Public Works Director. Unless one or more extensions in writing are granted by the Public Works Director upon request of the Contractor, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

22.4 AMOUNTS: Subject to the provisions of Item 22.3, the Contractor and Owner may

agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant hereto; provided, that such agreed amount or amounts shall never exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item 22.5. hereafter, prescribing the amount to be paid to the Contractor by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

**22.5 FAILURE TO AGREE:** In the event of the failure of the Contractor and the Owner to agree as provided in Item 22.4. upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, the Owner shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined. No amount shall be due for lost or anticipated profits.

**22.6 DEDUCTIONS:** In arriving at the amount due the Contractor under this section, there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract; (b) any claim which the Owner may have against the Contractor in connection with this contract; and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

**22.7 ADJUSTMENT:** If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Public Works Director a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

**22.8 NO LIMITATION OF RIGHTS:** Nothing contained in this section shall limit or alter the rights which the Owner may have for termination of this contract under Item 18 hereof entitled "Contractor Default; Owner's Right to Suspend Work and Annul Contract" or any other right which Owner may have for default or breach of contract by Contractor.

### **ITEM 23.0 NO WAIVER OF LEGAL RIGHTS**

Inspection by the Public Works Director, any order, measurement, quantity or certificate by the Public Works Director, any order by the City for payment of money, any payment for or acceptance of any work, any extension of time or any possession taken by the City, shall not

operate as a waiver of any provisions of the contract or any power therein reserved to the City of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The City reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The City reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the Contractor or his agents and the Public Works Director, discovered in the work after the final payment has been made.

Neither final acceptance of the work, nor final payment shall relieve the Contractor of responsibility for faulty materials or workmanship, and Contractor shall promptly remedy any defects due thereto, and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the City shall constitute acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

#### **ITEM 24.0 OBLIGATION TO PERFORM FUNCTIONS**

Any failure or neglect on the part of City, its Public Works Director or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve Contractor from full compliance with the contract documents nor render City liable to Contractor for money damages, extensions of time or increased compensation of any kind.

#### **ITEM 25.0 ALL LEGAL PROVISIONS INCLUDED**

It is the intent and agreement of the parties to this contract that all legal provisions of law required to be inserted herein, shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

#### **ITEM 26.0 OVERCHARGES**

Contractor hereby assigns to City any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.