

# Invitation to Bid

## Informal Bid

Construction/Public Works Project

Non-Construction/Non-Public Works Project

## **PROJECT: Desert Cloud Pond Area Repair Bid No. PW19-001**

Sealed bids will be received  
until 3:00 pm MST on February 13, 2019

Return Bid to: Public Works Department  
Horizon City  
14999 Darrington Road  
Horizon City, Texas 79928

## **INSTRUCTIONS TO BIDDERS—INFORMAL BID REQUEST**

### **1. RECEIPT AND OPENING OF BIDS**

- Bids received in the Horizon City Public Works Department after the submission deadline shall be returned unopened and will be considered void and unacceptable. Horizon City is not responsible for delayed mail, carrier, etc. and the time/date stamp clock used upon receipt of any bid in the Public Works Department shall be the official time of receipt.
- Bids are solicited for furnishing the materials and services set forth in this invitation to bid. Completed bid proposals must be received in the Horizon City Public Works Department by the deadline stated above. All bids must be in a sealed envelope clearly marked with the bid description and opening date on the outside of the envelope. If submitting your bid by express mail, please place the bid in a separate sealed envelope inside the carrier's envelope.
- **BIDS MAY NOT BE FAXED OR E-MAILED.**
- Bids may be withdrawn at any time prior to the official opening. Alterations made before opening time must be initialed by bidder guaranteeing authenticity. After the official opening, bids may not be amended, altered or withdrawn within sixty (60) consecutive calendar days without the written permission of the City.

### **2. PREPARATION OF BID**

- Bidders are advised that the plans, specifications and other documents on file as compiled into the furnished bid packet shall constitute all the information which the City shall furnish. The City excludes any express or implied warranties relating to such documents. Bidders are required, prior to submitting any bid, to review the plans and read the specifications, bid, and contract forms carefully; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required for its completion; and to obtain all information required to make an intelligent bid.
- No information given by the City or any official thereof shall be binding upon the City. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data which are necessary for full and complete information upon which the bid may be based. Any bidder, by submitting his bid, represents and warrants: that he has prepared his bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that he has reviewed, studied and examined the bid prior to the signing and submission of same; and that he was cognizant of the terms of his bid, verified his calculations and found them to be correct and agrees to be bound thereby.

- The bidder shall submit his bid on the forms furnished by the Owner. All blank spaces in the form shall be correctly filled in and the bidder shall state the prices both in words and numerals, for which he proposes to do the work contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly. In cases of discrepancy between the price written in words and price written in figures, the price written in words shall govern.
- If the bid is submitted by an individual, his name must be signed by him or his duly authorized agent. If the bid is submitted by an association or partnership, the name and address must be given and the bid signed by a duly authorized member of the association or partnership. If the bid is submitted by a corporation, the corporate name and business address must be given and the bid signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the bid must be properly certified and must be in writing and submitted with the bid. The bid shall be executed in ink.
- The bidder shall sign and date his bid where shown in the signature block. The person signing the bid must have the authority to bind the company in a contract. Bids which are not signed where indicated may be rejected.
- Horizon City is by statute exempt from the State Sales Tax and Federal Excise Tax; therefore, **the bid price shall not include taxes.** Bidder shall bear the responsibility of any sales or use tax if any product or supply is deemed to be taxable by state. Horizon City will furnish, upon request, sales tax exemption forms to the bidder that is awarded.
- The bidder agrees if this bid is accepted, to furnish any and all services and materials upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications.
- All delivery and freight charges are to be included in the bid price.
- Any reference to model/make/manufacturer used in bid specifications is descriptive, not restrictive. It is used to indicate the type and quality desired. Bids on items of like quality will be considered unless indicated by stating no substitutions allowed.
- Quantities indicated in the bid are estimated based upon information at the time bids are requested. The City reserves the right to increase or decrease the quantities by any amount it deems necessary and as permitted by law to meet its needs without any adjustment in the contract price.
- Design, strength and quality of materials must conform to the highest standards of manufacturing practice.

- The contractor will be required to file for the appropriate permits as required by City Ordinance.

### **3. ADDITIONAL PROVISIONS APPLICABLE TO A PUBLIC WORKS/ CONSTRUCTION PROJECT**

- Each Bidder must inform themselves fully of the conditions relating to the construction of the project designated as a public works or construction project and the employment of labor thereon, including but not limited to familiarity with the project site and any utilities or other affected parties. Failure to do so will not relieve a successful Bidder of their obligation to furnish all material and labor necessary to carry out the provisions of their contract or take all actions necessary with respect to coordinating with any utilities or other affected parties.
- All insurance requirements, including workers' compensation and liability, as outlined under State Law, shall be met prior to any services rendered and shall remain in effect during the time of the contract associated with an accepted bid.
- All current Federal and the State of Texas wage laws shall be complied with, including Chapter 2258 of the Government Code regarding the payment of prevailing wage rates. The Contractor and any subcontractor under him shall pay all laborers, workmen and mechanics of all skills employed at the site to perform work, not less than the Town of Horizon City adopted rates of wages for work of a similar character. The wage rates shall comply with the attached wage rate list.

### **4. ADDENDA AND INTERPRETATIONS**

- No interpretation of the meaning of plans, specifications, or other prebid documents will be made to any Bidder orally. Every request for such interpretation should be in writing addressed to the Horizon City Public Works Director, 14999 Darrington Road, Horizon City, Texas 79928.
- Any interpretations, corrections or changes to this Invitation to Bid and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Horizon City Public Works Director or other designee of the Mayor. Addenda will be sent to all who are known to have received a copy of this Invitation to Bid.
- Bidders shall acknowledge receipt of all addenda on the sealed envelope containing their bid and all addenda so issued shall become part of the contract documents.

### **5. METHOD OF AWARD—LOWEST RESPONSIBLE AND RESPONSIVE BIDDER**

- Horizon City reserves the right to reject any or all products and/or services covered in this Invitation to Bid and to waive informalities or defects in bids or to accept such bids as it shall

deem to be in the best interests of Horizon City.

- Horizon City reserves the right to award bids on a lump sum or unit price basis, whichever is in the best interest of the City. Horizon City reserves the right to split the bid between bidders on individual prices.
- All bids meeting the intent of this Invitation to Bid will be considered for award. Bidders taking exception to specifications, or offering substitutions, shall state these exceptions in the section provided on the Bid Form or by attachments as a part of the bid. The absence of such a list shall indicate that the bidder has not taken exceptions, and the City shall hold the bidder responsible to perform in strict accordance with the specifications of this invitation. Horizon City reserves the right to accept any, all, or none of the exception(s)/substitution(s) deemed to be in the best interest of the City.
- Bidders must supply with their bid, a list of at least three (3) references where like goods or services have been supplied by their company. Include name of the business, address, telephone number and name of representative with whom the City may speak.
- For any Public Works / Construction project exceeding \$20,000.00, Bidder must demonstrate successful construction of, and successful completion of one (1) project similar in nature and scope of this Project and one (1) project with a value of at least fifty percent (50%) of the value bid for this project, within the last five (5) years. In determining the lowest and best bidder, in addition to price, the City may consider the ability, capacity and skill of Bidder to perform the contract or provide the service required, the character, responsibility, integrity, reputation, and experience of the Bidder, and any documentation of the quality of performance on any previous City contracts or any previous or existing noncompliance by the Bidder with specification requirements.
- Section 176.006 of the Texas Local Government Code requires a bidder/vendor to file a conflict of interest questionnaire if the vendor has a business relationship with the City and has:
  - a) an employment or other business relationship with an officer or an officer's family member that results in that person receiving taxable income that is more than \$2,500 in the preceding twelve months; or
  - b) has given an officer or an officer's family member one or more gifts totaling more than \$250 in the preceding twelve months.

A vendor/bidder is required to file a questionnaire not later than the seventh business day after the later of the following:

- a) the date the vendor begins discussions or negotiations to enter into a contract with the City or submits an application or response to a bid proposal; or
- b) the date the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member.

State law requires that a vendor file an updated questionnaire with the City Clerk's office annually, before September 1<sup>st</sup>, and or not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate. Compliance with this law is the responsibility of each bidder/vendor.

- Section 2252.908 of the Texas Government Code requires an “interested party” as that term is defined in Section 2252.908(a)(3) to submit a disclosure of interested parties to the city at the time the contract is submitted to the city council for approval. The successful bidder, upon notification that this submission is required, shall complete Form 1295 as required by the State of Texas, Texas Ethics Commission and timely submit a signed and notarized copy of the form to the City.
- If this bid is accepted and approved by the Town of Horizon City, this bid shall be incorporated into a contract. No oral agreements either expressed or implied shall be valid. No different or additional terms will become part of this contract with the exception of a change arising.
- By accepting this invitation to bid and bidding on the item(s) set forth above you are accepting any and all of the general conditions set forth above and any additional specifications and conditions contained within the contract attached.
- Bidders may be disqualified and their bid not considered for the following specific reasons:
  - (a) reason for believing collusion exists among the bidders;
  - (b) reasonable grounds for believing that any bidder is interested in more than one bid for the work contemplated;
  - (c) the bidder being currently in any litigation against the Town of Horizon City, or where such litigation is contemplated or imminent, in the sole opinion of the Public Works Director or other designee of the Mayor;
  - (d) the bidder being in arrears on any existing contract or having defaulted on a previous contract;
  - (e) lack of competency, responsibility or financial capability;
  - (f) uncompleted work which in the judgment of the Public Works Director or other designee of the Mayor shall prevent or hinder the prompt completion of additional work if awarded;
  - (g) unbalanced value of any bid items.
- After bids are opened, the bids shall be tabulated for comparison on the basis of the bid prices and quantities shown in the bid. Until final award of the contract, the City reserves the right to reject any or all bids, to waive technicalities or irregularities at its option, to re-advertise for new bids or proceed to do the work otherwise in the best interests of the City. Each bidder shall be furnished a copy of the bid tabulation upon request.
- The award by the Town of Horizon City, if made, shall be to the lowest responsive, responsible bidder within 60 days after the opening of bids; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the contract. Delivery of the NOTICE OF AWARD shall be

hand-delivery, evidenced by a written and dated receipt, or by Certified Mail, and the date of receipt shall be established as the date of Delivery shown on the US Postal Service Domestic Return Receipt form or facsimile confirmation.

- The person or persons, partnership, company, firm, association or corporation to whom a contract is awarded shall within 10 working days after receipt of the contract sign the necessary agreements entering into the required contract with the City and provide the necessary evidence of insurance as required under the contract documents within 30 days. No contract shall be binding on the City until all authorized signatures required by law have been affixed and the executed contract delivered to the Contractor.
- The failure of the bidder to execute the contract within 10 days or provide the required evidence of insurance shall constitute a breach of his bid and the City may annul the award. In the event the Owner should seek new informal bids, the defaulting Contractor shall not be eligible to bid.

**HORIZON CITY**  
**Desert Cloud Pond Area Repair**  
**SPECIFICATIONS**

**Location**

Ponding area on Desert Cloud. Entrance is located between 14217 Desert Cloud and 14221 Desert Cloud.

**Crews**

As needed.

**Description of Work**

1. Using Machinery compact and repair erosion at:
  - a.) Pond slopes.
  - b.) Access Maintenance Road.
  - c.) Access Ramp.
2. Clean drainage structures from trash/debris and vegetation.
3. Clear/fill drainage structures from excess soil.
4. Re-Mortar cracks in Rock walls.
5. Paint entrance gate.
6. Dispose of all trash/debris properly.

**Standards for Work and Supervision**

Coordinate required inspections with the Public Works Director.

**Prices**

Price shall include all costs necessary to complete the work, including but not limited to the following: labor, landfill tipping fees, insurance, overhead, profit, travel time, mileage, and be exclusive of taxes.



### **Insurance Requirements**

By submitting this bid, the bidder affirms he has reviewed the insurance requirements found below in the applicable contract provisions and confirms its ability to procure the required insurance upon award of this contract.

### **Contract**

By submitting this bid, the bidder affirms he has reviewed the attached contract(s) and takes no exceptions. Should the bidder wish changes to the contract, those changes should be listed in the exceptions portion of the bid form below.

**BID FORM**

	<b>CAN YOU COMPLY?</b>	
	<b>YES</b>	<b>NO</b>
<b>REQUIRED SPECIFICATIONS</b>		
<b>Total Bid Price</b>		

**Note:** Also complete bid summary with the total bid price in figures and in words.

<b>EXCEPTIONS</b>

## BIDDER INFORMATION SHEET

<b>Company Name</b>	
<b>Address</b>	
<b>City, State, Zip</b>	
<b>Phone Number</b>	
<b>Fax Number</b>	
<b>Email Address</b>	
<b>Tax Identification Number</b>	
<b>Signature of Authorized Agent</b>	
<b>Printed Name of Authorized Agent</b>	
<b>Title</b>	
<b>Date</b>	

If the Bidder is a Corporation, the following Certificate should be executed:

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as Bidder hereinabove; that \_\_\_\_\_, who signed the foregoing bid on behalf of the Bidder was then \_\_\_\_\_ of said corporation; that said proposal was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

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Corporate Secretary Signature and Corporate Seal

**BID SUMMARY**

Total Bid \_\_\_\_\_  
(In Figures)

Total Bid \_\_\_\_\_  
(In Words)

Receipt is hereby acknowledged of the following addenda to the contract documents:

Addendum No. 1 dated _____	Received _____
Addendum No. 2 dated _____	Received _____
Addendum No. 3 dated _____	Received _____
Addendum No. 4 dated _____	Received _____
Addendum No. 5 dated _____	Received _____

\_\_\_\_\_  
**CONTRACTOR**

\_\_\_\_\_  
**BY**

\_\_\_\_\_  
**TITLE**

**Seal and Authorization  
(if a corporation)**

**ATTEST:**

\_\_\_\_\_  
**ADDRESS**

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**TELEPHONE**

**CONTRACT TIME**

Bidder agrees to commence work on a date to be specified in a written "Notice to Proceed" issued by the City. The Contract Time shall begin on the date to commence work specified in the Notice to Proceed and shall run for 7 additional CONSECUTIVE CALENDAR DAYS thereafter. Bidder shall Substantially Complete the project within 30 CONSECUTIVE CALENDAR DAYS after the date to commence work in the Notice to Proceed. Bidder agrees to pay, as liquidated damages, the sum as specified in the Special Conditions for each consecutive calendar day after the Contract Time.

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

**CERTIFICATION OF NONCOLLUSION**

The bidder, being sworn, deposes and says, \_\_\_\_\_, the contractor submitting this bid and its agents, officers or employees have not directly or indirectly entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or with any City official.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

SUBSCRIBED AND SWORN to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

## HORIZON CITY

### CONTRACT GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

### **3. CONTRACTUAL RELATIONSHIP**

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

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

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

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

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

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

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

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

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

### **6. EMPLOYEES**

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

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

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

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

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

## **7. CLEAN UP**

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

## **8. LABOR AND MATERIALS**

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

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

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

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

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



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

#### **10. INVOICES AND PAYMENTS**

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

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

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

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

## **12. WARRANTY-PRICE**

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

## **13. WARRANTY-PRODUCT**

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

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

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

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

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

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

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

#### **15. INDEMNIFICATION**

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

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

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

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

## **16. INSURANCE**

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

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

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

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

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

Please refer to Bid Number and Title in all correspondence.

## **17. SUBCONTRACTS**

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

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

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

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

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

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

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

## **18. ASSIGNMENTS**

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

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

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

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

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

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

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

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

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

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

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

## **20. RIGHT TO ASSURANCE**

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

## **21. TERMINATION**

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

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

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

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

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

## **22. FORCE MAJEURE**

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

## **23. SERVICE OF NOTICES**

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

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

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

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

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

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

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

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

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

## **26. SUCCESSORS AND ASSIGNS**

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

## **27. CONFLICT OF INTEREST**

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

## **28. HEADINGS**

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

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

## **29. ADVERTISING**

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

## **30. AVAILABILITY OF FUNDS**

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



**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 filling 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.