

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditure specified below is attached hereto and incorporated hereby by this reference.
- ( ) Other - Grant Funds Available

*Ch. B. [unclear]* *Ronald C. [unclear]*

Date: 5-23, 2012 City Controller of the City of Houston, Texas

FUND REF: 4500-1200-520126 AMOUNT: 300,000.00 ENCUMB. NO.: 10149031

OR # 46-11506  
FR108 # 3-12614

City of Houston, Texas Ordinance No. 2012-515

AN ORDINANCE APPROPRIATING THE SUM OF \$300,000.00 OUT OF THE FIRE CONSOLIDATED CONSTRUCTION FUND AND AWARDED A CONTRACT TO TIMES CONSTRUCTION, INC. FOR CONCRETE REPAIR SERVICES FOR VARIOUS DEPARTMENTS; ESTABLISHING A MAXIMUM CONTRACT AMOUNT AND DECLARING AN EMERGENCY.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: The sum of **\$300,000.00** is appropriated for services described in the title.

Section 2. Having duly advertised for and received competitive bids for the work described in the title of this ordinance, the City Council hereby finds and determines that the lowest responsible bid was submitted by the bidder named in the title hereof in the amount of **\$5,300,345.00**. The Contract for said work is hereby awarded to said bidder.

Section 3. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed **\$5,300,345.00** unless and until this sum is increased by ordinance of City Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

**PASSED AND ADOPTED** this 30th day of May, 20 12.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing

Ordinance is JUN 05 2012.

  
\_\_\_\_\_  
City Secretary

Prepared by Strategic Purchasing Department, Art Lopez at Extension 3-8731

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

5-21-12  
Date

Melora B. Bush  
Legal Assistant

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: JUN 05 2012

## CERTIFICATE OF CITY CONTROLLER

I, Ronald C. Green, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$300,000.00** required to perform, Concrete Repair Services , do hereby certify as follows:

- (1) The sum of **\$300,000.00** will be funded from the Fire Consolidated Construction Fund (4500) bond proceeds and/or commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 93-1409 authorizing the creation of the Fire Consolidated Construction Fund. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the **\$300,000.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the Water and Sewer System Commercial Paper Ordinance, Ordinance No. 93-1209.

  
\_\_\_\_\_  
City Controller *Ch.B. Mc*

AYE	NO	
✓		<b>MAYOR PARKER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		BROWN
✓		DAVIS
✓		COHEN
	<b>ABSENT</b>	ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

**AGREEMENT BETWEEN THE CITY OF HOUSTON  
AND CONTRACTOR**

**Owner:** THE CITY OF HOUSTON, 901 Bagby Street, Houston, Texas 77002 (the City)

**Contractor:** Times Construction, Inc.

**Address:** 2900 Wesleyan St. Suite #625, Houston, TX 77027

**Project No.:** S50-C23560

**The Project Title:** Work Order Contract for Concrete Repair Services for Various  
Departments

**The Project Location:** City Wide

**The City Engineer is:** Humberto Bautista

(Address for Written Notice) 900 Bagby Street, Houston, Texas 77002

**The Architect/Engineer is:**

(Address)

**THE OWNER AND THE CONTRACTOR AGREE AS SET FORTH BELOW:**

**ARTICLE 1  
WORK OF THIS CONTRACT**

- 1.1 The Contractor shall execute the Work in accordance with the provisions of the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as otherwise provided herein. Work shall be described in the Work Order. More than one Work Order may be issued at anytime under the Contract or no Work Orders may be issued under the Contract.

**ARTICLE 2  
CONTRACT TERM AND CONTRACT TIME**

- 2.1 The effective date is the date of countersignature by the City Controller. The Contract Term shall begin on the date specified in the Notice to Proceed issued by the City Purchasing Agent and shall continue for **a three-year initial period. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions.** If the Director/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in written of non-renewal at least 30 days before the expiration of the then current term.
- 2.2 The Date of Commencement of the Work, as defined in General Conditions, is the date from which the Contract Time is measured, which date is established by the Work Order.
- 2.3 The Contractor shall achieve substantial completion of the Work during the Contract Time, subject to adjustments as provided in Contract Documents.

- 2.4 Contract Term shall not exceed three years, except as otherwise provided herein. During this time, City from time-to-time may issue Work Orders specifying the Work to be completed and Contract Time within which Contractor must achieve Substantial Completion.
- 2.5 Should Contractor fail to achieve substantial completion of the Work within that Contract Time, the Contractor agrees to pay liquidated damages as stipulated in Supplementary Conditions.

**ARTICLE 3  
THE CONTRACT PRICE**

- 3.1 The City's duty to pay money to the Contractor for any purpose under the Contract is limited in its entirety by this Article 3.
- 3.2 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 3.3 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$300,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 3.4 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

**By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.**

\$ \_\_\_\_\_

- 3.5 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.
- 3.6 Subject to all the terms and conditions of the Contract Documents, the City shall pay the Contract Price to the Contractor in current funds for the Contractor's performance of the Work, as provided in the Work Order.
- 3.7 The Contract Amount, for those unit price items of Work listed in the Fee Schedule for Concrete Repair Services is subject to adjustment at completion of the Work due to variation in quantities of units of work actually incorporated in the completed Work and other adjustments as provided in Contract Documents.

- 3.8 Subject to all the terms and conditions of the Contract Documents, the City shall pay the Contract Price to the Contractor in current funds for the Contractor's performance of the Work, as provided in the Work Order.
- 3.9 The Contract Amount, for those unit price items of Work listed in the Fee Schedule for Concrete Repair Services for Various Departments is subject to adjustment at completion of the Work due to variation in quantities of units of work actually incorporated in the completed Work and other adjustments as provided in Contract Documents.

#### **ARTICLE 4 PAYMENTS**

- 4.1 The City shall make progress payments to the Contractor on account of the Contract Price included in the Work Order as provided in this Article 4 and elsewhere in the Contract Documents.
- 4.2 The City Engineer will issue a Certificate for Payment and the City will make a progress payment on the basis of such Certificate as provided in the General Conditions.
- 4.3 Final payment, constituting the entire unpaid balance of the Contract Price due under the Work Order, shall be made by the City to the Contractor as provided in the General Conditions.

#### **ARTICLE 5 MISCELLANEOUS PROVISIONS**

- 5.1 Where reference is made in this Agreement to a provision of the General Conditions or other Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.
- 5.2 The Contract may be terminated by the City or by the Contractor as provided in the General Conditions.
- 5.3 The Work may be suspended by the City as provided in the General Conditions.

#### **ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

- 6.1 The basis for this Agreement is this executed Document 00510 - Agreement Between the City of Houston and Contractor. Other Contract Documents, except for Work Orders and Modifications issued after execution of this Agreement, are enumerated under this Article.
- 6.2 The General Conditions are Document 00700, current edition, **INCLUDING THE INDEMNITY PROVISIONS STATED IN PARAGRAPH 3.24.**
- 6.3 The Supplementary Conditions of the Contract are those stated in Document 00800.
- 6.4 The Specifications.
- 6.5 Reserved
- 6.6 The Addenda, issued separately, which applied to Contract Documents, if any, are as follows:  
*(Addenda issued in all letters of clarification have been incorporated into the final document)*

6.7 Attachments to this Agreement are as follows:

<u>Documents</u>	<u>Title</u>
EXHIBIT A.	DEFINITIONS
EXHIBIT B	SCOPE OF WORK/TECHNICAL SPECIFICATIONS
EXHIBIT B-1	STANDARD DRAWINGS FOR CONCRETE REPAIR SERVICES
EXHIBIT B-2	WAGE SCALE FOR ENGINEERING CONSTRUCTION
EXHIBIT B-3	DOCUMENT 00512 WORK ORDER
EXHIBIT C	EQUAL EMPLOYMENT OPPORTUNITY
EXHIBIT D	MWBE SUBCONTRACT TERMS
EXHIBIT E	DRUG POLICY COMPLIANCE AGREEMENT
EXHIBIT F	CERTIFICATION OF NO SAFETY IMPACT POSITIONS
EXHIBIT G	DRUG POLICY COMPLIANCE DECLARATION
EXHIBIT H	FEES AND COSTS
EXHIBIT I	CITY'S CONTRACTORS PAY OR PLAY PROGRAM
EXHIBIT J	PERFORMANCE BOND
EXHIBIT K	ONE-YEAR MAINTENACE BOND
EXHIBIT L	STATUTORY PAYMENT BOND
EXHIBIT M	CITY OF HOUSTON GENERAL CONDITIONS DOCUMENT 00700
EXHIBIT N	CITY OF HOUSTON SUPPLEMENTAL CONDITIONS DOCUMENT 00800

This Agreement is effective as of the date of countersignature by the City Controller.

**Times Construction, Inc.**  
**CONTRACTOR:**

(If Joint Venture)

By: *H. Zafarian*  
Name: Hossein Zafarian  
Title: President  
Date: March 16, 2012  
Federal I.D. No. **76-0480100**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF HOUSTON, TEXAS**

APPROVED:

SIGNED:

By: *T. Wilcox*  
[City Purchasing Agent]

By: *Annise D. Parker*  
[Mayor] *Mark D. Rapp*

ATTEST/SEAL:  
By: *C. Russell*  
[City Secretary]

COUNTERSIGNED:  
By: *Ronald C. King*  
[City Controller] *Denard Polk*

Date Countersigned:

6-5-12

This Ordinance has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

4-23-12  
Date

*David D. [Signature]*  
Legal Assistant

**EXHIBIT "A"**  
**DEFINITIONS**

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Term" is defined in Article 2.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

**EXHIBIT "B"**  
**SCOPE OF WORK/TECHNICAL SPECIFICATIONS**

**SCOPE OF WORK**

**1.0 GENERAL:**

1.1 The Contractor shall provide all labor, materials, equipment, safety, insurance, transportation, and permits necessary to comply with all the City of Houston Building Codes, City of Houston Construction Standard Specifications and Construction Standard Details or their latest revision.

1.2 The project shall include driveways, wheelchair ramps, sidewalks and curbs.

**1.3 *The minimum dollar amount of any work order shall be \$7,000.00. All work orders that have multiple sites will be within a ½-mile radius of the starting point.***

1.4 The project shall be constructed in accordance with the Technical Specification and the referenced Sections of the City of Houston Construction Standard Specifications and/or the referenced Details of the City of Houston Construction Standard Construction Details.

1.5 The work will be completed at various locations throughout the city, spanning the term of this contract.

1.6 The Project Manager will provide drawings and approximate measurements to the Contractor.

1.7 Contract Compliance; The primary responsibility for monitoring compliance rests with the City's Contract Compliance Section. The Contractor shall be responsible for the following:

1.7.1 Reviewing assigned proposed plans

1.7.2 Verifying all measurements and quantities

1.7.3 Notifying department of any discrepancy

1.7.4 Providing a written proposal utilizing all applicable bid items for the required work.

1.7.5 The City reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and acceptable levels of service are provided. Monitoring may take the form of, but not necessarily be limited to:

- Inspection, testing, and/or sampling of goods delivered or to be delivered
- Review of deliveries received for accuracy and timeliness
- Review of Supplier's invoices for accuracy
- Review of certifications and/or licenses

- Site visits

- 1.8 If there is a conflict or discrepancy between the proposed field measurements and the other data, it is the Contractor's responsibility to notify the Project Manager of such conflict or discrepancy with supporting calculation prior to commencing work on an assigned project. Any additional cost incurred after work commenced shall be at the expense of the Contractor.
- 1.9 There will be no mobilization item for this project, which is incidental to each work order to be issued at different site(s) upon the needs of the City maintenance requirement.
- 1.10 Projects undertaken under the scope of this contract will NOT require an Engineer's seal.
- 1.11 City of Houston shall provide personnel for water on/off services within a reasonable time frame from receipt of request from contractor.
- 1.12 City of Houston shall provide inlets, manholes, and water valves as required by the Contractor to complete adjustments/repairs.
- 1.13 The City shall require a Pre-Construction Conference.
  - A. The City of Houston will schedule a conference after Notice of Award. Those required to attend will be given a five (5) day notice of meeting.
  - B. Attendance Required: City Department Representative, Affirmative Action, Contract Administrator and Contractor.
  - C. Agenda:
    1. Affirmative Action, Contract Compliance Division
    2. Designation of personnel representing the parties in Contract
    3. Contractor receives purchase order from City of Houston.

**2.0 WORKMANSHIP:**

- 2.1 All work shall be performed and completed in a thorough, workmanlike manner and in accordance with the latest proven practices of the trade by thoroughly skilled and experienced workmen.
- 2.2 All work shall be performed and completed using the latest standard industrial practices, notwithstanding any omissions from these specifications or drawings.
- 2.3 The concrete work shall conform to latest edition of ACI, ASTM Building Codes, City Ordinances, and all other applicable construction codes, specifications and details.
- 2.4 All materials furnished and all work performed under this contract must be satisfactory to the project manager.

2.5 The Contractor shall remove all materials from the work site that do not conform to the applicable codes and shall replace them with materials that conform to the applicable codes.

2.6 The Contractor shall immediately correct any deficiencies discovered during work or after completion.

**3.0 SAFETY AND FACILITY SECURITY:**

3.1 The Contractor shall submit the Hazard Communications Program / Contract Compliance form and all associated documentation to the Project Manager WITH EACH WORK ORDER.

3.2 All work shall be performed between the hours of 7:01 a.m. and 4:00 p.m., Monday through Friday, unless otherwise authorized. (Holidays as prescribed by City Council not included.)

3.3 The Contractor will be responsible for ensuring a safe work environment in accordance with rules and regulations of O.S.H.A., T.N.R.C.C. and other governmental agencies for all persons entering the work area, i.e. traffic cones or traffic signs for street construction and others applicable.

3.4 If it is necessary, for whatever reason, to stop work and leave an open excavation, adequate safety signs, barricades and/or steel plate shall be left in place.

3.5 All safety equipment used for the Project will be incidental to the unit price of the specified work.

3.6 Flagmen must be certified by Metropolitan Transit Authority of Harris County, Texas (METRO).

**4.0 CITY BUILDING CODES:**

4.1 All work performed or equipment installed shall be in strict accordance with the City of Houston Building Codes. The Contractor will immediately correct any deficiencies discovered during work or after completion. Failure to correct deficiencies will result in termination of the contract or the City having corrections made at the Contractor's expense.

**5.0 COMPLETION OF WORK ORDERS:**

5.1 The Contractor shall notify the Project Manager before the initiation of the project.

5.1.1 City personnel shall be authorized to observe all materials and work performed.

5.1.2 Such observation will not relieve the Contractor from any obligation to

perform the work in accordance with the requirements of these specifications.

- 5.2 All concrete work shall be completed within the time and procedure schedule as specified in the work order (generally twenty-one (21) days from issuance of the work order).
- 5.3 Any extension of the original completion date must be with the prior approval of the Project Manager.
- 5.4 Any deficiency listed by the City representative shall be corrected before final acceptance of the work for each work order is granted and invoicing is approved for payment.

**6.0 LIABILITY:**

- 6.1 All work shall be accomplished in such a manner as to prevent damage to the City of Houston facilities, equipment, roads, grounds, utilities, processes, etc., or to any other existing utilities.
- 6.2 The Contractor shall be liable for any damage to electrical, water, gas, etc. which occurs during the performance of work under this contract.
- 6.3 When such damage is due to the failure of the Contractor to take precautionary actions, or to exercise sound judgment, or fail to utilize proven construction practices, the Contractor shall restore, repair, or replace equipment.
  - 6.3.1 The restoration, repair or replacement shall be to a state that it had been before the damage occurred without additional charge to the City of Houston.
- 6.4 No additional compensation for repairs will be allowed.
- 6.5 If necessary, actual costs of repairs, or replacement, may be withheld from contract payment by the City of Houston or the Contractor may issue a credit payment to the city.

**7.0 SITE CLEAN UP:**

- 7.1 All rubbish and debris of every type, kind and nature resulting from the Contractor's activities shall be cleared up and removed from the project site or placed/moved to a part of the site, as designated by the project manager.
  - 7.1.1 All ruts and depressions resulting from the Contractor's operations shall be filled in and leveled off to facilitate mowing the site.
  - 7.1.2 Upon completion of the Contractor's work, including site clean up, the

area shall be returned to the same or better condition.

7.1.3 No separate payment will be made for clean up and debris removal as described above.

**8.0 WARRANTY:**

- 8.1 A warranty of one (1) year minimum shall be provided for both materials and workmanship.
- 8.2 The warranty period shall commence on the date the City of Houston officially accepts the completed work at each site.
- 8.3 Any warranty work is to be completed without cost to the City within ten (10) calendar days after written notification of a service problem.

**9.0 PERFORMANCE BOND AND PAYMENT BOND:**

- 9.1 The Contractor shall furnish and maintain a performance and payment bond in the amount of **100% of the annual contract amount, renewable annually**, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of three years and the Contractor mutually agrees, the Contractor shall furnish a performance and payment bond for each renewal year. However, the surety providing the performance bond for each year of the initial term of the agreement shall be under no obligation to provide the performance and payment bond for any renewal year. The bonds shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in the General Conditions Document 00700.
- 9.2 If the City exercises any option years, the Contractor shall maintain a Performance and Payment Bond in the amount equal to 100% of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bonds must be in substantially the form attached set out in the General Conditions Document 00700 and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bonds exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list. The Contractor must deliver the Performance and Payment Bond or Clean Irrevocable Letter of Credit to the City Purchasing Agent of the City on or before the tenth (10<sup>th</sup>) day following the day this Contractor receives notification.

**10.0 MAINTENANCE BOND:**

The Contractor shall furnish a maintenance bond in the amount of **100% of the annual contract amount, renewable annually** in the form provided in Exhibit "K". This bond, also referred to as the One Year Maintenance Bond, will be conditioned upon Contractor's repair, replacement or restoration of any work or any portion of the work which is found to be

defective or fails in any way to comply strictly with this contract or the plans and specifications for such work within a period of one (1) year from the date of acceptance of such work by the City Council or after the date that the Contract Administrator, or his designee in writing, determines, in a written notice to the Contractor, to be the date upon which the project is both substantially complete and available for the full and beneficial occupancy or use of the City.

#### **11.0 MWBE COMPLIANCE:**

The Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. The Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **22%, MBE 14% and SBE 8%** of the value of this Agreement to MWBEs. The Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO"), and will comply with them.

The Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in Exhibit "D".

#### **12.0 CITY CONTRACTORS' PAY OR PLAY PROGRAM:**

The purpose of this Executive Order 1-7 is to require certain contractors to offer to certain employees a minimal level of health benefits or to contribute a designated amount to be used to offset the costs of providing health care to uninsured people in the Houston/Harris County area. To that purpose, this Executive Order establishes the Pay or Play Program and procedures for the effectiveness and impact of the Program on contracting firms and the City of Houston

#### **13.0 GENERAL CONDITIONS:**

- 13.1 The Project's specifications listed in the Technical Specification contains modifying criteria related to working conditions, paid/unpaid items, etc. which supersede and/or represent an addendum to the respective City of Houston Standard Construction Specifications / Details. The most restrictive/critical rule between the two specifications of Technical Specification and Standard Construction Specifications will prevail for the construction requirement(s) of this project.
- 13.2 In addition to the Technical Specifications, the City of Houston Standard Construction Specifications is attached, as well as the Construction Detail(s) is attached. It is the Contractor's responsibility to verify the correct dimensions, materials, construction methods and other items referred in said Construction Specifications/Details for the specified bid items prior to bidding on this Project regardless of whether the documents are attached or not.

- 13.3 All wheelchair ramps must comply with current American with Disabilities Act (ADA) requirements, Standards for Accessible Design, Title III regulations 28 CRF Part 36, revised July 1, 1994, [www.usdoj.gov/crt/stdspdf.htm](http://www.usdoj.gov/crt/stdspdf.htm)

**14.0 SEQUENCE OF WORK ORDER EXECUTION:**

- 14.1 The Project Manager will issue a drawing sketch and total cost estimation to the Contractor for their estimation of the complete scope of work required for completion of the project.
- 14.2 The Contractor must respond with their construction cost quotation within three (3) working days after receiving the drawing sketch and cost estimation from the department. The quotation must include a breakdown by fee schedule line item of each service to be provided, the quantity, and the total cost for that line.
- 14.2.1 The Contractor will submit a completed **Hazard Communications Program / Contractor Compliance Form** with each cost quotation. **(ADDENDUM A)**
- 14.3 If the Contractor's construction cost quotation is acceptable, the Project Manager will issue a Work Order authorizing the Contractor to perform work at the site.
- 14.3.1 The schedule of project will be coordinated with City of Houston Project Manager so as not to interfere with City of Houston Water Production operations.
- 14.3.2 The Contractor will not commence work on the project until the Project Manager has approved the submitted schedule of work. Issuance of the Work Order is not sufficient to begin work. The Contractor must also obtain approval of the schedule of work prior to mobilization to the site.
- 14.4 The Contractor must start the construction within thirty (30) working days after the Work Order is issued. The specified response time includes the time required for building inspection, underground utility lines staking and material requisition. However, the Contractor agrees to start a specified construction work within five (5) working days or less if an emergency condition exists.
- 14.5 Existing utilities
- 14.5.1 It is the responsibility of the Contractor to contact all utility companies to field mark their underground lines in the area of the proposed concrete work prior to construction.
- 14.5.2 If a utility in an existing building is to be interrupted due to alteration work, the scheduled interruption must be coordinated with and be approved by the City of Houston Project Manager at least three (3) working days before the proposed construction.

**15.0 PRICE ADJUSTMENTS:**

15.1 The contract prices shall not be adjusted during the entire term of the contract.

**16.0 ADDITIONS & DELETIONS:**

16.1 The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the Fees and Costs Schedule. In the event the additional service is not identical to any item already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the Fees and Costs Schedule.

**17.0 ESTIMATED QUANTITIES NOT GUARANTEED:**

17.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of concrete repair services during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing requiring all the quantities specified herein.

**18.0 WARRANTY OF SERVICES:**

18.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.

18.2 "Correction" as used in this clause, means the elimination of a defect.

18.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

18.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the

Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

18.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

**19.0 INTERLOCAL AGREEMENTS:**

Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

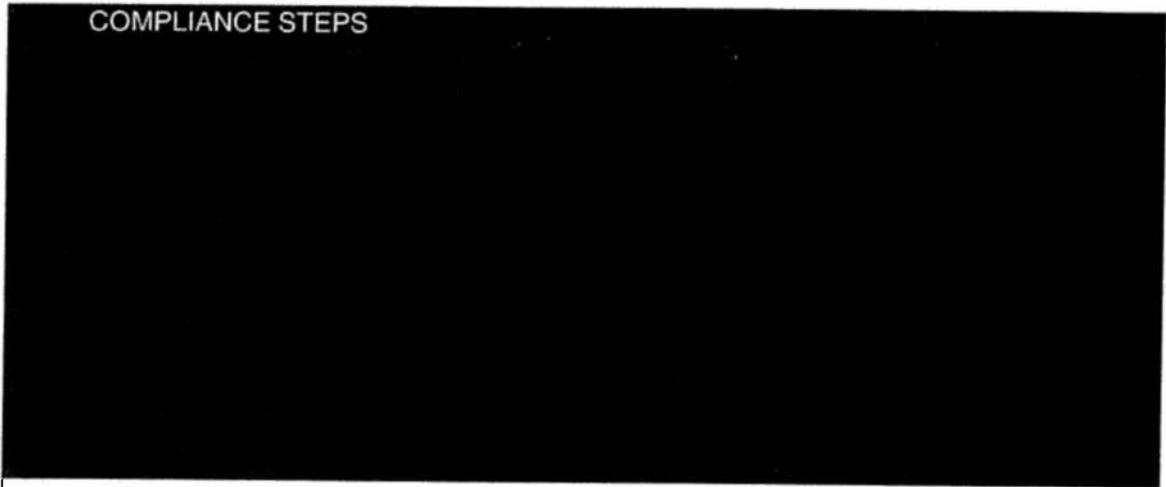
**ADDENDUM A  
CONTRACTOR COMPLIANCE FORM**

DEPT: Public Works and Engineering

LOCATION(S): \_\_\_\_\_

**(NOTE: To be submitted/completed with each Work Order.)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**COMPLIANCE STEPS**

- |    |  |                          |                          |
|----|--|--------------------------|--------------------------|
| 1. | Will contractor bring chemicals on City property?            | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Have the chemicals been assessed for hazards? (Attach HCP-1) | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Has Safety/Risk Management approved usage?                   | <input type="checkbox"/> | <input type="checkbox"/> |

## **TECHNICAL SPECIFICATIONS**

City of Houston Standard Specifications  
For  
**WORK ORDER CONTRACT FOR CONCRETE REPAIR SERVICES**

~~  
Table of Contents

Document Title: The following standard specifications are included in the bid package:

### **DIVISION 1 – GENERAL REQUIREMENTS**

01110 Summary of Work  
01145 Use of Premises  
01255 Change Order Procedures  
01270 Measurement and Payment  
01312 Coordination and Meetings  
01325 Construction Photographs  
01330 Construction Schedule  
01422 Submittal Procedures  
01450 Reference Standards  
01452 Inspection Services  
01454 Testing Laboratory Services  
01555 Traffic Control and Regulation  
01576 Waste Material Disposal  
01610 Basic Product Requirement  
01725 Field Surveying  
01770 Closeout Procedures  
01785 Project Record Documents

### **DIVISION 2 – SITE WORK (PWE web link)**

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

02086 Adjusting Manholes, Inlets, and Valve Boxes to Grade  
02221 Removing Existing Pavements and Structures  
02317 Backfill for Pavement Repair  
02320 Backfill  
02632 Cast-in-place Headwalls  
02711 Hot-mix Asphalt Base Course  
02712 Cement Stabilized Base Course  
02741 Hot-mix Asphalt Concrete Pavement  
02743 Tack Coat  
02751 Concrete Paving  
02752 Concrete Pavement Joints  
02753 Concrete Pavement Curing  
02754 Concrete Driveways  
02771 Curb, Curb and Gutter, and Headers  
02775 Concrete Sidewalks  
02911 Topsoil  
2922 Sodding

City of Houston Standard Specifications  
For  
WORK ORDER CONTRACT FOR CONCRETE REPAIR SERVICES

The following standard specifications are included in the bid package:

**DIVISION 2 – SITE WORK**

- 02952 Mudjacking (Slabjacking) Rigid Pavement
- 02953 Crack Sealing
- 02954 Sawed Joints
- 03931 Concrete Repair and Rehabilitation

**SECTION 01110**  
**SUMMARY OF WORK**

\*\*\*\*\*

*This text gives standard City of Houston provisions, as they may be appropriate to an individual Project. Determine Project requirements from City authorities in editing this text, and provide additional text as appropriate.*

\*\*\*\*\*

**PART 1 GENERAL**

**1.0 SECTION INCLUDES**

1.1 Summary of the Work including work by City, City furnished products, Work sequence, future Work, Contractor use of Premises, and City occupancy.

**2.0 WORK COVERED BY CONTRACT DOCUMENTS**

2.0 Work of the contract is for the construction of [CONCRETE IMPROVEMENTS].

**3.0 CASH ALLOWANCES**

3.1 Include the following specific Cash Allowances in the Contract Price under provision of General Conditions, “**REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700**”

**4.0 CITY FURNISHED PRODUCTS**

4.1 Items Furnished by City for Installation and Final Connection by Contractor: Water meter.

**4.2 Contractor's Responsibilities:**

4.1.1 Arrange and pay for product delivery to site.

4.1.2 Receive and unload products at site; jointly with City, inspect for

completeness or damage.

4.1.2.1 Handle, store, install, and finish products.

4.1.2.2 Repair or replace damaged items.

## 5.0 WORK SEQUENCE

5.1 Construct Work in phases during the construction period, coordinate construction schedule and operations with City: ***THIS SECTION WILL BE CLARIFIED AT THE PRE-BID MEETING, IF CONTRACTORS ARE UNSURE***

5.1.1 Phase 1: [\_\_\_\_\_].

5.1.2 Phase 2: [\_\_\_\_\_].

5.1.3 Phase 3: [\_\_\_\_\_].

5.2 Coordination of the Work: Refer to Section 01312 - Coordination and Meetings, and Section 01230 – Alternates (**PWE web link**)  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

## 6.0 CONTRACTOR USE OF PREMISES

6.1 Comply with procedures for access to the site and Contractor's use of rights-of-way as specified in Section 01145 - Use of Premises.

6.2 Construction Operations: Limited to City's rights-of-way provided by City.

6.3 Utility Outages and Shutdown: Provide notification to the City and private utility companies (when applicable) a minimum of 48 hours, excluding weekends and holidays, in advance of required utility shutdown. Coordinate all work as required.

## 7.0 WARRANTY

7.1 Comply with warranty requirements in accordance with Document 00700 - General Conditions. ""

*PART 2 PRODUCTS -\*\*\* Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

### **SECTION 01145** **USE OF PREMISES**

#### *PART 1 GENERAL*

#### 1.0 SECTION INCLUDES

- 1.1 Section includes general use of the site including properties inside and outside of rights-of-way, work affecting road, ramps, streets and driveways and notification to adjacent occupants.

## 2.0 RIGHTS-OF-WAY

- 2.1 Confine access and operations and storage areas to rights-of-way provided by City as stipulated in Document 00700 – reference page 135, "Exhibit M", web link, General Conditions; trespassing on abutting lands or other lands in the area is not allowed.
- 2.2 Contractor may make arrangements, at Contractor's cost, for temporary use of private properties, in which case Contractor and Contractor's surety shall indemnify and hold harmless the City against claims or demands arising from such use of properties outside of rights-of-way. Submit notarized copy of agreement between private property owner and Contractor prior to use of the area.
- 2.3 Obtain permits from City of Houston Parks and Recreation Department for storage of materials on esplanades and other areas within rights-of-way under that Department's jurisdiction. Submit copies of permits prior to use of the area.
- 2.4 Restrict total length which materials may be distributed along the route of the construction at any one time to 1,000 linear feet unless otherwise approved in writing by City Engineer.

## 3.0 PROPERTIES OUTSIDE OF RIGHTS-OF-WAY

- 3.1 Altering the condition of properties adjacent to and along rights-of-way will not be permitted.
- 3.2 Means, methods, techniques, sequences, or procedures which will result in damage to properties or improvements in the vicinity outside of rights-of-way will not be permitted.
- 3.3 Any damage to properties outside of rights-of-ways shall be repaired or replaced to the satisfaction of the City Engineer and at no cost to the City.

## 4.0 USE OF SITE

- 4.1 Obtain approvals of governing authorities prior to impeding or closing public roads or streets. Do not close more than two consecutive intersections at one time.
- 4.2 Notify City Engineer and City Traffic Management and Maintenance department at least 48 hours prior to closing a street or a street crossing. Permits for street closures are required in advance and are the responsibility of the Contractor.
- 4.3 Maintain access for emergency vehicles including access to fire hydrants.
- 4.4 Avoid obstructing drainage ditches or inlets; when obstruction is unavoidable due to requirements of the Work, provide grading and temporary drainage structures to maintain unimpeded flow.

4.5 Locate and protect private lawn sprinkler systems which may exist on rights-of-ways within the site. Repair or replace damaged systems to condition equal to or better than that existing at start of Work.

4.6 Perform daily clean-up of dirt outside the construction zone, and debris, scrap materials, and other disposable items. Keep streets, driveways, and sidewalks clean of dirt, debris and scrap materials. Do not leave building, roads, streets or other construction areas unclean overnight.

#### 5.0 NOTIFICATION TO ADJACENT OCCUPANTS

5.1 Notify individual occupants in areas to be effected by the Work of the proposed construction and time schedule. Notification shall be not less than 72 hours or more than 2 weeks prior to work being performed within 200 feet of the homes or businesses. City Engineer will provide a sample door hanger showing form and content to be followed.

5.2 Include in notification names and telephone numbers of two company representatives for resident contact, who will be available on 24-hour call. Include precautions which will be taken to protect private property and identify potential access or utility inconvenience or disruption.

5.3 Submit proposed notification to City Engineer for approval. Consideration shall be given to the ethnicity of the neighborhood where English is not the dominant language. Notice shall be in an understandable language.

#### 6.0 PUBLIC, TEMPORARY, AND CONSTRUCTION ROADS AND RAMPS

6.1 Construct and maintain temporary detours, ramps, and roads to provide for normal public traffic flow when use of public roads or streets is closed by necessities of the Work.

6.2 Provide mats or other means to prevent overloading or damage to existing roadways from tracked equipment or large or heavy trucks or equipment.

6.3 Construct and maintain access roads and parking areas as specified in Section 01504 - Temporary Facilities and Controls. **(PWE web link)**  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

#### 7.0 EXCAVATION IN STREETS AND DRIVEWAYS

7.1 Avoid needless hindering or inconveniencing public travel on a street or any intersecting alley or street for more than two blocks at any one time, except by permission of the City Engineer.

7.2 Obtain the City Traffic Management and Maintenance Department and City Engineer's approval when the nature of the Work requires closing of an entire street. Permits required for street closure are the Contractor's responsibility. Avoid unnecessary inconvenience to abutting property owners.

- 7.3 Remove surplus materials and debris and open each block for public use as work in that block is complete.
- 7.4 Acceptance of any portion of the Work will not be based on return of street to public use.
- 7.5 Avoid obstructing driveways or entrances to private property.
- 7.6 Provide temporary crossing or complete the excavation and backfill in one continuous operation to minimize the duration of obstruction when excavation is required across drives or entrances.
- 7.7 Provide barricades and signs in accordance with Section VI of the State of Texas Manual on Uniform Traffic Control Devices.

8.0 TRAFFIC CONTROL

- 8.1 Comply with traffic regulation as specified in Section 01555 - Traffic Control and Regulation.

9.0 SURFACE RESTORATION

- 9.1 Restore site to condition existing before construction to satisfaction of City Engineer.
- 9.2 Repair paved area per the requirements of Section 02951 - Pavement Repair and Resurfacing. **(PWE web link)**  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)
- 9.3 Repair turf areas which become damaged, level with bank run sand conforming to Section 02317 - Excavation and Backfill for Utilities, or topsoil conforming to Section 02911 - Topsoil, as approved by the City Engineer and resod in accordance with Section 02922 - Sodding. Water and level newly sodded areas with adjoining turf using steel wheel rollers appropriate for sodding. Do not use spot sodding or sprigging. **(PWE web link)**  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

*PART 2 PRODUCTS -\*\*\* Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01255**  
CHANGE ORDER PROCEDURES

*PART 1 GENERAL*

1.0 SECTION INCLUDES

- 1.1 Procedures for processing Change Orders, including:

- 1.2 Assignment of a responsible individual for approval and communication of changes in the Work;
- 1.3 Documentation of change in Contract Price and Contract Time;
- 1.4 Change procedures, using proposals and construction contract modifications, work change directive, stipulated price change order, unit price change order, time and materials change order;
- 1.5 Execution of Change Orders;
- 1.6 Correlation of Contractor submittals.

## 2.0 REFERENCES

- 2.1 Rental Rate Blue Book for Construction Equipment (Data Quest Blue Book). Rental Rate is defined as the full unadjusted base rental rate for the appropriate item of construction equipment.

## 3.0 RESPONSIBLE INDIVIDUAL

- 3.1 The Contractor shall provide a letter indicating the name and address of the individual authorized to execute change documents, and who shall also be responsible for informing others in Contractor's employ and Subcontractors of changes to the Work. The information shall be provided at the Preconstruction Conference.

## 4.0 DOCUMENTATION OF CHANGE IN CONTRACT PRICE AND CONTRACT TIME

- 4.1 The Contractor shall maintain detailed records of changes in the Work. Provide full information required for identification and evaluation of proposed changes, and to substantiate costs of changes in the Work.
- 4.2 The Contractor shall document each proposal for a change in cost or time with sufficient data to allow evaluation of the proposal.
- 4.3 Proposals shall include, as a minimum, the following information as applicable:
  - 4.3.1 Quantities of items in the original Document 00405 - Schedule of Unit Price Work with additions, reductions, deletions, and substitutions.  
**(PWE web link)**  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)
  - 4.3.2 When Work items were not included in the Schedule of Unit Price Work, Contractor shall provide unit prices for the new items, with supporting information as required by the City Engineer.
  - 4.3.3 Justification for any change in Contract Time.
  - 4.3.4 Additional data upon request.

- 4.4 For changes in the Work performed on a time-and-material basis, the following additional information may be required:
  - 4.4.1 Quantities and description of products and equipment.
  - 4.4.2 Taxes, insurance and bonds.
  - 4.4.3 Overhead and profit as noted in Document 00800 - Supplementary Conditions.(PWE web link [http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html))
  - 4.4.4 Dates and times work was performed, and by whom.
  - 4.4.5 Time records and certified copies of applicable payrolls.
  - 4.4.6 Invoices and receipts for products, rented equipment, and subcontracts, similarly documented.
- 4.5 For changes in the work performed on a time-and-materials basis, rental equipment will be paid as follows:
  - 4.5.1 Rented equipment will be paid by actual invoice cost for the duration of time required to complete the extra work without markup for overhead and profit. If the extra work comprises only a portion of the rental invoice where the equipment would otherwise be on the site, the Contractor shall compute the hourly equipment rate by dividing the actual monthly invoice by 176. (One day equals 8 hours and one week equals 40 hours.)
  - 4.5.2 Operating costs shall not exceed the estimated operating costs given in the Blue Book for the item of equipment. Overhead and profit will be allowed on operating cost.
- 4.6 For changes in the work performed on a time-and-materials basis using Contractor-owned equipment, use Blue Book rates as follows:
  - 4.6.1 Contractor-owned equipment will be paid at the Blue Book Rental Rate for the duration of time required to complete the extra work without markup for overhead and profit. The Rental Rate utilized shall be the lowest cost combination of hourly, daily, weekly or monthly rates. Use 150 percent of the Rental Rate for double shifts (one extra shift per day) and 200 percent of the Rental Rate for more than two shifts per day. Standby rates shall be 50 percent of the appropriate Rental Rate shown in the Blue Book. No other rate adjustments shall apply.
  - 4.6.2 Operating costs shall not exceed the estimated operating costs given in the Blue Book for the item of equipment. Overhead and profit will be allowed on operating cost. Operating costs will not be allowed for equipment on standby.

## 5.0 CHANGE PROCEDURES

- 5.1 Changes to Contract Price or Contract Time can only be made by issuance of a Change Order. Issuance of a Work Change Directive will be formalized into a

Change Order. All changes will be in accordance with the requirements of - General Conditions, **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

5.2 The City Engineer will advise of minor changes in the Work not involving an adjustment to Contract Price or Contract Time as authorized by the General Conditions by issuing supplemental instructions.

5.3 Contractor may request clarification of Drawings, Specifications or Contract Documents or other information by using Document 00660 - Request for Information. Response by the City Engineer to a Request for Information does not authorize the Contractor to perform tasks outside the scope of the Work. All changes must be authorized as described in this section. **(PWE web link)**  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

## 6.0 PROPOSALS AND CONTRACT MODIFICATIONS

6.1 The City Engineer may issue Document 00661 - Request for Proposal, I which includes a detailed description of a proposed change with supplementary or revised Drawings and Specifications. The City Engineer may also request a proposal in the response to a Request for Information. Contractor shall prepare and submit a proposal within 7 days or as specified in the request.

**(PWE web link)**

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

6.2 The Contractor may propose an unsolicited change by submitting a proposal to the City Engineer describing the proposed change and its full effect on the Work, with a statement describing the reason for the change and the effect on the Contract Price and Contract Time including full documentation.

## 7.0 WORK CHANGE DIRECTIVE

7.1 City Engineer may issue a signed Work Change Directive instructing the Contractor to proceed with a change in the Work. A Work Change Directive will subsequently be incorporated in a Change Order.

7.2 The document will describe changes in the Work and will designate a method of determining any change in Contract Price or Contract Time.

7.3 The Contractor shall proceed promptly to execute the changes in the Work in accordance with the Work Change Directive.

## 8.0 STIPULATED PRICE CHANGE ORDER

8.1 A stipulated price Change Order will be based on an accepted proposal including the Contractor's lump sum price quotation with Schedule of Values.

## 9.0 UNIT PRICE CHANGE ORDER

9.1 Where Unit Prices for the affected items of Work are included in the Bid Line Item Detail, the unit price Change Order will be based on the unit prices, subject to Articles

7 and 9 of the General Conditions, **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

9.2 Where unit prices of Work are not pre-determined in the Bid Line Item Detail, the Work Change Directive or accepted proposal will specify the unit prices to be used.

#### 10.0 TIME-AND-MATERIAL CHANGE ORDER

10.1 The Contractor shall provide an itemized account and supporting data after completion of change, within time limits indicated for claims in the General Conditions, **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

10.2 The City Engineer will determine the change allowable in Contract Price and Contract Time as provided in the General Conditions, **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

10.3 The Contractor shall maintain detailed records of work done on time-and-material basis as specified in paragraph 10.4, Documentation of Change in Contract Price and Contract Time.

10.4 The Contractor shall provide full information required for evaluation of changes and shall substantiate costs for changes in the Work.

#### 11.0 EXECUTION OF CHANGE DOCUMENTATION

11.1 The City Engineer will issue Change Orders, Work Change Directives, or accepted proposal for signatures of parties as described in Document 00700 - General Conditions. **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

#### 12.0 CORRELATION OF CONTRACTOR SUBMITTALS

12.1 For Stipulated Price Contracts, Contractor shall promptly revise the Schedule of Values and Application for Payment forms to record each authorized Change Order as a separate line item.

12.2 For Unit Price Contracts, the next monthly estimate of work after acceptance of a Change Order will be revised to include any new items not previously included and the appropriate unit rates.

12.3 The Contractor shall promptly revise progress schedules to reflect any change in Contract Time, and shall revise schedules to adjust time for other items of work affected by the change, and resubmit for review.

12.4 The Contractor shall promptly enter changes to the on-site and record copies of the Drawings, Specifications or Contract Documents as required in Section 01785 - Project Record Documents.

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01270**  
MEASUREMENT AND PAYMENT

*PART 1 GENERAL*

1.0 SECTION INCLUDES

- 1.1 Procedures for measurement and payment plus conditions for nonconformance assessment and nonpayment for rejected products.

2.0 AUTHORITY

- 2.1 Measurement methods delineated in Specification sections are intended to complement the criteria of this section. In the event of conflict, the requirements of the Specification section shall govern.
- 2.2 The City Engineer will take all measurements and compute quantities accordingly.
- 2.3 The Contractor shall assist by providing necessary equipment, workers, and survey personnel as required by City Engineer.

3.0 UNIT QUANTITIES SPECIFIED

- 3.1 Quantity and measurement estimates stated in the Agreement are for contract purposes only. Quantities and measurements supplied or placed in the Work and verified by City Engineer shall determine payment as stated in Article 9 of the General Conditions. **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**
- 3.2 If the actual Work requires greater or lesser quantities than those quantities indicated in the Bid Form, provide the required quantities at the unit prices contracted, except as otherwise stated in Article 9 of the General Conditions.

4.0 MEASUREMENT OF QUANTITIES

- 4.1 Measurement by Weight: Reinforcing steel, rolled or formed steel or other metal shapes will be measured by CRSI or AISC Manual of Steel Construction weights. Welded assemblies will be measured by CRSI or AISC Manual of Steel Construction or scale weights.
- 4.2 Measurement by Volume:
  - 4.2.1 Stockpiles: Measured by cubic dimension using mean length, width, and height or thickness.
  - 4.2.2 Excavation and Embankment Materials: Measured by cubic dimension using the average end area method.

4.2.3 Measurement by Area: Measured by square dimension using mean length and width or radius.

4.2.4 Linear Measurement: Measured by linear dimension, at the item centerline or mean chord.

4.2.5 Stipulated Price Measurement: By unit designated in the agreement.

4.2.6 Other: Items measured by weight, volume, area, or lineal means or combination, as appropriate, as a completed item or unit of the Work.

## 5.0 PAYMENT

5.1 Payment Includes: Full compensation for all required supervision, labor, products, tools, equipment, plant, transportation, services, and incidentals; and erection, application or installation of an item of the Work; and Contractor's overhead and profit.

5.2 Total compensation for required Unit Price Work shall be included in Unit Price bid in the Bid Line Item Detail. Claims for payment as Unit Price Work, but not specifically covered in the list of unit prices contained in the Bid Line Item Detail, will not be accepted.

5.3 Interim payments for stored materials will be made only for materials to be incorporated under items covered in unit prices, unless disallowed in Supplementary Conditions.

5.4 Progress payments will be based on the City Engineer's observations and evaluations of quantities incorporated in the Work multiplied by the unit price.

5.5 Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities determined by City Engineer multiplied by the unit price for Work which is incorporated in or made necessary by the Work.

## 6.0 NONCONFORMANCE ASSESSMENT

6.1 Remove and replace the Work, or portions of the Work, not conforming to the Contract Documents.

6.2 If, in the opinion of City Engineer, it is not practical to remove and replace the Work, the City Engineer will direct one of the following remedies:

6.2.1 The nonconforming Work will remain as is, but the unit price will be adjusted to a lower price at the discretion of City Engineer.

6.2.2 The nonconforming Work will be modified as authorized by the City Engineer, and the unit price will be adjusted to a lower price at the discretion of City Engineer, if the modified work is deemed to be less suitable than originally specified.

6.2.3 Specification sections may modify the above remedies or may identify a specific formula or percentage price reduction.

6.3 The authority of City Engineer to assess the nonconforming work and identify payment adjustment is final.

## 7.0 NONPAYMENT FOR REJECTED PRODUCTS

7.1 Payment will not be made for any of the following:

7.1.1 Products wasted or disposed of in a manner that is not acceptable to City Engineer.

7.1.2 Products determined as nonconforming before or after placement.

7.1.3 Products not completely unloaded from transporting vehicle.

7.1.4 Products placed beyond the lines and levels of the required Work.

7.1.5 Products remaining on hand after completion of the Work, unless specified otherwise.

7.1.6 Loading, hauling, and disposing of rejected products.

## **SECTION 01312** COORDINATION AND MEETINGS

### *PART 1 GENERAL*

#### 1.0 SECTION INCLUDES

1.1 Section includes general coordination including pre-construction conference, site mobilization conference, and progress meetings.

#### 2.0 RELATED DOCUMENTS

2.1 Coordination is required throughout the documents. Refer to all of the Contract Documents and coordinate as necessary.

#### 3.0 CITY ENGINEER AND REPRESENTATIVES

3.1 The City Engineer may act directly or through designated representatives as

defined in the General Conditions and as identified by name at the pre-construction conference.

#### 4.0 CONTRACTOR COORDINATION

- 4.1 Coordinate scheduling, submittals, and Work of the various Specifications sections to assure efficient and orderly sequence of installation of interdependent construction elements.
- 4.2 Verify that utility requirement characteristics of operating equipment are compatible with existing or planned utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- 4.3 Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit, as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- 4.4 Conceal pipes, ducts, and wiring within the construction in finished areas, except as otherwise indicated. Coordinate locations of fixtures and outlets with finish elements.
- 4.5 Coordinate completion and clean up of Work for Substantial Completion and for portions of Work designated for City's partial occupancy.
- 4.6 Coordinate access to site for correction of nonconforming Work to minimize disruption of City's activities where City is in partial occupancy.

#### 5.0 PRECONSTRUCTION CONFERENCE

- 5.1 The City Engineer will schedule a pre-construction conference.
- 5.2 Attendance Required: City Engineer's representatives, Architect/Engineer, Contractor, and major Subcontractors.
- 5.3 Agenda:
  - 5.3.1 Distribution of Contract Documents.
  - 5.3.2 Designation of personnel representing the parties in Contract, and the Architect/Engineer.
  - 5.3.3 Review of insurance.
  - 5.3.4 Discussion of formats proposed by the Contractor for schedule of values, and construction schedule.
  - 5.3.5 Procedures and processing of shop drawings and other submittals, substitutions, pay estimates or applications for payment, Requests for

Information, Request for Proposal, Change Orders, and Contract closeout.

5.3.6 Scheduling of the Work and coordination with other contractors.

5.3.7 Review of Subcontractors.

5.3.8 Appropriate agenda items listed for Site Mobilization Conference, paragraph 6.3, when pre-construction conference and site mobilization conference are combined.

5.3.9 Procedures for testing.

5.3.10 Procedures for maintaining record documents.

## 6.0 SITE MOBILIZATION CONFERENCE

6.1 When required by the Contract Documents, City Engineer will schedule a conference at the Project site prior to Contractor occupancy.

6.2 Attendance Required: City Engineer representatives, Architect/Engineer, Special Consultants, Contractor's Superintendent, and major Subcontractors.

6.3 Agenda:

6.3.1 Use of premises by City and Contractor.

6.3.2 Safety and first aid procedures.

6.3.3 Construction controls provided by City.

6.3.4 Temporary utilities.

6.3.5 Survey and layout.

6.3.6 Security and housekeeping procedures.

6.3.7 Field office requirements.

## 7.0 PROGRESS MEETINGS

7.1 Project meetings shall be held at Project field office or other location as designated by the City Engineer. Meeting shall be held at monthly intervals, or more frequent intervals if directed by City Engineer.

7.2 Attendance Required: Job superintendent, major Subcontractors and suppliers, City Engineer representatives, and Architect/Engineer as appropriate to agenda topics for each meeting.

7.3 City Engineer or his representative will make arrangements for meetings, and recording minutes.

- 7.4 The City Engineer or his representative will prepare the agenda and preside at meetings.
- 7.5 The Contractor shall provide required information and be prepared to discuss each agenda item.
- 7.6 Agenda:
  - 7.6.1 Review minutes of previous meetings.
  - 7.6.2 Review of Work progress schedule submittal, and pay estimates, payroll and compliance submittals.
  - 7.5.3 Field observations, problems, and decisions.
  - 7.5.4 Identification of problems which impede planned progress.
  - 7.5.5 Review of submittals schedule and status of submittals.
  - 7.5.6 Review of RFI and RFP status.
  - 7.5.7 Change order status.
  - 7.5.8 Review of off-site fabrication and delivery schedules.
  - 7.5.9 Maintenance of progress schedule.
  - 7.5.10 Corrective measures to regain projected schedules.
  - 7.5.11 Planned progress during succeeding work period.
  - 7.5.12 Coordination of projected progress.
  - 7.5.13 Maintenance of quality and work standards.
  - 7.5.14 Effect of proposed changes on progress schedule and coordination.
  - 7.5.15 Other item relating to Work.

**SECTION 01325**  
**CONSTRUCTION SCHEDULE**

***PART 1 GENERAL***

**1.0 GENERAL**

- 1.1 Provide Construction Schedules for Work included in this Contract in accordance with requirements in this Section. Create a Construction Schedule using Critical Path Method (CPM) computer software capable of mathematical analysis of Precedence Diagramming Method (PDM) schedules. Provide printed activity listings

and bar charts in formats described in this Section.

- 1.2 Combine activity listings and bar charts with a narrative report to form the Contractor's Construction Schedule submittal for the City Engineer.

## 2.0 SCHEDULING STAFF

- 2.1 Employ or retain services of an individual experienced in critical path scheduling for the duration of the Contract. This person shall cooperate with the City Engineer and shall update the Contractor's schedule at least monthly as required to indicate current status of the Work.

## 3.0 SUBMITTALS

- 3.1 Make Construction Schedule submittals for review by the City Engineer in accordance with requirements of Section 01330 - Submittal Procedures.
- 3.2 During the pre-construction meeting, as described in Section 01312 - Coordination and Meetings, provide sample bar charts and activity listings produced from the scheduling software proposed. Scheduling software is subject to approval of the City Engineer and must meet requirements provided in this Section. Review of the samples will be provided by the City Engineer within 7 days of the submittal.
- 3.3 Within 21 days of receipt of approval of the Contractor's format, or 30 days of the Notice to Proceed, whichever is later, submit a proposed Construction Schedule for review. The Construction Schedule submittal shall be based on the following:
  - 3.3.1 The level of detail and number of activities required in the schedule are dependent on the project type.
    - 3.3.1.1 For wastewater projects, the work shall be categorized by Work Type and Area Code in the schedule.
      - 3.3.1.1.1 For wastewater rehabilitation projects, there are 6 work-type categories. An area code will be assigned for each Meter Service Area or Basin. The schedule shall include at least one activity for each unique combination of work type and area code. Normal schedules of wastewater rehabilitation projects contain between 35 and 100 activities, depending on the number of basins and the work types involved in each basin.
      - 3.3.1.1.2 For wastewater relief projects (line work), area codes will be assigned geographically.
      - 3.3.1.1.3 For wastewater plant or facility work, other criteria may apply to the assignment of area codes, such as a combination of geographical and craft categories.
    - 3.3.2 For projects with multiple types of tasks within the scope, these types of work shall be indicated separately within the schedule.

- 3.3.3 For projects with work at different physical locations or service areas, or different facilities within a site, each location or facility shall be indicated separately within the schedule. Work on each floor of a multi-story building shall be shown as separate tasks.
- 3.3.4 For projects with multiple crafts or significant subcontractor components, these elements shall be indicated separately within the schedule. Unless permitted by the City Engineer, tasks shall consist of work covered by only one division of the Project Manual.
- 3.3.5 Unless permitted by the City Engineer, each schedule task shall be the same as a schedule of values line item, and vice versa.
- 3.3.6 For projects with significant major equipment items or materials representing over 5 percent of the Total Contract Price, the schedule shall indicate dates when these items are to be purchased, when they are to be delivered, and when installed. Activities for testing, adjustment, and delivering O & M manuals shall be included.
- 3.3.7 No task except the acquisition of major equipment items shall represent more than one percent of the Total Contract Price for facility projects and 3 percent of the Total Contract Price for other projects. The duration of tasks may not exceed 40 calendar days.
- 3.3.8 For projects where operating **facilities** are involved, each period of work which will **impact** any process or operation shall be identified in the schedule and must be agreed to by the City Engineer and the facility operator prior to starting work in the area
- 3.3.9 Construction Schedule submittals shall include:
  - 3.3.9.1 Printed bar charts which meet the criteria outlined in this Section and which are produced by the Contractor's approved scheduling software.
  - 3.3.9.2 Activity listings which meet the criteria outlined in this Section and which are produced by the Contractor's approved scheduling software.
  - 3.3.9.3 Predecessor/successor listing sorted by Activity ID which meets the criteria outlined in this Section and which is produced by the Contractor's approved scheduling software.
  - 3.3.9.4 A logic network diagram shall be required with the first construction schedule submittal for facilities projects.
  - 3.3.9.5 A graphic or tabular display of estimated monthly billings for the Work shall be prepared and submitted by the Contractor with the first schedule submittal. This information is not required in monthly updates, unless significant changes in work require resubmittal of the

schedule for review. The display shall allocate units indicated in the bid schedule or the schedule of values to Construction Schedule activities. (Weighted allocations are acceptable, where appropriate). The dollar value associated with each allocated unit will be spread across the duration of the activity on a monthly basis. The total for each month and a cumulative total will be indicated. These monthly forecasts are only for planning purposes of the City Engineer. Monthly payments for actual work completed will be made by the City Engineer in accordance with Document 00700 - General Conditions. **“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

3.3.9.6 A narrative report which shall provide the information outlined in this Section.

3.4 No payment will be made until the Construction Schedule and billing forecast are accepted by the City Engineer.

3.5 If the Contractor desires to make changes in his method of operating and scheduling, after approval of the original schedule has been given by the City Engineer, the Contractor shall notify the City Engineer in writing, stating the reasons for the change. If the City Engineer considers these changes to be of significant nature, the Contractor may be required to revise and resubmit for approval all or the affected portion of the Contractor's Construction Schedule to show the effect on the Work.

3.6 Upon written request from the City Engineer, the Contractor shall revise and submit for approval all or any part of the Construction Schedule submittal to reflect changed conditions in the Work or deviations made from the original plan and schedule.

3.7 The Contractor's Construction Schedule shall thereafter be updated with Actual Start and Actual Finish Dates, Percent Complete, and Remaining Duration of "Revised 11-5-08" each Activity and submitted monthly. The data date to be used in updating the monthly Construction Schedule shall be the same data date as is used in the monthly Application for Payment. This monthly update of the schedule shall be required before the monthly Application for Payment will be processed for payment.

***(Section 4.0 removed, pertains to new construction only)***

## 5.0 NARRATIVE SCHEDULE REPORT

5.1 The Narrative Report shall include a listing of the Activities Started This Month; Activities Completed This Month; Activities Continued This Month; Activities Scheduled to Start or Complete Next Month; Problems Encountered This Month; Actions Taken to Solve These Problems.

5.2 The narrative Schedule Report shall include a description of changes made to the Construction Schedule Logic (i.e., changes in Predecessors and Lags); Activities Added to the Schedule; Activities Deleted from the Schedule; any other changes made to the Schedule other than the addition of Actual Start Dates and Actual Finish Dates and changes of Data Date and Remaining Durations for re-calculation of

mathematical analysis.

**SECTION 01330**  
**SUBMITTAL PROCEDURES**

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Submittal procedures for:

- 1.1.1 Schedule of Values.
- 1.1.2 Construction Schedules.
- 1.1.3 Shop Drawings, Product Data, and Sampler/
- 1.1.4 Operations and Maintenance Data.
- 1.1.5 Manufacturer's Certificates.
- 1.1.6 Construction Photographs.
- 1.1.7 Project Record Documents.
- 1.1.8 Video Tapes.
- 1.1.9 Design Mixes.

2.0 SUBMITTAL PROCEDURES

2.1 Scheduling and Handling:

- 2.1.1 Schedule submittals well in advance of the need for the material or equipment for construction. Allow time to make delivery of material or equipment after submittal is approved.
- 2.1.2 Develop a submittal schedule that allows sufficient time for initial review, correction, resubmission and final review of all submittals. The City Engineer will review and return submittals to the Contractor as expeditiously as possible but the amount of time required for review will vary depending on the complexity and quantity of data submitted. In no case will a submittal schedule be acceptable which allows less than 30 days for initial review by the City Engineer. This time for review shall in no way be justification for delays or additional compensation to the Contractor.
- 2.1.3 The City Engineer's review of submittals covers only general conformity to the Drawings, Specifications and dimensions which affect the layout. The Contractor is responsible for quantity determination. No quantities will be verified by the City Engineer. The Contractor is responsible for any errors, omissions or deviations

from the Contract requirements; review of submittals in no way relieves the Contractor from his obligation to furnish required items according to the Drawings and Specifications.

2.1.4 Submit 5 copies of documents unless otherwise specified in the following paragraphs or in the Specifications.

2.1.5 Revise and resubmit submittals as required. Identify all changes made since previous submittal.

2.1.6 The Contractor shall assume the risk for material or equipment which is fabricated or delivered prior to approval. No material or equipment shall be incorporated into the Work or included in periodic progress payments until approval has been obtained in the specified manner.

## 2.2 Transmittal Form and Numbering:

2.2.1 Transmit each submittal to the City Engineer with a Transmittal Form. A copy of the Transmittal Form is attached.

2.2.2 Sequentially number each transmittal form beginning with the number 1. Resubmittals shall use the original number with an alphabetic suffix (i.e., 2A for first resubmittal of Submittal 2 or 15C for third resubmittal of Submittal 15). Each submittal shall only contain one type of work, material, or equipment. Mixed submittals will not be accepted.

2.2.3 Identify variations from requirements of Contract Documents and identify product or system limitations.

2.2.4 For submittal numbering of video tapes, see paragraph 10.2 Video, page 43.

## 2.3 Contractor's Stamp:

2.3.1 Apply Contractor's stamp, certifying that the items have been reviewed in detail and are correct and in accordance with Contract Documents, except as noted by any requested variance.

2.3.2 As a minimum, the Contractor's Stamp shall include:

2.3.2.1 Contractor's name.

2.3.2.2 Job number.

2.3.2.3 Submittal number.

2.3.2.4 Certification statement that the Contractor has reviewed the submittal and it is in compliance with the Contract Documents.

2.3.2.5 Signature line for the Contractor.

## 3.0 SCHEDULE OF VALUES

3.1 Submit a Schedule of Values in accordance with Section 01292 - Schedule of Values.

(PWE web link)

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

4.0 CONSTRUCTION SCHEDULES

4.1 Submit Construction Schedules as provided in Project Manual.

5.0 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

5.1 Submit shop drawings in accordance with Section 01340 - Shop Drawings, Product Data, and Samples. (PWE web link)

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

6.0 OPERATIONS AND MAINTENANCE DATA

6.1 Submit Operations and Maintenance data in accordance with Section 01782 - Operations and Maintenance Data.

7.0 MANUFACTURER'S CERTIFICATES

7.1 When specified in Specification sections, submit manufacturers' certificate of compliance for review by the City Engineer.

7.2 The Contractor's Stamp, as described in paragraph 2.3, page 42, shall be placed on front page of the certification.

7.3 Submit supporting reference data, affidavits, and certifications as appropriate.

7.4 Certificates may be recent or previous test results on material or product, but must be acceptable to City Engineer.

8.0 CONSTRUCTION PHOTOGRAPHS

8.1 Submit Construction Photographs in accordance with Section 01321 - Construction Photographs.

(PWE web link)

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

9.0 PROJECT RECORD DOCUMENTS

9.1 Submit Project Record Documents in accordance with Section 01785 - Project Record Documents.

10.0 VIDEO

10.1 Submit television video tapes as required in Section 02533 - Acceptance Testing for Sanitary Sewers. (PWE web link)

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

10.2 Transmittal forms for video tapes shall be numbered sequentially beginning with

T01, T02, T03, etc.

#### 11.0 DESIGN MIXES

- 11.1 When specified in Specifications, submit design mixes for review.
- 11.2 The Contractor's Stamp, as described in paragraph 2.3, on page 42, shall be placed on front page of each design mix.
- 11.3 Mark each design mix to identify proportions, gradations, and additives for each class and type of design mix submitted. Include applicable test results on samples for each mix.
- 11.4 Maintain a copy of approved design mixes at mixing plant.

### **SECTION 01422** REFERENCE STANDARDS

#### *PART 1 GENERAL*

##### 1.0 SECTION INCLUDES

- 1.1 Section includes general quality assurance as related to Reference Standards and a list of references.

##### 2.0 QUALITY ASSURANCE

- 2.1 For Products or workmanship specified by association, trade, or Federal Standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- 2.2 Conform to reference standard by date of issue current on the date as stated in the General Conditions.
- 2.3 Request clarification from City Engineer before proceeding should specified reference standards conflict with Contract Documents.

##### 3.0 SCHEDULE OF REFERENCES

- 3.1 AASHTO American Association of State Highway  
and Transportation Officials  
444 North Capitol Street, N.W.  
Washington, DC 20001
- 3.2 ACI American Concrete Institute  
P.O. Box 9094  
Farmington Hills, MI 48333-9094
- 3.3 AGC Associated General Contractors of America  
1957 E Street, N.W.

- Washington, DC 20006
- 3.4 AI Asphalt Institute  
Asphalt Institute Building  
College Park, MD 20740
- 3.5 AITC American Institute of Timber Construction  
333 W. Hampden Avenue  
Englewood, CO 80110
- 3.6 AISC American Institute of Steel Construction  
400 North Michigan Avenue  
Eighth Floor,  
Chicago, IL 60611
- 3.7 AISI American Iron and Steel Institute  
1000 16th Street, N.W.  
Washington, DC 20036
- 3.8 ASME American Society of Mechanical Engineers  
345 East 47th Street  
New York, NY 10017
- 3.9 ANSI American National Standards Institute  
1430 Broadway  
New York, NY 10018
- 3.10 APA American Plywood Association  
Box 11700  
Tacoma, WA 98411
- 3.11 API American Petroleum Institute  
1220 L Street, N.W.  
Washington, DC 20005
- 3.12 AREA American Railway Engineering Association  
50 F Street, N.W.  
Washington, DC 20001
- 3.13 ASTM American Society for Testing and Materials  
1916 Race Street  
Philadelphia, PA 19103
- 3.14 AWWA American Wood-Preservers' Association  
7735 Old Georgetown Road  
Bethesda, MD 20014
- 3.15 AWS American Welding Society  
P.O. Box 35104  
Miami, FL 33135

- 3.16 AWWA American Water Works Association  
6666 West Quincy Avenue  
Denver, CO 80235
- 3.17 COH City of Houston  
900 Bagby Street  
P.O. Box 1562  
Houston, TX 77251-1562
- 3.18 CLFMI Chain Link Fence Manufacturers Institute  
1101 Connecticut Avenue, N.W.  
Washington, DC 20036
- 3.19 CRSI Concrete Reinforcing Steel Institute  
933 Plum Grove Road  
Schaumburg, IL 60173-4758
- 3.20 EJMA Expansion Joint Manufacturers Association  
707 Westchester Avenue  
White Plains, NY 10604
- 3.21 FS Federal Standardization Documents  
General Services Administration  
Specifications Unit (WFSIS)  
7th and D Streets, S.W.  
Washington, DC 20406
- 3.22 ICEA Insulated Cable Engineer Association  
P.O. Box 440  
S. Yarmouth, MA 02664
- 3.23 IEEE Institute of Electrical and Electronics Engineers  
445 Hoes Lane  
P.O. Box 1331  
Piscataway, NJ 0855-1331
- 3.24 ISA International Society of Arboriculture  
303 West University  
P.O. Box GG  
Savoy, IL 61874
- 3.25 MIL Military Specifications  
General Services Administration  
Specifications Unit (WFSIS)  
7th and D Streets, S.W.  
Washington, DC 20406
- 3.26 NACE National Association of Corrosion Engineers  
1440 South Creek Drive  
Houston, TX 71084

- 3.27 NEMA National Electrical Manufacturers' Association  
2101 L Street, N.W., Suite 300  
Washington, DC 20037
- 3.28 NFPA National Fire Protection Association  
Batterymarch Park  
P.O. Box 9101  
Quincy, MA 02269-9101
- 3.29 OSHA Occupational Safety Health Administration  
U.S. Department of Labor  
Government Printing Office  
Washington, DC 20402
- 3.30 PCA Portland Cement Association  
5420 Old Orchard Road  
Skokie, IL 60077-1083
- 3.31 PCI Prestressed Concrete Institute  
201 North Wacker Drive  
Chicago, IL 60606
- 3.32 SDI Steel Deck Institute  
Box 9506  
Canton, OH 44711
- 3.33 SSPC Steel Structures Painting Council  
4400 Fifth Avenue  
Pittsburgh, PA 15213
- 3.34 TAC Texas Administrative Code  
Texas Water Commission  
P. O. Box 13087, Capitol Station  
Austin, TX 78711-3087
- 3.36 TxDOT Texas Department of Transportation  
11th and Brazos  
Austin, TX 78701 2483
- 3.37 UL Underwriters' Laboratories, Inc.  
333 Pfingston Road  
Northbrook, IL 60062
- 3.38 UNI-BELL UNI-BELL Pipe Association  
2655 Villa Creek Drive, Suite 155  
Dallas, TX 75234

**PART 2 PRODUCTS-\*\*\* Not Used\*\*\***

**PART 3 EXECUTION -\*\*\* Not Used\*\*\***

**SECTION 01450**  
**CONTRACTOR'S QUALITY CONTROL**

**PART 1 GENERAL**

**1.0 SECTION INCLUDES**

1.1 Quality assurance and control of installation and manufacturer's field services and reports.

**2.0 MEASUREMENT AND PAYMENT**

2.1 No payment will be made for this item. Include the cost of Contractor's quality control in overhead cost for this project.

**3.0 QUALITY ASSURANCE/CONTROL OF INSTALLATION**

3.1 Monitor quality control over suppliers, manufacturers, products, services, site conditions and workmanship, to produce Work of specified quality.

3.2 Comply fully with manufacturers' installation instructions, including each step in sequence.

3.3 Request clarification from City Engineer before proceeding should manufacturers' instructions conflict with Contract Documents.

3.4 Comply with specified standards as minimum requirements for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.

3.5 Perform work by persons qualified to produce the specified level of workmanship.

**4.0 REFERENCES**

4.1 Obtain copies of standards and maintain at job site when required by individual Specification sections.

**5.0 MANUFACTURERS' FIELD SERVICES AND REPORTS**

5.1 When specified in individual Specification sections, provide material or product suppliers' or manufacturers' technical representative to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, operator training, test, adjust, and balance of equipment as applicable, and to initiate operation, as required. Conform to minimum time requirements for start-up operations and operator training if defined in Specification sections.

5.2 At the City Engineer's request, submit qualifications of manufacturer's representative to City Engineer 15 days in advance of required representative's services. The representative shall be subject to approval of City Engineer.

5.3 Manufacturer's representative shall report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to

manufacturers' written instructions. Submit report within 14 days of observation to City Engineer for review.

*PART 2 PRODUCTS -\*\*\* Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01452**  
INSPECTION SERVICES

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Inspection services and references

2.0 INSPECTION

2.1 The City Engineer will appoint an Inspector as a representative of the City to perform inspections, tests, and other services specified in individual specification Sections

2.3 Alternately, the City Engineer may appoint, employ, and pay an independent firm to provide additional inspection or construction management services as indicated in Section 01454 - Testing Laboratory Services.

2.4 Reports will be submitted by the independent firm to City Engineer, Architect/Engineer, and City, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.

2.5 Assist and cooperate with the Inspector; furnish samples of materials, design mix, equipment, tools, and storage.

2.6 Notify the City Engineer 24 hours prior to expected time for operations requiring services. Notify Architect/Engineer and independent firm when noted.

2.7 Sign and acknowledge report for Inspector.

*PART 2 PRODUCTS-\*\*\*Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01454**  
TESTING LABORATORY SERVICES

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Testing laboratory services and Contractor responsibilities related to those services.

## 2.0 REFERENCES

- 2.1 ASTM C 1077 - Standard Practice for Laboratories Testing Concrete and Concrete Aggregates for Use in Construction and Criteria for Laboratory Evaluation.
- 2.2 ASTM D 3666 - Standard Specification for Minimum Requirements for Agencies Testing and Inspecting Bituminous Paving Materials.
- 2.3 ASTM D 3740 - Standard Practice for Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
- 2.4 ASTM E 329 - Specification for Minimum Requirements for Agencies Engaged the Testing and/or Inspection of Materials Used in Construction.
- 2.5 ISO/TEC Guide 25 - General Requirements for the Competence of Calibration and Testing Laboratories.

## 3.0 SELECTION AND PAYMENT

- 3.1 The City will select, employ, and pay for services of an independent testing laboratory to perform inspection and testing identified in Part 3, Execution, of individual Specification sections.
- 3.2 The Contractor shall employ and pay for services of an independent testing laboratory or laboratories to perform inspection and testing identified in Part 2, Products, of individual Specification sections.
- 3.3 Employment of a testing laboratory by the City shall not relieve Contractor of obligation to perform work in accordance with requirements of Contract Documents.
- 3.4 The Contractor will have the minimum 2-hour charge for testing laboratory time deducted from the estimate for payment if operations requiring testing or inspection are canceled without prior notification.
- 3.5 The Contractor will have the cost of retesting deducted from the estimate for payment whenever failed work must be removed and replaced and retested.

## 4.0 QUALIFICATION OF LABORATORY

- 4.1 Meet laboratory requirements of ASTM E 329 and applicable requirements of ASTM C 1077, ASTM D 3666, and ASTM D 3740.
- 4.2 Meet the ISO/TEC Guide 25 conditions for accreditation by the American Association for Laboratory Accreditation (A2LA) in specific fields of testing required in individual Specification sections.
- 4.3 Where a laboratory subcontracts any part of the testing services, such work shall be placed with a laboratory complying with the requirements of this Section.

## 5.0 LABORATORY REPORTS

- 5.1 The testing laboratory shall provide and distribute copies of laboratory reports to the distribution list provided by the City Engineer at the pre-construction conference.
- 5.2 One copy of each laboratory report distributed or faxed to the Contractor shall be kept at the site field office for the duration of the project.
- 5.3 Before close of business on the working day following test completion and review, reports which indicate failing test results shall be transmitted immediately via fax from the testing laboratory to the material supplier, Contractor, and City Engineer.

## 6.0 LIMITS ON TESTING LABORATORY AUTHORITY

- 6.1 Laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.
- 6.2 Laboratory may not approve or accept any portion of the Work.
- 6.3 Laboratory may not assume any duties of the Contractor.
- 6.4 Laboratory has no authority to stop the Work.

## 7.0 CONTRACTOR RESPONSIBILITIES

- 7.1 Provide safe access to the Work and to manufacturer's facilities for the City Engineer and for testing laboratory personnel.
- 7.2 Provide to the testing laboratory a copy of the construction schedule and a copy of each update to the construction schedule.
- 7.3 Notify the City Engineer and the testing laboratory during normal working hours of the day previous to the expected time for operations requiring inspection and testing services. If the Contractor fails to make timely prior notification, then the Contractor shall not proceed with the operations requiring inspection and testing services.
- 7.4 Notify the Architect/Engineer 24 hours in advance if the Specification requires the presence of the Architect/Engineer for sampling or testing.
- 7.5 Request and monitor testing as required to provide timely results and to avoid delay to the Work. Provide samples to the laboratory in sufficient time to allow the required test to be performed in accordance with specified test methods before the intended use of the material.
- 7.6 Cooperate with laboratory personnel in collecting samples on site. Provide incidental labor and facilities for safe access to the Work to be tested; to obtain and handle samples at the site or at source of products to be tested; and to facilitate tests and inspections including storage and curing of test samples.

**PART 2 PRODUCTS -\*\*\* Not Used\*\*\***

## *PART 3 EXECUTION*

### 1.0 CONDUCTING TESTING

- 1.1 Laboratory sampling and testing specified in individual Specification sections shall conform to the latest issues of ASTM standards, TxDOT methods, or other recognized test standards as approved by the City Engineer.
- 1.2 The requirements of this section shall also apply to those tests for approval of materials, for mix designs, and for quality control of materials as performed by the testing laboratories employed by the Contractor.

### **SECTION 01555**

### TRAFFIC CONTROL AND REGULATION

#### *PART 1 GENERAL*

### 1.0 SECTION INCLUDES

- 1.1 Requirements for signs, signals, control devices, flares, lights and traffic signals, as well as construction parking control, designated haul routes and bridging of trenches and excavations.
- 1.2 Requirement for and qualifications of flagmen.

### 2.0 SUBMITTALS

- 2.1 A traffic control plan responsive to the Texas Manual on Uniform Traffic Control Devices (TMUTCD) and sealed by a Registered Professional Engineer is incorporated into the Drawings. If the Contractor proposes to implement traffic control without modification to the plan provided, he shall submit a letter confirming that decision. If the Contractor proposes to implement traffic control different than the plan provided, he shall submit a traffic control plan in conformance with the TMUTCD and sealed by a Registered Professional Engineer.
- 2.2 For both the traffic control plan and flagmen use, submit schedules of values within 30 days following the Notice to Proceed. Refer to Section 01292 - Schedule of Values.  

**(PWE web link)**

[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)
- 2.3 The Contractor shall provide such information and records regarding the use of qualified flagmen to verify that the Contractor's use of "peace officers" as flagmen is in compliance with the Contract Documents and Texas law, including but not limited to, Article 4413 (29bb), commonly referred to as the Private Investigators and Private Security Agencies Act, and Article 2.12, Texas Code of Criminal Procedure.
- 2.4. The Contractor shall provide such information and records regarding the

use of qualified flagmen to verify that the Contractor's use of "certified flagmen" as flagmen is in compliance with the Contract Documents and applicable City ordinance.

2.5. Make submittals in accordance with Section 01330 - Submittal Procedures. (page 41)

### 3.0 UNIT PRICES

3.1. Traffic Control and Regulation. Measurement is on a lump sum basis for traffic control and regulation, including submittal of a traffic control plan if different from the plan shown on the Drawings, provision of traffic control devices, and provision of equipment and personnel as necessary to protect the work and the public. The amount invoiced shall be determined based on the schedule of values submitted for traffic control and regulation.

3.2 Flagmen. Measurement is on a lump sum basis for flagmen as required for the Project. The amount invoiced shall be determined based on the schedule of values submitted for flagmen.

3.3 Refer to Section 01270 - Measurement and Payment for unit price procedures. (pg 29)

### 4.0 FLAGMEN

4.1. Use flagmen, qualified as described under paragraph 4.2, Uniformed Peace Officers, or paragraph 4.4, Certified Flagmen, to control, regulate, and direct the even flow or movement of vehicular or pedestrian traffic when construction operations encroach on public traffic lanes.

4.2. Uniformed Peace Officer: A person who has full-time employment as a peace officer and who receives compensation as a flagman for private employment as an individual employee or independent contractor. Private employment may be either an employee-employer relationship or on an individual basis. A flagman may not be in the employ of another peace officer and may not be a reserve peace officer.

4.2.1 A peace officer is defined as:

4.2.1.1 Sheriffs and their deputies;

4.2.1.2 Constables and deputy constables;

4.2.1.3 Marshals or police officers of an incorporated city, town, or village; or

4.2.1.4 As otherwise provided by Article 2.12, Code of Criminal Procedure, as amended.

4.3 A person who has full-time employment as a peace officer is one who is actively employed in a full-time capacity as a peace officer working, on average, a minimum of 32 paid hours per week, being paid at a rate of pay not less than the prevailing minimum hourly wage rate as set by the federal

Wage and Hour Act and entitled to the full benefits of participation in any retirement plan, vacation, holidays, and insurance benefits. A reserve peace officer does not qualify, under this definition, as a peace officer.

4.4 Certified Flagman: A person who receives compensation as a flagman and who meets the following qualifications and requirements:

4.4.1 Formally trained and certified in traffic control procedures through the City's Department of Public Works & Engineering's E. B. Cape Center.

4.4.2 Required to wear a distinctive uniform, bright-colored vest, and be equipped with appropriate flagging and communication devices.

4.4.3 English speaking, with Spanish as an advantageous, but not required, primary or secondary language.

4.4.4 Paid as a Certified Flagman, equivalent to the hourly wage rate set for Rough Carpenter under, Wage Scale for Engineering Construction, "SECTION B-3".

4.4.5 Required to carry proof of training / certification, such as photographic identification card issued by the training institute, to allow the City Engineer to easily determine that necessary full-time traffic control is actually provided, when and where construction work encroaches upon traffic lanes.

## *PART 2 PRODUCTS*

### 1.0 SIGNS, SIGNALS, AND DEVICES

1.1 Comply with Texas State Manual on Uniform Traffic Control Devices.

1.2 Traffic Cones and Drums, Flares and Lights: As approved by local jurisdictions.

## *PART 3 EXECUTION*

### 1.0 PUBLIC ROADS

1.1 Abide by laws and regulations of governing authorities when using public roads. If the Contractor's work requires that public roads be temporarily impeded or closed, approvals shall be obtained from governing authorities and permits paid for before starting any work. Coordinate activities with the City Engineer.

1.2 The Contractor shall maintain at all times a 10-foot-wide all-weather lane adjacent to work areas which shall be kept free of construction equipment and debris and shall be for the use of emergency vehicles, or as otherwise provided in the traffic control plan.

1.3 The Contractor shall not obstruct the normal flow of traffic from 7:00 a.m. to

9:00 a.m. and 4:00 p.m. to 6:00 p.m. on designated major arterials or as directed by the City Engineer.

1.4 The Contractor shall maintain local driveway access to residential and commercial properties adjacent to work areas at all times.

1.5 Cleanliness of Surrounding Streets:

1.5.1 Keep streets used for entering or leaving the job area free of excavated material, debris, and any foreign material resulting from construction operations. Comply with City of Houston Ordinance No. 5705, Construction or Demolishing Privileges.

## 2.0 CONSTRUCTION PARKING CONTROL

2.1 Control vehicular parking to prevent interference with public traffic and parking, access by emergency vehicles, and City's operations.

2.2 Monitor parking of construction personnel's vehicles in existing facilities. Maintain vehicular access to and through parking areas.

2.3 Prevent parking on or adjacent to access roads or in non-designated areas.

## 3.0 FLARES AND LIGHTS

3.1 Provide flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.

## 4.0 HAUL ROUTES

4.1 Utilize haul routes designated by authorities or shown on the Drawings for construction traffic.

4.2 Confine construction traffic to designated haul routes.

4.3 Provide traffic control at critical areas of haul routes to regulate traffic and minimize interference with public traffic.

## 5.0 TRAFFIC SIGNS AND SIGNALS

5.1 Install traffic control devices at approaches to the site and on site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.

5.2 Install and operate traffic control signals to direct and maintain orderly flow of traffic in areas under Contractor's control and areas affected by Contractor's operations.

5.3 Relocate traffic signs and signals as Work progresses to maintain effective traffic control.

6.0 BRIDGING TRENCHES AND EXCAVATIONS

- 6.1 Whenever necessary, bridge trenches and excavation to permit an unobstructed flow of traffic.
- 6.2 Secure bridging against displacement by using adjustable cleats, angles, bolts or other devices whenever bridge is installed:
  - 6.2.1 On an existing bus route;
  - 6.2.2 When more than five percent of daily traffic is comprised of commercial or truck traffic;
  - 6.2.3 When more than two separate plates are used for the bridge; or
  - 6.2.4 When bridge is to be used for more than five consecutive days.
- 6.3 Install bridging to operate with minimum noise.
- 6.4 Adequately shore the trench or excavation to support bridge and traffic.
- 6.5 Extend steel plates used for bridging a minimum of one foot beyond edges of trench or excavation. Use temporary paving materials (premix) to feather edges of plates to minimize wheel impact on secured bridging.
- 6.6 Use steel plates of sufficient thickness to support H-20 loading, truck or lane, that produces maximum stress.

7.0 REMOVAL

- 7.1 Remove equipment and devices when no longer required.
- 7.2 Repair damage caused by installation.
- 7.3 Remove post settings to a depth of 2 feet.

**THE FOLLOWING ITEMS SHOULD BE CHECKED FOR COORDINATION DURING DESIGN:**

\*\*\*\*\*

- 1.0 Coordinate this specification with other related specifications including the following related Sections.

2.0 RELATED SECTIONS

2.1 Section 01270 - Measurement and Payment: Unit price procedures (pg 29)

2.2 Section 01292 - Schedule of Values (**PWE web link**)  
[http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

2.3 Section 01330 – Submittals (page 41)

**SECTION 01576**  
**WASTE MATERIAL DISPOSAL**

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Disposal of waste material and salvageable material.

2.0 UNIT PRICES

2.1 No separate payment will be made for waste material disposal under this Section. Include payment in unit price for related sections.

3.0 SUBMITTALS

3.1 Submittals shall conform to requirements of Section 01330 - Submittal Procedures, on page 41.

3.2 Submit a copy of an approved "Development Permit", as defined in Chapter 19 of the Flood Plain Ordinance (City Ordinance Number 81-914 and Number 85-1705), prior to disposal of excess material in areas designated as being in a "100-year Flood Hazard Area" within the City. Contact the City of Houston Floodplain Manager, 3300 Main Street, at (713) 525-7605 for floodplain information.

3.3 Obtain and submit disposal permits for proposed disposal sites if required by local ordinances.

3.4 Submit a copy of written permission from property owner, along with description of property, prior to disposal of excess material adjacent to the Project. Submit a written and signed release from property owner upon completion of disposal work.

*PART 2 PRODUCTS -\*\*\* Not Used\*\*\**

*PART 3 EXECUTION*

1.0 SALVAGEABLE MATERIAL

1.1 Excavated Material: When indicated on Drawings, load, haul, and deposit excavated material at a location or locations shown on Drawings outside the limits of Project.

1.2 Base, Surface, and Bedding Material: Load shell, gravel, bituminous, or other base and surfacing material designated for salvage into City of Houston trucks.

1.3 Pipe Culvert: Load culverts designated for salvage into City of Houston trucks.

1.4 Other Salvageable Materials: Conform to requirements of individual Specification Sections.

1.5 Coordinate loading of salvageable material on City of Houston trucks with City Engineer.

2.0 EXCESS MATERIAL

2.1 Vegetation, rubble, broken concrete, debris, asphaltic concrete pavement, excess soil, and other materials not designated for salvage, shall become the property of Contractor and shall be removed from the job site and legally disposed of.

2.2 Excess soil may be deposited on private property adjacent to the Project when written permission is obtained from property owner. See Paragraph 1.03 D above.

2.3 Verify the flood plain status of any proposed disposal site. Do not dispose of excavated materials in an area designated as within the 100-year Flood Hazard Area unless a "Development Permit" has been obtained. Excess material placed in a "100-year Flood Hazard Area" within the City, without a "Development Permit", shall be removed by Contractor at no additional cost to the City.

2.4 Waste materials shall be removed from the site on a daily basis, such that the site is maintained in a neat and orderly condition.

**SECTION 01610**  
BASIC PRODUCT REQUIREMENTS

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Requirements for transportation, delivery, handling, and storage of material and equipment.

2.0 PRODUCTS

2.1 Products: Means material, equipment, or systems forming the Work. Does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components designated for reuse.

2.2 Do not reuse materials and equipment, designated to be removed, except as specified by the Contract Documents.

2.3 Provide equipment and components from the fewest number of manufacturers as is practical, in order to simplify spare parts inventory and to allow for maximum interchangeability of components. For multiple components of the

same size, type or application, use the same make and model of component throughout the project.

### 3.0 TRANSPORTATION

- 3.1 Make arrangements for transportation, delivery, and handling of equipment and materials required for timely completion of the Work.
- 3.2 Transport and handle products in accordance with instructions.
- 3.3 Consign and address shipping documents to the proper party giving name of Project, street number, and City. Shipments shall be delivered to the Contractor.

### 4.0 DELIVERY

- 4.0 Arrange deliveries of products to accommodate the short term site completion schedules and in ample time to facilitate inspection prior to installation. Avoid deliveries that cause lengthy storage or overburden of limited storage space.
- 4.1 Coordinate deliveries to avoid conflict with Work and conditions at the site and to accommodate the following:
  - 4.1.1 Work of other contractors or the City.
  - 4.1.2 Limitations of storage space.
  - 4.1.3 Availability of equipment and personnel for handling products.
  - 4.1.4 City's use of premises.
- 4.2 Have products delivered to the site in manufacturer's original, unopened, labeled containers.
- 4.3 Immediately upon delivery, inspect shipment to assure:
  - 4.3.1 Product complies with requirements of Contract Documents.
  - 4.3.2 Quantities are correct.
  - 4.3.3 Containers and packages are intact; labels are legible.
  - 4.3.4 Products are properly protected and undamaged.

### 5.0 PRODUCT HANDLING

- 5.1 Coordinate the off-loading of materials and equipment delivered to the job site. If necessary to move stored materials and equipment during construction, Contractor shall relocate materials and equipment at no additional cost to the City.

- 5.2 Provide equipment and personnel necessary to handle products, including those provided by the City, by methods to prevent damage to products or packaging.
- 5.3 Provide additional protection during handling as necessary to prevent breaking, scraping, marring, or otherwise damaging products or surrounding areas.
- 5.4 Handle products by methods to prevent over bending or overstressing.
- 5.5 Lift heavy components only at designated lifting points.
- 5.6 Handle materials and equipment in accordance with Manufacturer's recommendations.
- 5.7 Do not drop, roll, or skid products off delivery vehicles. Hand carry or use suitable materials handling equipment.

## 6.0 STORAGE OF MATERIAL

- 6.1 Store and protect materials in accordance with manufacturer's recommendations and requirements of these Specifications.
- 6.2 Make necessary provisions for safe storage of materials and equipment. Place loose soil materials, and materials to be incorporated into the Work to prevent damage to any part of the Work or existing facilities and to maintain free access at all times to all parts of the Work and to utility service company installations in the vicinity of the Work. Keep materials and equipment neatly and compactly stored in locations that will cause a minimum of inconvenience to other contractors, public travel, adjoining owners, tenants, and occupants. Arrange storage in a manner to provide easy access for inspection.
- 6.3 Restrict storage to areas available on the construction site for storage of material and equipment as shown on Drawings or approved by the City Engineer.
- 6.4 Provide off-site storage and protection when on-site storage is not adequate.
- 6.5 Do not use lawns, grass plots, or other private property for storage purposes without written permission of the owner or other person in possession or control of such premises.
- 6.6 Protect stored materials and equipment against loss or damage.
- 6.7 Store in manufacturers' unopened containers.
- 6.8 Materials delivered and stored along the line of the Work shall be neatly, safely, and compactly stacked along the work site in such manner as to cause the least inconvenience and damage to property owners and the general public, and shall be not closer than 3 feet to any fire hydrant. Public and private drives and street crossings shall be kept open.
- 6.9 Damage to lawns, sidewalks, streets or other improvements shall be repaired or

replaced to the satisfaction of the City Engineer. The total length which materials may be distributed along the route of construction at any one time is 1000 lineal feet, unless otherwise approved in writing by the City Engineer.

*PART 2 PRODUCTS -\*\*\* Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01725**  
**FIELD SURVEYING**

*PART 1 GENERAL*

1.0 QUALITY CONTROL

1.1 Conform to State of Texas laws for surveys requiring licensed surveyors. Employ a land surveyor acceptable to City Engineer, if required.

2.0 SUBMITTALS

2.1 Submit to City Engineer the name, address, and telephone number of Surveyor before starting survey work.

2.2 Submit documentation verifying accuracy of survey work on request.

2.3 Submit certificate signed by surveyor, that the elevations and locations of the Work are in conformance with Contract Documents.

2.4 Submit information under provisions of Section 01330 - Submittal Procedures, on page 41.

3.0 PROJECT RECORD DOCUMENTS

3.1 Maintain a complete and accurate log of control and survey work as it progresses.

3.2 Prepare a certified survey setting forth dimensions, locations, angles, and elevations of construction and site Work upon completion of foundation walls and major site improvements.

3.3 Submit Record Documents under provisions of Section 01785 - Project Record Documents. (page 80)

4.0 EXAMINATION

4.1 Verify locations of survey control points prior to starting Work.

4.2 Notify City Engineer immediately of any discrepancies discovered.

5.0 SURVEY REFERENCE POINTS

5.1 Control datum for survey is that established by City-provided survey as required in the General Conditions and indicated on Drawings.

**“REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700”**

5.2 Locate and protect survey control points prior to starting site work; preserve permanent reference points during construction.

5.3 Notify City Engineer 48 hours in advance of need for relocation of reference points due to changes in grades or other reasons.

5.4 Report promptly to City Engineer the loss or destruction of any reference point.

5.5 The Contractor shall reimburse City for cost of re-establishment of permanent reference points disturbed by Contractor's operations.

## 6.0 SURVEY REQUIREMENTS

6.1 Utilize recognized engineering survey practices.

6.2 Establish a minimum of two permanent bench marks on site, referenced to established control points. Record locations, with horizontal and vertical data, on Project Record Documents.

6.3 Establish elevations, lines and levels to provide quantities required for measurement and payment and to provide appropriate controls for the Work. Locate and lay out by instrumentation and similar appropriate means:

6.3.1 Site improvements including pavements; stakes for grading; fill and topsoil placement; utility locations, slopes, and invert elevations.

6.3.2 Grid or axis for structures.

6.3.3 Building foundation, column locations, ground floor elevations.

6.4 Verify periodically layouts by same means.

## **SECTION 01770** CLOSEOUT PROCEDURES

### *PART 1 GENERAL*

#### 1.0 SECTION INCLUDES

1.1 Substantial Completion Procedures.

1.2 Closeout procedures for final submittals, operation and maintenance data, warranties, spare parts and maintenance materials.

1.3 Texas Department of Licensing and Regulation (TDLR) inspection for ADA compliance.

## 2.0 SUBSTANTIAL COMPLETION

2.1 Comply with Document 00700 - General Conditions, regarding substantial completion when Contractor considers the Work, or portion thereof designated by City Engineer, to be substantially complete.

**"REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700"**

2.1.1 Insure the following items have been completed when included in the Work, prior to presenting a list of items to be inspected by Project Manager for issuance of a Certificate of Substantial Completion:

2.1.1.1 cutting, plugging, and abandoning of water, wastewater, and storm sewer lines, as required by specifications for each item;

2.1.1.2 construction of, and repairs to, pavement, driveways, sidewalks, and curbs and gutters;

2.1.1.3 sodding and hydromulch seeding, unless waived by the City Engineer in writing;

2.1.1.4 general clean up including pavement markings, transfer of services, successful testing and landscape;

2.1.1.5 installation of all bid items, and

2.1.1.6 any additional requirements in Section 01110-Summary of Work on page 18.

2.2 Assist Project Manager with inspection of Contractor's list of items and complete or correct the items, including items added by project Manager, within a time period of 30 days or as mutually agreed.

2.3 Should Project Manager's inspection show failure of Contractor to comply with substantial completion requirements, including those items in Paragraph 2.1.1 of this specification, Contractor shall complete or correct the items, before requesting another inspection by Project Manager.

2.4 Comply with Document 00700 - General Conditions, regarding Final Completion and Final Payment when Work is complete and ready for City Engineer's final inspection.

**"REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700"**

2.5 Provide Project Record Documents in accordance with Section 01785 - Project Record Documents on page 80.

2.6 Complete or correct items on punch list, with no new items added. Address new items during warranty period.

2.7 City will occupy portions of Work as specified in other Sections.

### 3.0 FINAL CLEANING

3.1 Execute final cleaning prior to final inspection.

3.2 For facilities, clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces, vacuum carpeted and soft surfaces.

3.3 Clean equipment and fixtures to sanitary condition.

3.4 Clean or replace filters of operating equipment.

3.5 Clean debris from roofs, gutters, down spouts, and drainage systems.

3.6 Clean site; sweep paved areas, rake landscaped surfaces clean.

3.7 Remove waste and surplus materials, rubbish, and temporary construction facilities from site following final test of utilities and completion of Work.

### 4.0 ADJUSTING

4.1 Adjust operating equipment to ensure smooth and unhindered operation. Value of this testing and adjusting is 5 percent of Lump Sum Price in Schedule of Values for item being tested.

### 5.0 OPERATION AND MAINTENANCE DATA

5.1 Submit operations and maintenance data as noted in Section 01330 - Submittal Procedures on page 41.

5.2 Five percent of lump sum amount of each piece of equipment as indicated in Schedule of Unit Price Work or Schedule of Values shall be paid after required O&M data submissions are received and approved by City Engineer.

### 6.0 WARRANTIES

6.1 Provide one original and two copies of each warranty from subcontractors, suppliers, and manufacturers.

6.2 Provide Table of Contents and assemble warranties in 3-ring/D binder with durable plastic cover.

6.3 Submit warranties prior to final progress payment.

6.4 Warranties shall commence in accordance with requirements in Document 00700 - General Conditions.

**"REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700"**

### 7.0 SPARE PARTS AND MAINTENANCE MATERIALS

7.1 Provide products, spare parts, maintenance and extra materials in quantities specified in individual Specification sections.

7.2 Deliver to location within City limits as directed by City Engineer; obtain receipt prior to final Payment Application.

8.0 TEXAS DEPARTMENT OF LICENSING AND REGULATION (TDLR) INSPECTION

8.1 Contact TDLR's Houston Regional Office, 5425 Polk Street, Houston, Texas, 77023, telephone 713-924-6303, fax 713-921-3106, to verify schedule an inspection for ADA compliance prior to final completion.

8.2 Provide results of TDLR's inspection to City prior to final inspection.

9.0 FINAL PHOTOS

9.1 Provide per Specification Section 01322 - Construction Photographs for Facility Projects. (**PWE web link**) [http://pwecms.cityofhouston.net/forms-amp-policies/search\\_result-2.html](http://pwecms.cityofhouston.net/forms-amp-policies/search_result-2.html)

10.0 PROJECT RECORD DOCUMENTS

10.1 Provide per Specification Section 01785 - Project Record Documents. (page 80)

*PART 2 PRODUCTS -\*\*\*Not Used\*\*\**

*PART 3 EXECUTION -\*\*\* Not Used\*\*\**

**SECTION 01785**  
PROJECT RECORD DOCUMENTS

*PART 1 GENERAL*

1.0 SECTION INCLUDES

1.1 Maintenance and Submittal of Record Documents and Samples.

2.0 MAINTENANCE OF DOCUMENTS AND SAMPLES

2.1 Maintain one record copy of documents at the site in accordance with Document 00700 - General Conditions, paragraph 3.14, Documents and Samples at the Site.

**"REFER TO E-BID SYSTEM, VENDOR LOG IN, SEE DOCUMENT 00700"**

2.2 Store Record Documents and samples in field office if a field office is required by Contract Documents, or in a secure location. Provide files, racks, and secure storage for Record Documents and samples.

- 2.3 Label each document "PROJECT RECORD" in neat, large, printed letters.
- 2.4 Maintain Record Documents in a clean, dry, and legible condition. Do not use Record Documents for construction purposes.
- 2.5 Keep Record Documents and Samples available for inspection by City Engineer.

### 3.0 RECORDING

- 3.1 Record information concurrently with construction progress. Do not conceal any work until required information is recorded.
- 3.2 Contract Drawings and Shop Drawings: Legibly mark each item to record all actual construction, or "as built" conditions, including:
  - 3.2.1 Measured depths of elements of foundation in relation to finish first floor datum.
  - 3.2.2 Measured horizontal locations and elevations of underground utilities and appurtenances, referenced to permanent surface improvements.
  - 3.2.3 Elevations of underground utilities referenced to City of Houston bench mark utilized for project.
  - 3.2.4 Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of construction.
- 3.3 Field changes of dimension and detail.
  - 3.3.1 Changes made by modifications.
  - 3.3.2 Details not on original contract drawings.
  - 3.3.3 References to related shop drawings and Modifications.
- 3.4 Record information with a red felt-tip marking pen on a set of blue line opaque drawings, provided by City Engineer.

### 4.0 SUBMITTALS

- 4.1 At contract closeout, deliver Project Record Documents to City Engineer.

*PART 2 PRODUCTS - \*\*\*Not Used\*\*\**

*PART 3 EXECUTION - \*\*\*Not Used\*\*\**

**SECTION 02952**  
**MUDJACKING (SLABJACKING) RIGID PAVEMENTS**

***PART 1 GENERAL***

**1.0 SECTION INCLUDES**

1.1 Mudjacking Rigid Pavement.

**2.0 MEASUREMENT AND PAYMENT**

2.1 Measurement shall be made of the actual number of holes drilled necessary to accomplish the work and the area in square feet raised by this process.

2.2 Payment at the unit price shall be full compensation for furnishing all labor, equipment, tools, materials, constructing and filling the holes. In addition, waste material shall be removed and surrounding area restored.

2.3 Payment shall be made at the unit price bid per item.

**3.0 REFERENCE**

3.1 TxDOT Tex 120-E – Unconfined Compressive Strength.

***PART 2 PRODUCTS***

**1.0 MATERIALS**

1.1 Grout Mixtures: Portland cement grout mixture used for slabjacking shall consist of Portland cement, pozzolan or fly ash, limestone dust, sand, and water. The mix shall contain a minimum of 2 sacks of cement per cubic yard of grout, providing a minimum compressive strength of 650 psi at 7 days following TxDOT Tex 120-E. The use of accelerators, high range water reducers and fluidifiers are subject to the approval of the City Engineer.

1.2 Mineral Aggregate: Aggregate to be used for slabjacking may consist of natural sand, manufactured sand, or a combination of natural and manufactured sand and limestone dust. If the aggregate is a combination of separately processed sized from the same or different sources, or a blend of different materials, the different components shall be batched separately or blended prior to delivery to the batching plant under approved conditions.

**2.0 EQUIPMENT**

2.1 Grout Plant: The grout plant shall consist of a positive displacement grout injection pump capable of applying up to 250 psi pressure, a high speed colloidal mixing machine, and a grout mill connected to the cone-shaped bottom or a cylindrical dram. The colloidal mill shall operate

between 800 to 2,000 RPM, creating a high shearing action and subsequent pressure release to make a homogeneous mixture. The injection system shall be capable of continuously pumping grout at rates as low as 1-1/2 gallons per minute and shall be equipped with pressure monitoring devices and a quick action valve system that can be closed instantly and provide for the grout to be re-circulated through the system.

### *PART 3 EXECUTION*

#### 1.0 PREPARATION

- 1.1 General Requirements: The Contractor shall furnish all equipment, tools, and other apparatus necessary for the proper construction and acceptable completion of the work specified under this contract. The equipment shall be approved by the City Engineer prior to starting the work, and maintained in good working condition by the Contractor during the progress of the work.
- 1.2 Pavement Inspection: Prior to jacking any pavement, the slabs shall be closely examined for any existing cracks. A representative of the Contractor and the City Engineer shall perform this investigation, and both parties shall satisfy themselves as to the existing condition of the pavement, and all existing cracks noted or marked.

#### 2.0 EXECUTION

- 2.1 Drilling Holes for Grout Injection: Grout injection holes shall be drilled in a pattern as shown on the plans or as directed by the City Engineer. Holes shall not be larger than 2 inches in diameter drilled vertically to a depth sufficient to penetrate through any chemically stabilized base, but not more than three inches into the subgrade. Spacing of holes shall be a maximum of 24 inches on center. Holes shall be drilled in such a manner that breakout shall not occur at the bottom of the slab.
- 2.2 Drilling An air compressor and rock drills or other device capable of drilling the grout injections holes through the pavement and base material shall be provided. The holes are vertical and round. Down-feed pressure whether by hand or mechanical equipment shall be in good condition and operated in such a manner that the means shall not exceed 200 psi. Holes shall be drilled in such a manner so as to prevent breakout at the bottom of the pavement. All necessary hoses, valving and valve manifolds and positive cut-off and bypass provisions to control pressure and volume, pressure gauges with gauge protectors, expanding packers for positive seal grout injection, wood plugs, hole washing tools, drill steel and bits shall be provided by the Contractor.
- 2.3 Jacking: Prior to jacking operations the Contractor shall erect string lines that will be blocked up from the pavement high points to monitor movement. An expanding rubber packer or other approved device providing a positive seal and connected to the discharge hose on the grout plant shall be lowered into the holes. The discharge end of the

packer or hose shall not extend below the lower surface of the concrete pavement. The Contractor shall pump in a pattern and in the amount required to raise the pavement to within 0.01 foot from a string line grade. Grade tolerances shown in this section shall be applicable to transverse grades as well as longitudinal grades. Continuous pressures to 200 psi will be permitted. Pressures to 300 psi will be allowed only for short periods. Loss of grout through cracks, joints, other injection holes, or from back pressure in the hose or in the shoulder area will not be tolerated. Grout held in the mixer or in the injection pump or hose for more than one hour after mixing shall not be used for jacking.

- 2.4 Raising of Slabs: The slabs shall not be raised more than ¼ inch when pumping in any one hole at any time. No part of the slab shall lead any other part of the slab or any adjacent slab more than ¼ inch at a time. The entire slab and all adjacent slabs shall be kept on the same plane at all times, within the ¼ inch tolerance. The Contractor shall make observations to assure that when pumping from one hole, the grout flows to adjacent holes to insure that all voids are filled. The Contractor may cut a slab to prevent breakage when it is bound against an adjoining slab. If the temperature is 27 degrees C, 80 degrees F, or higher during the jacking operation, the slabs shall be sufficiently moistened to prevent expansion of the slabs.
- 2.5 Plan Grade Requirements: At all times during the raising of the slabs, the Contractor shall furnish and utilize qualified personnel and equipment for determining the proper elevations required to conform to the plan elevations. Upon completion of jacking operations, all slabs within the work area shall present an even grade at each joint and shall not vary from the plan elevations by more than (0.02) foot. If slabs are found that are lower than the specified tolerance from the plan grade, these slabs shall be further jacked until the tolerance is met. (If slabs are found that are higher than the specified tolerance, the Contractor shall raise the grade of the surrounding pavement, as determined by the City Engineer, to a newly established grade.) (Individual sections of pavement that are raised about the specified tolerances shall be brought to grade by grinding.) Should the over-jacking be greater than ¼ inch, the City Engineer has the option to require removal and replacement of the pavement. These repairs shall be accomplished at no additional cost to the City.
- 2.6 Sealing of Injection Holes: After jacking has been completed at any one hole, the packer shall be removed and the hole temporarily plugged immediately with a tapered wooden plug. The temporary wooden plugs shall not be removed until sufficient time has elapsed to permit the grout to set sufficiently so that back pressure will not force it through the holes. Each hole shall be permanently sealed flush with the pavement surface with a fast setting sand/cement or other patch material approved by the City Engineer. The patch material shall have a minimum thickness of 3 inches.

### 3.0 PROTECTION OF PAVEMENT

- 3.1 Weather Limitations: Pavement slabjacking shall be performed when the ambient temperature at the bottom of the pavement slab is less than 5 degrees C, 40 degrees F, or when the subgrade or subbase is frozen.
- 3.2 Traffic: Traffic shall not be permitted on the pavement until the grout has obtained a minimum set in 12 hours.
- 3.3 Replacing and Repair of Damaged Pavement: The Contractor shall replace or repair any slabs broken due to jacking as determined by the City Engineer at no cost to the City.

**SECTION 02953**  
**CRACK SEALING**

*PART 1 GENERAL*

1.0 SECTION INCLUDES

- 1.1 Sealing Asphaltic Concrete Pavement Cracks.
- 1.2 Sealing Portland Cement Concrete Pavement Cracks.
- 1.3 MEASUREMENT AND PAYMENT
- 1.4 Measurement will be made by the linear foot of crack cleaned and sealed.
- 1.5 The work performed and material furnished as prescribed by this item at the unit price bid for Crack Sealing shall be full compensation for cleaning, furnishing and placing all materials and for all labor, equipment and incidentals necessary to complete the work.

*PART 2 PRODUCTS*

1.0 MATERIALS

- 1.1 2SS-IP Polymer Emulsion: This shall be a slow-setting anionic emulsion produced from a polymer-modified asphalt and shall be suitable for sealing fine cracks in asphaltic concrete pavement.
- 1.2 HFRS-2P High Float Emulsion: This shall be a rapid-setting anionic emulsion produced from a polymer-modified asphalt and shall be suitable for sealing fine cracks in asphaltic concrete pavement.
- 1.3 Rubber Asphalt Crack Sealing Compound: This material shall be a blend of rubber and asphalt and shall be suitable for sealing 1/8-inch or larger width cracks in Portland Cement concrete pavement. It shall be capable of being melted and applied by suitable oil-jacketed kettle equipped with pressure pump, hose and nozzle at a temperature of 400 F. or less. It shall contain no water or highly-volatile matter and shall not track by traffic as soon as

cooled to road temperature.

## 2.0 EQUIPMENT

- 2.1 A reservoir, pump, hose, nozzle, and squeegee system capable of handling and applying the asphalt emulsion at ambient temperatures of 40 F. Or above in such a manner that it will seal cracks 1/16 to 1/8 inch in width. The City Engineer shall approve the system prior to use.
- 2.2 An oil jacketed kettle equipped with a pressure pump, hose and nozzle capable of applying the rubber asphalt crack sealing compound at the temperature of 400 or less. The equipment shall be approved by the City Engineer.
- 2.3 Other equipment, tools and machinery necessary for proper prosecution of the work shall be on the project and approved by the City Engineer prior to beginning of joint sealing operations.

## *PART 3 EXECUTION*

### 1.0 PREPARATION

- 1.1 Cracks 1/16- to 1/8-inch-width shall be blown out with compressed air and sealed with polymer-modified emulsion by a method satisfactory to the Engineer. If directed by the Engineer, a light coating of fmc sand shall be applied to the emulsion treated cracks prior to opening to traffic to prevent tracking.
- 1.2 Cracks 1/8 inch and larger than 1/8 inch width shall be cleaned of infiltrated material and blown dry with compressed air. The rubber asphalt material shall then be heated and applied to seal the cracks in a manner satisfactory to the City Engineer.
- 1.3 No sealing of any cracks shall be done unless the pavement temperature is above 40F and pavement and cracks are dry.

### **SECTION 02954** **SAWED JOINTS**

## *PART 1 GENERAL*

### 1.0 SECTION INCLUDES

- 1.1 Sawing a joint to provide a clean break with a straight neat edge for removal of concrete pavement, concrete base and asphaltic concrete resurfacing, concrete curb or concrete curb and gutter.
- 1.2 Bid Line Items 4 and 5 (repair of concrete curbs and driveways) are covered by this specification.

- 1.3 If limit of removal of existing concrete or asphaltic pavement does not fall on existing joint, depth of saw cut shall be minimum of 1-1/2-inch to provide a straight, smooth joint surface without chipping, spalling, or cracking.
- 1.4 Sawing for full depth of pavement as required by plan drawings or as directed by the City shall provide a straight, smooth joint surface without chipping, spalling or cracking.

## 2.0 MEASUREMENT AND PAYMENT

- 2.1 Measurement for saw-cutting existing concrete pavement, concrete base asphaltic surfacing shall be by linear foot.
- 2.2 Saw-cutting existing standard concrete curbs will be considered as 1.5 linear feet and existing standard concrete curb and gutter as 3 linear feet.
- 2.3 Bid Items 5 and 6 are covered by this specification. Payment will depend upon 1-1/2-inch cut depth or full pavement cut depth. Payment at the respective unit price bid shall be full compensation for furnishing all labor, equipment, tools, materials and incidentals to complete the work.
- 2.4 Contraction joints and longitudinal weakened plane joints constructed in new pavement by saw-cutting will be considered incidental to the unit price for Concrete Pavement.
- 2.5 Joints for Curb, Curb and Gutters, Concrete Sidewalks, Concrete Pavement, Concrete Driveways and Wheel Chair Ramps constructed by saw-cutting in new construction will be considered incidental to the unit price for that application item.

## 3.0 SUBMITTALS

- 3.1 Submit Manufacturer's data and specifications for saw cutting equipment.

## *PART 2 PRODUCTS – \*\*\*NOT USED\*\*\**

## *PART 3 EXECUTION*

### 1.0 SAW-CUT METHOD

- 1.1 Sawed joints shall be cut with a power-driven concrete pavement saw.
- 1.2 Circular cutter shall be capable of cutting straight line groove of minimum ½ inch width.
- 1.3 Concrete saw: Provide sawing equipment adequate in power to complete sawing to required dimensions and within required time. Provide at least one standby saw that is in good working order. Maintain an ample supply of saw blades at work site at all times during sawing operations. Sawing equipment shall be on job at all times during concrete placement.

- 1.4 Sawed joints may also be used as an alternate to formed contraction or weakened plane joints in newly constructed concrete pavement, curbs, curb and gutters, sidewalks and driveways. Ref to 2.2 above.
- 1.5 Circular cutter shall be capable of cutting straight line groove minimum of ½ inch wide. Depth shall be 1-1/2 inches or full depth according to plans or as directed by the City Engineer.
- 1.6 For newly constructed pavement, commence sawing as soon as concrete has hardened sufficiently to permit cutting without chipping, spalling or tearing and prior to initiation of cracks. Once sawing has commenced, it shall be continued until completed. Make saw cut with one pass. Complete sawing within 24 hours of new concrete placement. Saw joints at required spacing consecutively in sequence of concrete placement.

**SECTION B-1**  
**STANDARD DRAWINGS FOR CONCRETE PAVEMENT REPAIR**

Table of Contents

This is a Work Order contract. Additional drawings may be provided to the Contractor with each Work Order, and at that time will become part of the Contract Documents.

<b>Sheet Number</b>	<b>Drawing Title</b>	
547-S	Concrete Headwalls Details (Attachment A)	
02751-01	Concrete Pavement Details	
02754-01	Driveway Details (Streets with Curbs)	
02754-02	Driveway Details (Open Ditches)	
02775-02	Wheelchair Ramp Details	
2902-01	Pavement Repair Detail	
100	Fire Station Driveway: 8" Driveway	1
101	Communications Bldg. Slab	5
102	Grade Beam	1
103	Foundation Repair	1
104	Generator Bldg. Slab	2
105	Typical Guard Post Detail	1
106	Pipe Protector Detail	1
107	Storm Inlet Detail	1
108	Trench Detail	1
109	Storm Pipe Detail	1
110	Trench & Inlet Detail	1
COHTA1-2	Type-A Grate Inlet	1
110A	Reinforced Concrete Culvert Pipe	2
111	Typical drilled pier	1
112	Typical existing foundation, new stabilizing pier	1
113	Slotted drain	5
114	Pavement under-cut detail where drive meets street	2
115	Pavement detail where drive meets street	1

**SECTION B-2  
WAGE SCALE FOR ENGINEERING CONSTRUCTION**

- 1.1 In accordance with the Prevailing Wage Law on Public Works (Article 5159-a of the Revised Civil Statutes of Texas), the public body awarding the contract does hereby specify the following to be the general prevailing rates in the locality in which the work is being performed.
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 The wage scale for engineering construction is to be applied to all site work greater than 5 feet from an exterior wall of new building under construction or from an exterior wall of an existing building.

Document 00820

**WAGE SCALE FOR ENGINEERING CONSTRUCTION**

- 1.01 In accordance with the Prevailing Wage Law on Public Works (Chapter 2258 of the Texas Government Code), the public body awarding the Contract does hereby specify the following to be the general prevailing rates in the locality in which the Work is being performed.
- 1.02 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.03 The wage scale for engineering construction is to be applied to all site work greater than 5 feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.04 If the Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Mayor's Office Of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168 and 2009-247 subject to City Council approval.

REST OF PAGE INTENTIONALLY LEFT BLANK

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES  
FOR  
ENGINEERING CONSTRUCTION  
2012

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Asphalt Distributor Operator	\$14.06	Milling Machine Operator - Fine Grade	\$13.53
Asphalt Paving Machine Operator	\$14.32	Mixer Operator	\$10.33
Asphalt Raker	\$12.36	Motor Grader Operator- Rough	\$14.23
Asphalt. Shoveler	\$11.68	Motor Grader Operator	\$15.69
Broom or Sweeper Operator	\$12.68	Oiler	\$12.12
Bulldozer Operator	\$11.81	Painter-Structures	\$18.62
Carpenter- Rough	\$12.49	Pavement Marking Machine Operator	\$11.18
Concrete Finisher- Paving	\$11.38	Pile Driverman.	\$14.95
Concrete Finisher- Structures	\$10.80	Pipe Layer	\$12.12
Concrete Paving Curbing Machine Operator	\$11.71	Reinforcing Steel Setter - Paving	\$15.14
Concrete Paving Finishing Machine Operator	\$13.07	Reinforcing Steel Setter - Structure	\$13.87
Concrete Paving Joint Sealer Operator	\$11.00	Roller Operator, Pneumatic - Self-propelled	\$11.57
Concrete Paving. Saw Operator	\$13.99	Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$11.57
Concrete Paving Spreader Operator.	\$10.44	Roller Operator, Steel Wheel, Plant Mix Pavement	\$11.92
Concrete Rubber . . .	\$9.00	Scraper Operator	\$13.47
Crane Clamshell Backhoe Derrick, Dragline, Shovel Operator	\$12.71	Servicer	\$13.97
Crusher and Screening Plant Operator	\$11.29	Sign Installer - PGM	\$8.54
Electrician * 3 Journeyman 2 Apprentice	\$21.79	Slip Form Machine Operator	\$11.07
Flagger	\$10.33	Spreader Box Operator	\$13.58
Form Builder/Setter- Structures	\$10.50	Structural Steel Worker	\$14.39
Form Liner- Paving and Curb	\$11.75	Tractor Operator - Crawler Type	\$13.68
Form Setter- Paving and Curb	\$10.51	Tractor Operator- Pneumatic	\$10.07
Foundation Drill Operator - Crawler Mounted	\$17.43	Transit Mixer Truck Driver	\$11.00
Foundation Drill Operator - Truck Mounted	\$17.43	Truck Driver, Lowboy-float	\$16.03
Front Loader Operator	\$13.32	Truck Driver, Single-Axle - Heavy	\$11.46
Laborer Common	\$11.02	Truck Driver, Single-Axle - Light	\$10.07
Laborer- Utility	\$11.73	Truck Driver, Tandem Axle Semi-Trailer	\$12.24
Manhole Builder	\$9.00	Work Zone Barricade Servicer	\$11.67
Mechanic	\$16.96	Welders - Receive rate prescribed for craft performing operation to which welding is incidental	
* Apprentices- must be in an approved USDOL Program and cannot exceed ratios			

Ordinance No. 2009-247 passed March 25, 2009

**SECTION B-3  
DOCUMENT 00512**

*WORK ORDER (NO. \_\_\_\_\_)*

**The Owner:** THE CITY OF HOUSTON, 901 Bagby Street, Houston, Texas 77002 (the City)

**The Contractor:**

**Address:**

**Project GFS Number:**

**Project Title:**

**Project Location:**

**City Engineer:**

**Address:**

**Project Engineer:**

**DESCRIPTION OF THE WORK**

**The Work to be performed under this Work Order includes:**

[Brief Description of Work to be done]

All necessary Drawings or Specifications are attached and incorporated herein as part of the Work Order.

**DATE OF COMMENCEMENT**

The Date of Commencement of this Work order under the Project is \_\_\_\_\_, . On such date the Contractor is to start performing its obligations under the Work Order in accordance with the Contract Documents. The Contract Time for this Work Order is \_\_\_\_ days; the date on which Liquidated Damages shall commence is established as \_\_\_\_\_, 20\_\_\_\_, subject to adjustments of the Contract Time as provided in the Contract Documents.

Should Contractor fail to achieve substantial completion of the Work within the Contract Time, the Contractor agrees to pay liquidated damages as stipulated in Supplementary Conditions.

**CONTRACT PRICE**

Subject to all the terms and conditions of the Contract Documents, the City shall pay the Contractor in current funds for the Contractor's performance of the Work described in this Work Order, the Work Order estimated price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Work Order price is calculated in bid document - Quantity Analysis, which is subject to adjustment upon completion of the Work due to variation in quantities of units of Work actually incorporated in the completed Work and other adjustment as provided in Contract Documents.

The Contract Price is based, in whole or in part, on those unit price items of Work which are listed in bid document. The Contract Price is subject to adjustment due to variation in quantities of units of work actually incorporated in the completed Work and other adjustment as provided in the Contract Documents.

This Work Order is a Contract Document. Work performed and payments made pursuant to this Work Order shall be subject to the terms and conditions of all other Contract Documents except as otherwise provided, including but not limited to Document 00700 - General Conditions and Document 00800 - Supplementary Conditions.

Attachments to this Work Order are as follows:

<u>Document No.</u>	<u>Title</u>
00408	Quantity Analysis
00220	Geotechnical Information
00230	Existing Conditions Drawings and/or Location Maps Supplementary Specifications

Drawings are identified by Drawing No. \_\_\_\_\_ and Bound Separately.

Additional terms, instructions, and conditions which pertain to this Work Order:

City of Houston

By: [City Engineer]

Acknowledged:

\_\_\_\_\_  
Contractor

**EXHIBIT "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "D"**  
**CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. **Eldorado Construction, Inc.** (M/WBE subcontractors) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. **Eldorado Construction, Inc.** (M/WBE subcontractors) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractors shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director form either party that a dispute ahs arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as other wise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Mayor's Office of Business Opportunity (713) 837-9000, 611 Walker, 20<sup>th</sup> Floor, Houston, Texas.

**EXHIBIT "D"**  
**CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. **Baseline Paving & Construction, Inc.** (M/WBE subcontractors) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. **Baseline Paving & Construction, Inc.** (M/WBE subcontractors) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractors shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director form either party that a dispute ahs arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as other wise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Mayor's Office of Business Opportunity (713) 837-9000, 611 Walker, 20<sup>th</sup> Floor, Houston, Texas.

**EXHIBIT "DD"**

**CITY OF HOUSTON  
OFFICE OF BUSINESS OPPORTUNITY & CONTRACT COMPLIANCE**

**M/WBE UTILIZATION REPORT**

**Report Period** \_\_\_\_\_

PROJECT NAME & NUMBER: \_\_\_\_\_

AWARD DATE: \_\_\_\_\_

PRIME CONTRACTOR: \_\_\_\_\_

CONTRACT No.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTRACT AMOUNT: \_\_\_\_\_

LIAISON/PHONE No.: \_\_\_\_\_

M/WBE GOAL: \_\_\_\_\_

M/WBE SUB/VENDOR NAME	DATE OF AA CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID TO DATE

Use additional pages if needed. Submit by the 15th day of the following month.  
Provide support documentation on all revenues paid to end of the report period to:  
M/WBEs to reflect up/down variances on contract amount

Affirmative Action Division  
ATTN: Velma Laws 713-837-9018  
611 Walker, 20<sup>th</sup> Floor  
Houston, Texas 77002

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, Hossein Zafarian President as an owner or officer of  
(Name) (Print/Type) (Title)  
Times Construction, Inc. (Contractor)  
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 3/16/2012

Contractor Name Hossein Zafarian

Signature 

Title President

**EXHIBIT "F"**  
**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

I, Hossein Zafarian, President  
**(Name)(Print/Type) (Title)**

as an owner or officer of Times Construction, Inc. (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

3/16/2012 Hossein Zafarian  
Date Contractor Name

H. Zafarian  
Signature

President  
Title

---

---

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF  
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES  
FOR CONTRACTORS**

I, Hossein Zafarian  
**(NAME) (PRINT/TYPE)**

as an owner or officer of Times Construction, Inc. (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

3/16/2012  
**DATE**

Hossein Zafarian  
**CONTRACTOR NAME**

H. Zafarian  
**SIGNATURE**

President  
**TITLE**



**EXHIBIT "H"  
FEES AND COSTS**

<b>BID ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>UNIT PRICE</b>
<b>Year One - Annual Cost, Group Totals</b>			
1	Curb removal - all types	LF	\$3.00
2	Gutter removal - all types	LF	\$5.00
3	Sidewalk removal	FT2	\$1.50
4	6" Driveway removal	FT2	\$1.75
5	8" Driveway removal, drawing 100	FT2	\$2.10
6	Foundation slab removal, drawing 103	FT2	\$14.00
7	Expansion joints repair	LF	\$2.00
8	6" concrete driveway and pavement with curbs, includes reinforcement-in-place, drawings 02754-01 and 02754-02	FT2	\$4.70
9	6" concrete driveway and pavement without curves, drawing 02754-02. State curve or headwall (optional).	FT3	\$9.50
10	Removal/replace slab - all manhole/inlets, reset (incidental), all expansion joints included.	FT3	\$12.90
11	Remove/replace base 18"	FT3	\$6.30
12	Remove/replace curb only	LF	\$5.75
13	Mud jacking	FT2	\$6.30
14	Concrete curb & gutter - all types, includes reinforced-in-place, drawings 02771-01 and 02775-01.	LF	\$12.00
15	8" driveway for Fire station, drawing 100	FT2	\$7.00
16	4-1/2" concrete sidewalk, includes reinforced-in-place, drawing 02752-02.	FT2	\$4.60
17	Remove and replace asphalt surfaces including subgrades.	FT2	\$6.50
18	Communication equipment slab, drawing 101	EA	\$4,000.00
19	Generator slab, drawing 104	EA	\$3,500.00
20	Building foundation slab, drawing 103	FT2	\$12.50
21	Grade beam, drawing 102	LF	\$25.00
22	Saw cut concrete, 4"-6"	LF	\$5.00
23	Saw cut concrete, 8"-10"	LF	\$10.00
24	Wheelchair access ramp, drawings 02775-02, 02775-03, 02775-04	FT2	\$8.00
25	Bollard (guard post), 6", painted, drawing 105	EA	\$335.00
26	Pipe protector fencing (guard railing) painted, drawing 106	LF	\$120.00
27	Cement stabilized sand	YD3	\$85.00
28	Lime for stabilization	LB	\$0.30
29	Select fill dirt	YD3	\$50.00
30	Storm inlet, Type A (catch basin), drawing 107	EA	\$1,200.00
31	Trench drain, drawing 108	LF	\$240.00
32	6" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$18.00
33	8" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$21.00

34	10" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$25.00
35	12" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$32.00
36	15" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$40.00
37	18" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$52.00
38	24" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$76.00
39	12" RCP reinforced concrete pipe, drawing 109	LF	\$40.00
40	15" RCP reinforced concrete pipe, drawing 109	LF	\$54.00
41	18" RCP reinforced concrete pipe, drawing 109	LF	\$60.00
42	24" RCP reinforced concrete pipe, drawing 109	LF	\$73.00
43	6" PVC schedule 40 pipe, drawing 109	LF	\$21.00
44	8" PVC schedule 40 pipe, drawing 109	LF	\$24.00
45	10" PVC schedule 40 pipe, drawing 109	LF	\$29.00
46	12" PVC schedule 40 pipe, drawing 109	LF	\$37.00
47	18" metal corrugated pipe	LF	\$62.00
48	24" metal corrugated pipe	LF	\$69.00
49	30" metal corrugated pipe	LF	\$93.00
50	#5 rebar extra layer, 12" o.c. both ways	FT2	\$4.00
51	Testing lab services for excavation, filling and backfilling	EA	\$350.00
52	Testing lab services for cast-in-place concrete	EA	\$150.00
53	Bell bottom piers (various diameters and depths) Dwg. # 111	EA	\$450.00
54	Foundation repair underpinning. Dwg #112	EA	\$600.00
55	Slotted Drain / corrugated galv. Steel pipe. Dwg. #113 5 sheets	LF	\$100.00
56	Under cutting street where new Fire Station concrete approach meets street. Dwg. #114	LF	\$16.00
57	Joining concrete driveway to existing concrete street. DWG. #115	LF	\$16.00
58	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$21,000.00
<b>Year Two - Annual Cost, Group Totals</b>			
1	Curb removal - all types	LF	\$3.00
2	Gutter removal - all types	LF	\$5.00
3	Sidewalk removal	FT2	\$1.50
4	6" Driveway removal	FT2	\$1.75
5	8" Driveway removal, drawing 100	FT2	\$2.10

6	Foundation slab removal, drawing 103	FT2	\$13.50
7	Expansion joints repair	LF	\$2.00
8	6" concrete driveway and pavement with curbs, includes reinforcement-in-place, drawings 02754-01 and 02754-02	FT2	\$4.50
9	6" concrete driveway and pavement without curves, drawing 02754-02. State curve or headwall (optional).	FT3	\$9.00
10	Removal/replace slab - all manhole/inlets, reset (incidental), all expansion joints included.	FT3	\$12.40
11	Remove/replace base 18"	FT3	\$6.10
12	Remove/replace curb only	LF	\$5.50
13	Mud jacking	FT2	\$6.10
14	Concrete curb & gutter - all types, includes reinforced-in-place, drawings 02771-01 and 02775-01.	LF	\$9.70
15	8" driveway for Fire station, drawing 100	FT2	\$6.80
16	4-1/2" concrete sidewalk, includes reinforced-in-place, drawing 02752-02.	FT2	\$4.45
17	Remove and replace asphalt surfaces including subgrades.	FT2	\$6.25
18	Communication equipment slab, drawing 101	EA	\$4,000.00
19	Generator slab, drawing 104	EA	\$3,500.00
20	Building foundation slab, drawing 103	FT2	\$12.20
21	Grade beam, drawing 102	LF	\$21.50
22	Saw cut concrete, 4"-6"	LF	\$4.00
23	Saw cut concrete, 8"-10"	LF	\$6.10
24	Wheelchair access ramp, drawings 02775-02, 02775-03, 02775-04	FT2	\$7.20
25	Bollard (guard post), 6", painted, drawing 105	EA	\$325.00
26	Pipe protector fencing (guard railing) painted, drawing 106	LF	\$116.00
27	Cement stabilized sand	YD3	\$81.00
28	Lime for stabilization	LB	\$0.30
29	Select fill dirt	YD3	\$50.00
30	Storm inlet, Type A (catch basin), drawing 107	EA	\$1,100.00
31	Trench drain, drawing 108	LF	\$230.00
32	6" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$17.00
33	8" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$20.00
34	10" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$24.00
35	12" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$32.00
36	15" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$40.00
37	18" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$50.00
38	24" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$74.00
39	12" RCP reinforced concrete pipe, drawing 109	LF	\$38.00

40	15" RCP reinforced concrete pipe, drawing 109	LF	\$52.00
41	18" RCP reinforced concrete pipe, drawing 109	LF	\$58.00
42	24" RCP reinforced concrete pipe, drawing 109	LF	\$71.00
43	6" PVC schedule 40 pipe, drawing 109	LF	\$20.00
44	8" PVC schedule 40 pipe, drawing 109	LF	\$22.50
45	10" PVC schedule 40 pipe, drawing 109	LF	\$29.00
46	12" PVC schedule 40 pipe, drawing 109	LF	\$36.00
47	18" metal corrugated pipe	LF	\$60.00
48	24" metal corrugated pipe	LF	\$67.00
49	30" metal corrugated pipe	LF	\$90.00
50	#5 rebar extra layer, 12" o.c. both ways	FT2	\$3.50
51	Testing lab services for excavation, filling and backfilling	EA	\$340.00
52	Testing lab services for cast-in-place concrete	EA	\$135.00
53	Bell bottom piers (various diameters and depths) Dwg. # 111	EA	\$410.00
54	Foundation repair underpinning. Dwg #112	EA	\$580.00
55	Slotted Drain / corrugated galv. Steel pipe. Dwg. #113 â€" 5 sheets	LF	\$100.00
56	Under cutting street where new Fire Station concrete approach meets street. Dwg. #114	LF	\$15.00
57	Joining concrete driveway to existing concrete street. DWG. #115	LF	\$15.00
58	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$18,000.00

**Year Three - Annual Cost, Group Totals**

1	Curb removal - all types	LF	\$3.00
2	Gutter removal - all types	LF	\$5.00
3	Sidewalk removal	FT2	\$1.50
4	6" Driveway removal	FT2	\$1.65
5	8" Driveway removal, drawing 100	FT2	\$1.95
6	Foundation slab removal, drawing 103	FT2	\$13.00
7	Expansion joints repair	LF	\$1.76
8	6" concrete driveway and pavement with curbs, includes reinforcement-in-place, drawings 02754-01 and 02754-02	FT2	\$4.35
9	6" concrete driveway and pavement without curves, drawing 02754-02. State curve or headwall (optional).	FT3	\$8.70
10	Removal/replace slab - all manhole/inlets, reset (incidental), all expansion joints included.	FT3	\$12.00
11	Remove/replace base 18"	FT3	\$6.00
12	Remove/replace curb only	LF	\$5.40
13	Mud jacking	FT2	\$5.85
14	Concrete curb & gutter - all types, includes reinforced-in-place, drawings 02771-01 and 02775-01.	LF	\$9.35
15	8" driveway for Fire station, drawing 100	FT2	\$6.50

16	4-1/2" concrete sidewalk, includes reinforced-in-place, drawing 02752-02.	FT2	\$4.25
17	Remove and replace asphalt surfaces including subgrades.	FT2	\$6.00
18	Communication equipment slab, drawing 101	EA	\$4,000.00
19	Generator slab, drawing 104	EA	\$3,500.00
20	Building foundation slab, drawing 103	FT2	\$11.70
21	Grade beam, drawing 102	LF	\$20.50
22	Saw cut concrete, 4"-6"	LF	\$2.95
23	Saw cut concrete, 8"-10"	LF	\$5.85
24	Wheelchair access ramp, drawings 02775-02, 02775-03, 02775-04	FT2	\$6.85
25	Bollard (guard post), 6", painted, drawing 105	EA	\$310.00
26	Pipe protector fencing (guard railing) painted, drawing 106	LF	\$111.50
27	Cement stabilized sand	YD3	\$78.00
28	Lime for stabilization	LB	\$0.30
29	Select fill dirt	YD3	\$50.00
30	Storm inlet, Type A (catch basin), drawing 107	EA	\$1,050.00
31	Trench drain, drawing 108	LF	\$221.00
32	6" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$16.00
33	8" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$19.50
34	10" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$23.00
35	12" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$30.00
36	15" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$37.00
37	18" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$48.00
38	24" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$70.50
39	12" RCP reinforced concrete pipe, drawing 109	LF	\$37.00
40	15" RCP reinforced concrete pipe, drawing 109	LF	\$50.00
41	18" RCP reinforced concrete pipe, drawing 109	LF	\$56.00
42	24" RCP reinforced concrete pipe, drawing 109	LF	\$68.00
43	6" PVC schedule 40 pipe, drawing 109	LF	\$19.50
44	8" PVC schedule 40 pipe, drawing 109	LF	\$22.00
45	10" PVC schedule 40 pipe, drawing 109	LF	\$27.50
46	12" PVC schedule 40 pipe, drawing 109	LF	\$34.00
47	18" metal corrugated pipe	LF	\$57.50
48	24" metal corrugated pipe	LF	\$64.00
49	30" metal corrugated pipe	LF	\$86.50
50	#5 rebar extra layer, 12" o.c. both ways	FT2	\$3.35
51	Testing lab services for excavation, filling and backfilling	EA	\$325.00

52	Testing lab services for cast-in-place concrete	EA	\$130.00
53	Bell bottom piers (various diameters and depths) Dwg. # 111	EA	\$395.00
54	Foundation repair underpinning. Dwg #112	EA	\$560.00
55	Slotted Drain / corrugated galv. Steel pipe. Dwg. #113 5 sheets	LF	\$95.00
56	Under cutting street where new Fire Station concrete approach meets street. Dwg. #114	LF	\$14.50
57	Joining concrete driveway to existing concrete street. DWG. #115	LF	\$14.50
58	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$17,000.00

**Year Four (Option Year One) - Annual Cost, Group Totals**

1	Curb removal - all types	LF	\$3.00
2	Gutter removal - all types	LF	\$5.00
3	Sidewalk removal	FT2	\$1.50
4	6" Driveway removal	FT2	\$1.60
5	8" Driveway removal, drawing 100	FT2	\$1.90
6	Foundation slab removal, drawing 103	FT2	\$12.50
7	Expansion joints repair	LF	\$1.70
8	6" concrete driveway and pavement with curbs, includes reinforcement-in-place, drawings 02754-01 and 02754-02	FT2	\$4.20
9	6" concrete driveway and pavement without curves, drawing 02754-02. State curve or headwall (optional).	FT3	\$8.35
10	Removal/replace slab - all manhole/inlets, reset (incidental), all expansion joints included.	FT3	\$11.50
11	Remove/replace base 18"	FT3	\$5.65
12	Remove/replace curb only	LF	\$5.15
13	Mud jacking	FT2	\$5.65
14	Concrete curb & gutter - all types, includes reinforced-in-place, drawings 02771-01 and 02775-01.	LF	\$9.00
15	8" driveway for Fire station, drawing 100	FT2	\$6.25
16	4-1/2" concrete sidewalk, includes reinforced-in-place, drawing 02752-02.	FT2	\$4.10
17	Remove and replace asphalt surfaces including subgrades.	FT2	\$5.80
18	Communication equipment slab, drawing 101	EA	\$4,000.00
19	Generator slab, drawing 104	EA	\$3,500.00
20	Building foundation slab, drawing 103	FT2	\$11.25
21	Grade beam, drawing 102	LF	\$19.60
22	Saw cut concrete, 4"-6"	LF	\$2.85
23	Saw cut concrete, 8"-10"	LF	\$5.65
24	Wheelchair access ramp, drawings 02775-02, 02775-03, 02775-04	FT2	\$6.60
25	Bollard (guard post), 6", painted, drawing 105	EA	\$300.00

26	Pipe protector fencing (guard railing) painted, drawing 106	LF	\$108.00
27	Cement stabilized sand	YD3	\$75.00
28	Lime for stabilization	LB	\$0.30
29	Select fill dirt	YD3	\$50.00
30	Storm inlet, Type A (catch basin), drawing 107	EA	\$1,050.00
31	Trench drain, drawing 108	LF	\$221.00
32	6" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$15.50
33	8" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$18.50
34	10" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$22.00
35	12" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$29.00
36	15" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$36.00
37	18" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$46.00
38	24" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$68.00
39	12" RCP reinforced concrete pipe, drawing 109	LF	\$35.50
40	15" RCP reinforced concrete pipe, drawing 109	LF	\$48.00
41	18" RCP reinforced concrete pipe, drawing 109	LF	\$54.00
42	24" RCP reinforced concrete pipe, drawing 109	LF	\$65.50
43	6" PVC schedule 40 pipe, drawing 109	LF	\$19.00
44	8" PVC schedule 40 pipe, drawing 109	LF	\$21.00
45	10" PVC schedule 40 pipe, drawing 109	LF	\$26.50
46	12" PVC schedule 40 pipe, drawing 109	LF	\$33.00
47	18" metal corrugated pipe	LF	\$55.50
48	24" metal corrugated pipe	LF	\$62.00
49	30" metal corrugated pipe	LF	\$83.50
50	#5 rebar extra layer, 12" o.c. both ways	FT2	\$3.25
51	Testing lab services for excavation, filling and backfilling	EA	\$315.00
52	Testing lab services for cast-in-place concrete	EA	\$125.00
53	Bell bottom piers (various diameters and depths) Dwg. # 111	EA	\$380.00
54	Foundation repair underpinning. Dwg #112	EA	\$540.00
55	Slotted Drain / corrugated galv. Steel pipe. Dwg. #113 5 sheets	LF	\$91.50
56	Under cutting street where new Fire Station concrete approach meets street. Dwg. #114	LF	\$14.00
57	Joining concrete driveway to existing concrete street. DWG. #115	LF	\$14.00
58	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$16,000.00
<b>Year Five (Option Year Two) - Annual Cost, Group Totals</b>			
1	Curb removal - all types	LF	\$3.00

2	Gutter removal - all types	LF	\$5.00
3	Sidewalk removal	FT2	\$1.50
4	6" Driveway removal	FT2	\$1.55
5	8" Driveway removal, drawing 100	FT2	\$1.85
6	Foundation slab removal, drawing 103	FT2	\$12.50
7	Expansion joints repair	LF	\$1.65
8	6" concrete driveway and pavement with curbs, includes reinforcement-in-place, drawings 02754-01 and 02754-02	FT2	\$4.00
9	6" concrete driveway and pavement without curves, drawing 02754-02. State curve or headwall (optional).	FT3	\$8.00
10	Removal/replace slab - all manhole/inlets, reset (incidental), all expansion joints included.	FT3	\$11.00
11	Remove/replace base 18"	FT3	\$5.50
12	Remove/replace curb only	LF	\$5.00
13	Mud jacking	FT2	\$5.50
14	Concrete curb & gutter - all types, includes reinforced-in-place, drawings 02771-01 and 02775-01.	LF	\$8.50
15	8" driveway for Fire station, drawing 100	FT2	\$6.00
16	4-1/2" concrete sidewalk, includes reinforced-in-place, drawing 02752-02.	FT2	\$4.00
17	Remove and replace asphalt surfaces including subgrades.	FT2	\$5.65
18	Communication equipment slab, drawing 101	EA	\$4,000.00
19	Generator slab, drawing 104	EA	\$3,500.00
20	Building foundation slab, drawing 103	FT2	\$11.00
21	Grade beam, drawing 102	LF	\$19.00
22	Saw cut concrete, 4"-6"	LF	\$2.75
23	Saw cut concrete, 8"-10"	LF	\$5.50
24	Wheelchair access ramp, drawings 02775-02, 02775-03, 02775-04	FT2	\$6.45
25	Bollard (guard post), 6", painted, drawing 105	EA	\$290.00
26	Pipe protector fencing (guard railing) painted, drawing 106	LF	\$105.00
27	Cement stabilized sand	YD3	\$73.00
28	Lime for stabilization	LB	\$0.30
29	Select fill dirt	YD3	\$50.00
30	Storm inlet, Type A (catch basin), drawing 107	EA	\$1,000.00
31	Trench drain, drawing 108	LF	\$207.00
32	6" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$15.20
33	8" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$18.00
34	10" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$21.50
35	12" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$28.00
36	15" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$35.00
37	18" SDR-35 pipe, standard dimensional ratio, drawing 109	LF	\$44.75

38	24" SDR-35 pipe, standard dimentional ratio, drawing 109	LF	\$66.00
39	12" RCP reinforced concrete pipe, drawing 109	LF	\$34.00
40	15" RCP reinforced concrete pipe, drawing 109	LF	\$47.00
41	18" RCP reinforced concrete pipe, drawing 109	LF	\$52.00
42	24" RCP reinforced concrete pipe, drawing 109	LF	\$63.50
43	6" PVC schedule 40 pipe, drawing 109	LF	\$18.00
44	8" PVC schedule 40 pipe, drawing 109	LF	\$20.50
45	10" PVC schedule 40 pipe, drawing 109	LF	\$25.50
46	12" PVC schedule 40 pipe, drawing 109	LF	\$32.00
47	18" metal corrugated pipe	LF	\$54.00
48	24" metal corrugated pipe	LF	\$60.00
49	30" metal corrugated pipe	LF	\$81.00
50	#5 rebar extra layer, 12" o.c. both ways	FT2	\$3.15
51	Testing lab services for excavation, filling and backfilling	EA	\$305.00
52	Testing lab services for cast-in-place concrete	EA	\$125.00
53	Bell bottom piers (various diameters and depths) Dwg. # 111	EA	\$380.00
54	Foundation repair underpinning. Dwg #112	EA	\$525.00
55	Slotted Drain / corrugated galv. Steel pipe. Dwg. #113 5 sheets	LF	\$90.00
56	Under cutting street where new Fire Station concrete approach meets street. Dwg. #114	LF	\$13.50
57	Joining concrete driveway to existing concrete street. DWG. #115	LF	\$13.50
58	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$15,000.00

**EXHIBIT "I"**  
**PAY OR PLAY PROGRAM**  
*(See next page)*



FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Times Construction, Inc. \$5,300,345.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 2900 Wesleyan St. Suite 625 Houston, TX 77027

Project No.: [GFS/CIP/AIP/File No.] S50-C23560

Project Name: [Legal Project Name] Concrete Repair Services for Various Departments

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

[X] Yes [ ] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.

[ ] Yes [X] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria: (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

[ ] Yes [X] No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

[X] Yes [ ] No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.

[X] Yes [ ] No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

[X] Yes [ ] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Mayors Office of Business Opportunity. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Table with 3 columns: Following information is Mandatory, Prime Contractor, Sub-Contractor. Rows include Total No. Of Employees on City Job, No. Of Employees-"Playing", No. Of Employees -"Paying", and No. Of Employees "Exempt".

I hereby certify that the above information is true and correct.

[Signature]
CONTRACTOR (Signature)

3/16/2012
DATE

Hossein Zafarian, President
NAME AND TITLE (Print or type)

**EXHIBIT "J"**  
**PERFORMANCE BOND**  
**DOCUMENT 00610**  
*(See next page)*

Document 00610

PERFORMANCE BOND

**THAT WE**, Times Construction, Inc., as Principal, (the "Contractor"), and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, in the penal sum of **\$1,151,575.00** for the payment of which sum, well and truly to be made to the City, its successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, the Contractor has on or about this day executed a Contract in writing with the City for S50-C23560 for Concrete Repair Services for Various Departments, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE**, if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the City may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the City or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the City's benefit, and the City will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the City gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the City, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the City shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other Party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

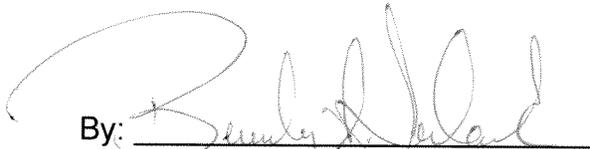
By:   
Name: Carol Haire  
Title: Project Administrator

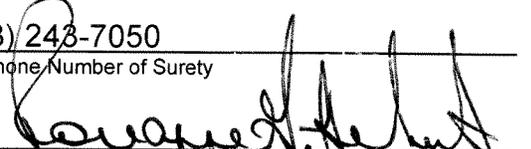
Times Construction, Inc.  
Name of Contractor

By:   
Name: HOSSEIN  
Title: ZAFARIANIAN  
Date: March 15, 2012

ATTEST/SURETY WITNESS:  
(SEAL)

The Hanover Insurance Company  
Full Name of Surety  
10375 Richmond Ave., Suite 1050  
Address of Surety for Notice  
Houston, Texas 77042

By:   
Name: Beverly A. Ireland  
Title: Surety Assistant  
Date: March 15, 2012

(713) 248-7050  
Telephone Number of Surety  
By:   
Name: Roxanne G. Hebert  
Title: Attorney-in-Fact  
Date: March 15, 2012

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

  
Legal Assistant

4-23-12  
Date

END OF DOCUMENT

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

**Roxanne G. Hebert, Bruce C. DeHart, David R. Groppe, Edward L. Moore, Lori Ellis,  
Mary M. Rifaat, Beverly A. Ireland and/or Sharen Groppe**

of **Spring, TX** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

**Any such obligations in the United States, not to exceed Thirty Five Million and No/100 (\$35,000,000) in any single instance**

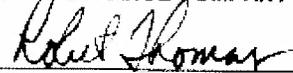
and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

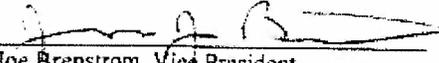
"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this **5th** day of **December 2011**.



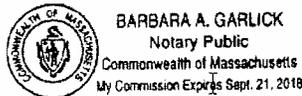
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Robert Thomas, Vice President

  
Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this **5th** day of **December 2011** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.





Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this **15<sup>th</sup>** day of **March** 20**12**.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Glenn Margosian, Vice President

**EXHIBIT "K"**  
**ONE-YEAR MAINTENANCE BOND**  
**DOCUMENT 00612**  
*(See next page)*

Document 00612

ONE-YEAR MAINTENANCE BOND

**THAT WE**, Times Construction, Inc., as Principal, hereinafter called Contractor, and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of **\$1,151,575.00**, for the payment of which sum well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, the Contractor has on or about this day executed a Contract in writing with the City of Houston for S50-C23560 for Concrete Repair Services for Various Departments, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE**, if the said Contractor shall comply with the provisions of Paragraph 11.5.1 of the General Conditions, and correct work not in accordance with the Contract documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

By: *Carol Haire*  
Name: Carol Haire  
Title: Project Administrator

Times Construction, Inc.  
Name of Contractor

By: *H. Zafarani*  
Name: Hossein Zafarani  
Title: President  
Date: March 15, 2012

ATTEST/SURETY WITNESS:  
(SEAL)

By: *Beverly A. Ireland*  
Name: Beverly A. Ireland  
Title: Surety Assistant  
Date: March 15, 2012

The Hanover Insurance Company  
Full Name of Surety  
10375 Richmond Ave., Suite 1050  
Address of Surety for Notice  
Houston, Texas 77042

(713) 243-7050  
Telephone Number of Surety  
By: *Roxanne G. Hebert*  
Name: Roxanne G. Hebert  
Title: Attorney-in-Fact  
Date: March 15, 2012

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

*Jan Dussard*  
Legal Assistant

4-23-12  
Date

END OF DOCUMENT

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

**Roxanne G. Hebert, Bruce C. DeHart, David R. Groppe, Edward L. Moore, Lori Ellis,  
Mary M. Rifaat, Beverly A. Ireland and/or Sharen Groppe**

of **Spring, TX** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

**Any such obligations in the United States, not to exceed Thirty Five Million and No/100 (\$35,000,000) in any single instance**

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

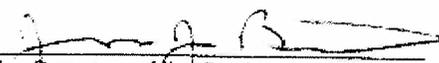
"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this **5th** day of **December 2011**.



THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Robert Thomas, Vice President

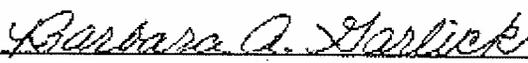
  
Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this **5th** day of **December 2011** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



BARBARA A. GARLICK  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Sept. 21, 2018



Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this **15<sup>th</sup>** day of **March** 20**12**.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Glenn Margosian, Vice President



**FOR INFORMATION, OR  
TO MAKE A COMPLAINT, CALL:  
1-800-999-9239**

**PARA INFORMACION, O  
PARA HACER UNA QUEJA, HABLE:  
1-800-999-9239**

### **COMPLAINT NOTICE - TEXAS**

Should any dispute arise about your premium or about a claim that you have filed, contact the agent or write to the company that issued the policy, bond or certificate. If the problem is not resolved, you may also write the State Board of Insurance, P.O. Box 149091, Austin, Texas 78714-9091. FAX# (512) 475-1771. This notice of complaint procedure is for information only and does not become a part or condition of this policy, bond or certificate.

**231-1314 TX (9-91)**

**EXHIBIT "L"**  
**STATUTORY PAYMENT BOND**  
**DOCUMENT 00611**  
*(See next page)*

Document 00611

STATUTORY PAYMENT BOND

**THAT WE**, Times Construction, Inc., as Principal, hereinafter called Contractor and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of Houston, a municipal corporation, in the sum of **\$1,151,575.00** for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, the Contractor has on or about this day executed a contract in writing with the City of Houston for S50-C23560 for Concrete Repair Services for Various  
Departments, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein;

**NOW, THEREFORE**, if the said Contractor shall pay all claimants supplying labor and materials to him or a Subcontractor in the prosecution of the Work provided for in the Contract, then, this obligation shall be void; otherwise the same is to remain in full force and effect;

**PROVIDED HOWEVER**, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

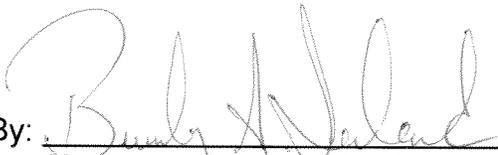
Times Construction, Inc.  
Name of Contractor

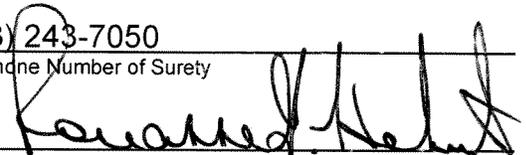
By:   
Name: Carol Haive  
Title: Project Administrator

By:   
Name: HOSSEIN KAFARIAN  
Title: PRESIDENT  
Date: March 15, 2012

ATTEST/SURETY WITNESS:  
(SEAL)

The Hanover Insurance Company  
Full Name of Surety  
10375 Richmond Ave., Suite 1050  
Address of Surety for Notice  
Houston, Texas 77042

By:   
Name: Beverly A. Ireland  
Title: Surety Assistant  
Date: March 15, 2012

(713) 243-7050  
Telephone Number of Surety  
By:   
Name: Roxanne G. Hebert  
Title: Attorney-in-Fact  
Date: March 15, 2012

This Ordinance or Contract has been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

  
Legal Assistant

4-23-12  
Date

END OF DOCUMENT

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

**Roxanne G. Hebert, Bruce C. DeHart, David R. Groppe, Edward L. Moore, Lori Ellis,  
Mary M. Rifaat, Beverly A. Ireland and/or Sharen Groppe**

of **Spring, TX** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

**Any such obligations in the United States, not to exceed Thirty Five Million and No/100 (\$35,000,000) in any single instance**

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this **5th** day of **December 2011**.



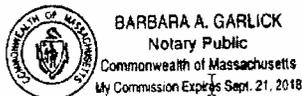
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

Robert Thomas, Vice President

Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this **5th** day of **December 2011** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this **15<sup>th</sup>** day of **March** 2012.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

Glenn Margosian, Vice President

**EXHIBIT "M"**  
**CITY OF HOUSTON GENERAL CONDITIONS**  
**DOCUMENT 00700**  
*(See next page)*

Document 00700

**GENERAL CONDITIONS**

November 1, 2011 EDITION

TABLE OF ARTICLES

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

\*\*\*\*\*

*List of Changes:*

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

- 01-14-2011: Insertion of terms "Business Enterprise" and "Business Enterprise Policy" into definition section (§1.1) and insertion of those terms in §3.5, as appropriate, and deletion of old §3.5.3*
- 01-18-2011: Renaming of §4.5; renumbering of Table of Contents due to introduction of "Interim Payment Waiver & Release" as a separate section (§4.6)*
- 01-31-2011: Edit of Section 4.6, "Interim Payment Waiver & Release" to reflect language suggestions of Litigation Division of Legal Dept.*
- 02-09-2011: Edit of language in definitions of "Business Enterprise" and "Business Enterprise Policy"*
- 10-12-2011: Amended Section 8.2, related to delays and extensions of time, to strengthen language suggested in 2011 Construction Law CLE.*
- 10-19-2011: General reformatting of entire document for consistency; updating of header re: date; insertion of "Mayor's Office of Business Opportunity", as appropriate, to reflect name change*
- 10-27-2011: Added a definition for "Mayor's Office of Business Opportunity"; amended Section 8.2.2 to refer to Section 4.3.6.2; replaced MWBE with "Business Enterprise", where appropriate; added "persons, or entities" to Section 5.1 to broaden applicable provisions; updated issue date to proposed Issue date of November 1, 2011.*
- 10-31-2011: edited definition of "Business Enterprise"*

\*\*\*\*\*

ARTICLE 1 - GENERAL PROVISIONS .....	3	ARTICLE 4 - ADMINISTRATION OF THE CONTRACT.....	16
1.1 DEFINITIONS .....	3	4.1 CONTRACT ADMINISTRATION .....	16
1.2 EXECUTION, CORRELATION, AND INTENT .....	5	4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT .....	17
1.3 OWNERSHIP AND USE OF DOCUMENTS .....	6	4.3 CLAIMS AND DISPUTES .....	17
1.4 INTERPRETATION .....	6	4.4 RESOLUTION OF CLAIMS AND DISPUTES .....	18
ARTICLE 2 - THE CITY .....	6	4.5 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEYFEES AND INTEREST .....	18
2.1 LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES .....	6	4.6 <u>INTERIM PAYMENT WAIVER &amp; RELEASE</u> .....	18
2.2 DUTIES OF THE CITY .....	6	ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS.....	19
2.3 AVAILABILITY OF LAND AND USE OF SITE .....	6	5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK .....	19
2.4 THE CITY'S RIGHT TO STOP THE WORK.....	7	5.2 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.....	19
2.5 THE CITY'S RIGHT TO CARRY OUT WORK .....	7	ARTICLE 6 - CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS .....	20
ARTICLE 3 - CONTRACTOR .....	7	6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.....	20
3.1 RESPONSIBILITIES .....	7	6.2 COORDINATION.....	20
3.2 REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR .....	7	6.3 MUTUAL RESPONSIBILITY.....	20
3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.....	7	6.4 THE CITY'S RIGHT TO CLEAN UP .....	20
3.4 SUPERINTENDENT .....	8	ARTICLE 7 - CHANGES IN THE WORK.....	20
3.5 LABOR .....	8	7.1 CHANGES .....	20
3.6 PREVAILING WAGE RATES.....	9	7.2 WORK CHANGE DIRECTIVES.....	21
3.7 LABOR CONDITIONS.....	9	7.3 ADJUSTMENTS IN CONTRACT PRICE .....	21
3.8 DRUG DETECTION AND DETERRENCE.....	9	7.4 MINOR CHANGES IN THE WORK .....	22
3.9 MATERIALS & EQUIPMENT .....	10	ARTICLE 8 - TIME.....	22
3.10 PRODUCT OPTIONS AND SUBSTITUTIONS .....	11	8.1 PROGRESS AND COMPLETION .....	22
3.11 CASH ALLOWANCES .....	11	8.2 DELAYS AND EXTENSIONS OF TIME.....	23
3.12 WARRANTY.....	11	ARTICLE 9 - PAYMENTS AND COMPLETION .....	23
3.13 TAXES .....	12	9.1 UNIT PRICE WORK .....	23
3.14 PERMITS, FEES, AND NOTICES .....	12	9.2 ESTIMATES FOR PAYMENT, UNIT PRICE WORK .....	24
3.15 CONSTRUCTION SCHEDULES .....	12	9.3 STIPULATED PRICE WORK.....	24
3.16 DOCUMENTS AND SAMPLES AT THE SITE .....	12	9.4 APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK.....	24
3.17 MANUFACTURER'S SPECIFICATIONS .....	13	9.5 CERTIFICATES FOR PAYMENT .....	24
3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.....	13	9.6 COMPUTATIONS OF CERTIFICATES FOR PAYMENT .....	24
3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES.....	14	9.7 DECISIONS TO WITHHOLD CERTIFICATION.....	25
3.20 CUTTING AND PATCHING .....	14	9.8 PROGRESS PAYMENTS.....	25
3.21 CLEANING.....	14	9.9 DATE OF SUBSTANTIAL COMPLETION .....	25
3.22 SANITATION.....	14	9.10 PARTIAL OCCUPANCY OR USE .....	26
3.23 ACCESS TO WORK AND TO INFORMATION.....	14	9.11 FINAL COMPLETION AND FINAL PAYMENT .....	26
3.24 TRADE SECRETS .....	14		
3.25 INDEMNIFICATION .....	15		
3.26 RELEASE AND INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT .....	15		
3.27 INDEMNIFICATION PROCEDURES .....	16		
3.28 CONTRACTOR DEBT .....	16		

9.12	LIQUIDATED DAMAGES.....	27
ARTICLE 10 - SAFETY PRECAUTIONS..... 28		
10.1	SAFETY PROGRAMS.....	28
10.2	POLLUTANTS AND POLLUTANT FACILITIES.....	28
10.3	SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY.....	28
10.4	EMERGENCIES.....	29
ARTICLE 11 - INSURANCE AND BONDS ..... 29		
11.1	GENERAL INSURANCE REQUIREMENTS.....	29
11.2	INSURANCE TO BE PROVIDED BY CONTRACTOR.....	29
11.3	PROOF OF INSURANCE.....	32
11.4	PERFORMANCE AND PAYMENT BONDS.....	33
11.5	MAINTENANCE BONDS.....	33
11.6	SURETY.....	33
11.7	DELIVERY OF BONDS.....	33
ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK..... 33		
12.1	UNCOVERING OF THE WORK.....	34
12.2	CORRECTION OF THE WORK.....	34
12.3	ACCEPTANCE OF NONCONFORMING WORK.....	34
ARTICLE 13 - MISCELLANEOUS PROVISIONS..... 34		
13.1	GOVERNING LAWS.....	34
13.2	SUCCESSORS.....	34
13.3	BUSINESS STRUCTURE AND ASSIGNMENTS.....	34
13.4	WRITTEN NOTICE.....	35
13.5	RIGHTS AND REMEDIES.....	35
13.6	TESTS AND INSPECTIONS.....	35
13.7	INTEREST.....	35
13.8	PARTIES IN INTEREST.....	35
13.9	ENTIRE CONTRACT.....	35
13.10	WRITTEN AMENDMENT.....	36
13.11	COMPLIANCE WITH LAWS.....	36
13.12	SEVERABILITY.....	35
ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT..... 36		
14.1	TERMINATION BY THE CITY FOR CAUSE.....	36
14.2	TERMINATION BY THE CITY FOR CONVENIENCE.....	37
14.3	SUSPENSION BY THE CITY FOR CONVENIENCE.....	37
14.4	TERMINATION BY CONTRACTOR.....	38

ARTICLE 1 - GENERAL PROVISIONS

1.1 **DEFINITIONS**

1.1.1 **Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, Original Contract Time, Original Contract Price, enumeration of documents included in the Contract, and other provisions.

1.1.2 **Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

1.1.3 **Business Enterprise:** Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any Historically Underutilized Business ("HUB").

1.1.4 **Business Enterprise Policy:** Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article II.

1.1.5 **Cash Allowance:** An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract. The unspecified items must be purchased according to the terms of Article 7.

1.1.6 **Change Order:** Written instrument prepared by the City and signed by City Engineer and Contractor, specifying the following:

- .1 a change in the Work;
- .2 a change in Contract Price, if any; and
- .3 a change in Contract Time, if any.

The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.

1.1.7 **City:** The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.

1.1.8 **City Engineer:** The City Engineer, or the City employee representing the City Engineer, designated in the Agreement and authorized to represent the City, or successors.

1.1.9 **Claim:** Written demand or written assertion by one Party seeking adjustment of the Contract, payment of money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

1.1.10 **Conditions of the Contract:** General Conditions and Supplementary Conditions.

1.1.11 **Construction Manager:** Person or firm under contract with the City as its authorized representative to oversee and administer construction of the Work, and who may perform the role of Project Manager and Inspector, as designated by City Engineer in writing.

1.1.12 **Contract:** The Agreement; documents enumerated in and incorporated into the Agreement; Modifications; and amendments.

1.1.13 **Contract Price:** The monetary amount stated in the Agreement adjusted by Change Order, and increases or decreases in Unit Price Quantities, if any.

1.1.14 **Contract Time:** The number of days stated in the Agreement to substantially complete the Work, plus days authorized by Change Order.

1.1.15 **Contractor:** Person or firm identified as such in the Agreement including its successors and its authorized representatives.

1.1.16 **Date of Commencement of the Work:** Date established in Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.

1.1.17 **Date of Substantial Completion:** Date that construction, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.

1.1.18 *Design Consultant:* Person or firm, under contract with the City, to provide professional services during construction and its authorized representatives. If a Design Consultant is not employed for services during construction, Project Manager will perform duties of Design Consultant designated in the Contract in addition to usual duties of Project Manager.

1.1.19 *Drawings:* Graphic and pictorial portions of the Contract that define the character and scope of the Work.

1.1.20 *Extra Unit Price:* Unit Prices, which may be required for completion of the Work. These Unit Prices and Unit Price Quantities are in the Contract and are included in Original Contract Price.

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

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

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

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

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

1.1.26 *Major Unit Price Work:* An individual Unit Price item,

- .1 whose value is greater than five percent of Original Contract Price,
- .2 whose value becomes greater than five percent of Original Contract Price as the result of an increase in quantity, or
- .3 whose value is \$100,000, whichever is least.

1.1.27 *Mayor's Office of Business Opportunity:* any reference to, or use of, the "Office of Affirmative Action" shall mean the Mayor's Office of Business Opportunity, or any such future name to which it is changed.

1.1.28 *Minor Change in the Work:* A written change in the Work, ordered by City Engineer, that does not change Contract Price or Contract Time, and that is consistent with the general scope of the Contract.

1.1.29 *Modification:* Change Order, Work Change Directive, or Minor Change in the Work.

1.1.30 *Notice of Noncompliance:* A written notice by City Engineer to Contractor regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.

1.1.31 *Notice to Proceed:* A written notice by City Engineer to Contractor establishing Date of Commencement of the Work.

1.1.32 *Original Contract Price:* The monetary amount originally stated in the Agreement.

1.1.33 *Parties:* Contractor and the City. When in singular form, refers to Contractor or the City.

1.1.34 *Pollutant:* Any materials subject to the Texas Solid Waste Disposal Act.

1.1.35 *Pollutant Facility:* Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).

1.1.36 *Product:* Materials, equipment, or systems incorporated into the Work or to be incorporated into the Work.

1.1.37 *Product Data:* Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a Product.

1.1.38 *Project:* Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by the City or by separate contractors.

1.1.39 *Project Manager:* City Engineer's authorized representative for administration of the Work. Titles used within the City's departments may be different than those used in this definition.

1.1.40 *Provide:* Furnish and Install, complete, ready for intended use.

1.1.41 *Samples:* Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.

1.1.42 *Shop Drawings:* Drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor, Subcontractor or Supplier, to illustrate a portion of the Work.

1.1.43 *Specifications:* Divisions 01 through 16 of the documents that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

1.1.44 *Stipulated Price:* Single lump sum amount stated in the Contract for completion of the Work, or for designated portion of the Work.

1.1.45 *Subcontractor:* Person or firm that has direct or indirect contract with Contractor or with another Subcontractor to perform a portion of the Work and its authorized representatives.

1.1.46 *Superintendent:* Employee of Contractor having authority and responsibility to act for and represent Contractor.

1.1.47 *Supplementary Conditions:* Part of Conditions of the Contract that amends or supplements General Conditions.

1.1.48 *Supplier:* Manufacturer, distributor, materialman, or vendor having a direct agreement with Contractor or Subcontractor for Products, or services and its authorized representatives.

1.1.49 *Surety:* Corporate entity that is bound by one or more Bonds, and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include co-surety or reinsurer, as applicable.

1.1.50 *Underground Facilities:* Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

1.1.51 *Unit Price:* An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

1.1.52 *Unit Price Quantities:* Quantities indicated in the Contract that are approximations made by the City for contracting purposes.

1.1.53 *Work:* Entire construction required by the Contract, including all labor, Products, and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.

1.1.54 *Work Change Directive:* A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state proposed basis for adjustment, if any, in Contract Price or Contract Time, or both.

## 1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.

1.2.2 The Contract and Modifications have been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Contract may not be more strongly construed against the City than against Contractor and Surety.

1.2.3 Contractor shall include all items necessary for proper execution and completion of the Work.

1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of receipt of bids, except as may be otherwise specifically stated in the Contract.

1.2.5 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of the City, City Engineer, Contractor, or Design Consultant from those set forth in the Contract. Nor do these provisions assign to Design Consultant any duty or authority to supervise or direct performance of the Work or any duty or

authority to undertake any actions contrary to provisions of the Contract.

1.2.6 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.7 Unless otherwise defined in the Contract, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.

### 1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Drawings, Specifications, and other documents prepared by the City or by Design Consultant are instruments of service through which the Work to be executed by Contractor is described. Contractor may retain one Contract record set.

1.3.2 Neither Contractor, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract or any part of the Contract.

1.3.3 Documents contained in the Contract, prepared by the City or by Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They may not be used by Contractor, Subcontractor or Supplier on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of City Engineer, and Design Consultant, when applicable.

1.3.4 Contractor, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract appropriate to and for use in execution of their work under the Contract.

### 1.4 INTERPRETATION

1.4.1 Specifications are written in an imperative streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

## ARTICLE 2 - THE CITY

---

### 2.1 LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES

2.1.1 No officer or employee of the City may authorize Contractor to perform an act or work contrary to the Contract, except as otherwise provided in the Contract.

### 2.2 DUTIES OF THE CITY

2.2.1 If a building permit is required, the City will process an application for, and Contractor shall purchase the building permit before Date of Commencement of the Work.

2.2.2 The City will make available to Contractor a reproducible set of Drawings. Additional copies will be furnished, on Contractor's request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, the City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that the City is required to provide under the Contract will be provided by the City with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.

2.2.6 Except as expressly stated in this Article, the City owes no duty to the Contractor or any subcontractor.

### 2.3 AVAILABILITY OF LAND AND USE OF SITE

2.3.1 The City will furnish, as indicated in the Contract, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Contractor unless otherwise provided in the Contract.

2.3.2 Contractor shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract, and may not unreasonably encumber site with materials or equipment.

2.3.3 In addition to land provided by the City under Section 2.3, Contractor shall provide all land and access to land that may be required for use by Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the City during its use of the land as stated in Section 3.25.

2.4 ***THE CITY'S RIGHT TO STOP THE WORK***

2.4.1 If Contractor fails to carry out the Work in accordance with the Contract, or fails to correct work which is not in accordance with requirements of the Contract as required in Sections 12.1 and 12.2, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.2. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Contractor to resume performance of the Work.

2.5 ***THE CITY'S RIGHT TO CARRY OUT WORK***

2.5.1 If Contractor fails to carry out work in accordance with the Contract, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 14.1.

2.5.1.1 When the City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to Contractor are both subject to prior approval of City Engineer. If payments, then or thereafter due Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.

2.5.2 Notwithstanding the City's right to carry out work, maintenance and protection of the Work

remains Contractor's responsibility, as provided in the Contract.

***ARTICLE 3 - CONTRACTOR***

3.1 ***RESPONSIBILITIES***

3.1.1 Contractor shall maintain office with agent in the greater City of Houston area during the Contractor's performance under the Contract. Contractor shall file its street address with City Engineer.

3.1.2 Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the City. Should this Paragraph 3.1.2 be violated, City Engineer may terminate the Contract under Section 14.1.

3.2 ***REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR***

3.2.1 Contractor shall carefully study and compare documents contained in the Contract with each other and with information furnished by the City pursuant to Section 2.2 and shall immediately report, in writing, any errors, inconsistencies, or omissions to City Engineer. If work is affected, Contractor shall obtain a written interpretation or clarification from City Engineer before proceeding with the affected work. However, Contractor will not be liable to the City for failure to report an error, inconsistency, or omission in the Contract unless Contractor had actual knowledge or should have had knowledge of the error, inconsistency, or omission.

3.2.2 Contractor shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Contractor with the Contract, before commencing activities. Contractor shall immediately report, in writing, to City Engineer for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

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

3.3 ***SUPERVISION AND CONSTRUCTION PROCEDURES***

3.3.1 Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and

expertise as necessary to perform the Work in accordance with the Contract. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.

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

#### 3.4 SUPERINTENDENT

3.4.1 Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor.

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

#### 3.5 LABOR

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

3.5.2 Contractor shall comply with the applicable Business Enterprise Policy set out in this Agreement and in the Supplementary Conditions.

3.5.3 When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy. Contractor acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Mayor's Office of Business Opportunity and shall comply with them.

3.5.3.1 Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to

binding arbitration to be conducted in Houston, Texas, if directed to do so by the Mayor's Office of Business Opportunity Director ("Director"). Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

3.5.3.2 Contractor shall ensure that subcontracts with Business Enterprise firms are clearly labeled "**THIS CONTRACT IS SUBJECT TO ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

- .1 (Business Enterprise) may not delegate or subcontract more than 50 percent of work under this subcontract to any other subcontractor without the express written consent of the Director.
- .2 (Business Enterprise) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this purpose for at least four years after the end of its performance under this subcontract. Nothing in this Section shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- .3 Within five business days of execution of this subcontract, Contractor and (Business Enterprise) shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
- .4 As concluded by the parties to this subcontract, and as evidenced by their signature to this subcontract, any controversy between the parties involving the construction or application of the terms of this subcontract will, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to arbitration, under the

Texas General Arbitration Act (TEX. CIV. PRAC. & REM. CODE ANN., Ch 171 - "Act"). Arbitration will be conducted according to the following procedures:

- .1 Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
- .2 If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration governed by the American Arbitration Association rules.
- .3 Upon submittal of the matter to arbitration, each party shall pay all fees required by the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
- .4 If the City contracts with an organization other than the American Arbitration Association to provide arbitration services related to disputes between prime contractors and Business Enterprise firms, the parties may, at their option, proceed with arbitration before the American Arbitration Association or with the organization the City has contracted with.
- .5 All arbitrations will be conducted in Houston, Texas unless the parties agree to another location in writing.

3.5.4 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7 and Ordinance 2007-0534, are incorporated into the Contract for all purposes. Contractor shall comply with the terms and conditions of the Pay or Play Program as they are set out at the time of City Council approval of this agreement. **IF CONTRACTOR DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY**

## **PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE.**

### **3.6 PREVAILING WAGE RATES**

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

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

- .1 Federal Wage Rate General Decisions
  - .1 Highway Rates
  - .2 Building Rates
  - .3 Heavy Construction Rates
  - .4 Residential Rates
- .2 City Prevailing Wage Rates
  - .1 Building Construction Rates
  - .2 Engineering Construction Rates
  - .3 Asbestos Worker Rates

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

### **3.7 LABOR CONDITIONS**

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

3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Contractor shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.

### **3.8 DRUG DETECTION AND DETERRENCE**

3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of

illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Bids.

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

- .1 contracts authorized by Emergency Purchase Orders,
- .2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
- .3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
- .4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
- .5 contracts with federal, state, or local governmental entities.

3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:

- .1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
- .2 a copy of Contractor's drug free workplace policy, and
- .3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).

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

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

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

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

### 3.9 MATERIALS & EQUIPMENT

3.9.1 Unless otherwise provided in the Contract, Contractor shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

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

3.9.2 Contractor shall provide Products that are:

- .1 new, unless otherwise required or permitted by the Contract, and
- .2 of specified quality.

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

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

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

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

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

### 3.10 PRODUCT OPTIONS AND SUBSTITUTIONS

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

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

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

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

3.10.5 A request for substitution constitutes a representation that Contractor:

- .1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;

- .2 shall provide the same warranty for the substitution as for the specified Product;
- .3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
- .4 confirms that cost data is complete and includes all related costs under the Contract;
- .5 waives Claim for additional costs or time extensions that may subsequently become apparent; and
- .6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 City Engineer will not consider and will not approve substitutions when:

- .1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
- .2 acceptance will require revision to the Contract.

3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.

### 3.11 CASH ALLOWANCES

3.11.1 Contract Price includes Cash Allowances as identified in the Contract.

3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.

### 3.12 WARRANTY

3.12.1 Contractor warrants to the City that Products furnished under the Contract are:

- .1 free of defects in title;
- .2 of good quality; and
- .3 new, unless otherwise required or permitted by the Contract.

If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.

3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:

- .1 improper or insufficient maintenance by the City;
- .2 normal wear and tear under normal usage; or
- .3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

3.12.7 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Contractor shall immediately take legal action necessary to remove Encumbrances.

### 3.13 TAXES

3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.

3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.

3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

### 3.14 PERMITS, FEES, AND NOTICES

3.14.1 Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:

- .1 necessary for proper execution and completion of the Work; and
- .2 legally required at time bids are received.

### 3.15 CONSTRUCTION SCHEDULES

3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for City Engineer's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.

3.15.2 Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.

3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract.

3.15.4 Each month, Contractor shall submit to City Engineer a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.

3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to City Engineer for approval.

### 3.16 DOCUMENTS AND SAMPLES AT THE SITE

3.16.1 Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Paragraph 9.11.4.

3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.

3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

3.17 **MANUFACTURER'S  
SPECIFICATIONS**

3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected work.

3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.

3.18 **SHOP DRAWINGS, PRODUCT DATA,  
AND SAMPLES**

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.

3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.

3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.

3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the Project Manager. Contractor shall perform work in accordance with the review.

3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.

3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.

3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.

3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.

### 3.19 *CULTURAL RESOURCES AND ENDANGERED SPECIES*

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

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

### 3.20 *CUTTING AND PATCHING*

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

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

### 3.21 *CLEANING*

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

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

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

### 3.22 *SANITATION*

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

### 3.23 *ACCESS TO WORK AND TO INFORMATION*

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

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

### 3.24 *TRADE SECRETS*

3.24.1 Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. City Engineer will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of City Engineer. The City will make its best efforts to protect confidentiality of proprietary information.

3.25 *INDEMNIFICATION*

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

- .1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS .1 through .3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- .2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;
- .3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

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

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

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

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

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

- .1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR
- .2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS,

AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**3.27 INDEMNIFICATION PROCEDURES**

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

- .1 a description of the indemnification event in reasonable detail,
- .2 the basis on which indemnification may be due, and
- .3 the anticipated amount of the indemnified loss.

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

**3.27.2 Defense of Indemnification Claims:**

- .1 **Assumption of Defense:** Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.
- .2 **Continued Participation:** If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:
  - .1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;

- .2 would require the City to pay amounts that Contractor does not fund in full; or
- .3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT**

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

**ARTICLE 4 - ADMINISTRATION OF THE CONTRACT**

**4.1 CONTRACT ADMINISTRATION**

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

**4.1.2** City Engineer may act through Project Manager, Design Consultant, or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing. The City Engineer may not delegate authority to render decisions under Section 4.4.

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

is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

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

4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.

4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Sections 3.3, 3.12, and 3.18. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.

4.1.7 Based on field observations and evaluations, Project Manager will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.

4.1.8 Project Manager will receive and forward to City Engineer for his review and records, written warranties and related documents required by the Contract and assembled by Contractor.

4.1.9 Upon written request by Contractor or Project Manager, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.10 City Engineer may reject work which does not conform to the Contract.

4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or

testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, Installed, or completed.

## 4.2 *COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT*

4.2.1 Except as otherwise provided in the Contract or when authorized by City Engineer in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.

## 4.3 *CLAIMS AND DISPUTES*

4.3.1 *Documentation by Project Manager:* Contractor shall submit Claims, including those alleging an error or omission by Project Manager or Design Consultant, to Project Manager for documentation and recommendation to City Engineer.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.

4.3.3 *Time Limits on Claims:* Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Contractor is responsible for safety and protection of physical properties and conditions at site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also

include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:

- .1 those indicated by the Contract; or
- .2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;

then Contractor will give written notice to City Engineer no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

4.3.6 *Claims for Additional Cost:* If Contractor wishes to make a Claim for increase in Contract Price, Contractor shall give written notice before proceeding with work for which Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

4.3.6.1 Contractor may file a Claim in accordance with Section 4.4 if Contractor believes it has incurred additional costs, for the following reasons:

- .1 written interpretation of City Engineer;
- .2 order by City Engineer to stop the Work when Contractor is not at fault;
- .3 suspension of the Work by City Engineer;
- .4 termination of the Contract by City Engineer; or

- .5 The City's non-compliance with another provision of the Contract.

4.3.6.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.

4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Contractor wishes to make a Claim for an increase in Contract Time, Contractor shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.

#### 4.4 *RESOLUTION OF CLAIMS AND DISPUTES*

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

- .1 submit a suggested time to meet and discuss the Claim with City Engineer;
- .2 reject Claim, in whole or in part, stating reasons for rejection;
- .3 recommend approval of the Claim by the other Party;
- .4 suggest a compromise; or
- .5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation. If Claim is not resolved, City Engineer will take receipt of Claim and begin a new review under Section 4.4.

4.4.4 If Claim is not referred to or settled in non-binding mediation, City Engineer may conduct a hearing and will render a written decision, including findings of fact, within 75 days of receipt of Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's

assistance in resolving Claim. City Engineer's decision is final and binding on the Parties.

4.5 *CONDITION PRECEDENT TO SUIT;  
WAIVER OF ATTORNEY FEES AND  
INTEREST*

4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.

4.5.2 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.

4.5.3 Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.

4.6 *INTERIM PAYMENT WAIVER & RELEASE*

4.6.1 In accordance with section 4.3, the Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.

4.6.2 The Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Contractor submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND  
SUPPLIERS

5.1 *AWARD OF SUBCONTRACTS  
OTHER CONTRACTS FOR  
PORTIONS OF THE WORK*

5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.

5.1.2 If City Engineer has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom City Engineer has no reasonable objection.

5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract.

5.1.4 Contractor shall notify City Engineer in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.

5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by City Engineer a material breach leading to termination of the Contract.

5.2 *CONTRACTOR RESPONSIBILITY  
FOR SUBCONTRACTORS*

5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.

5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Agreement.

However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Agreement.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the City Engineer that Contractor has fulfilled the requirements of this Section.

#### ARTICLE 6 - CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

##### 6.1 *THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS*

6.1.1 The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.

##### 6.2 *COORDINATION*

6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.

6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.

6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the

proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

##### 6.3 *MUTUAL RESPONSIBILITY*

6.3.1 The responsible party bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.

6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.

6.3.3 Claims or disputes between Contractor and other City contractors, or subcontractors of other City contractors, working on the Project must be submitted to binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by the City.

##### 6.4 *THE CITY'S RIGHT TO CLEAN UP*

6.4.1 If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, the City may clean up and allocate cost among those responsible, as determined by City Engineer.

#### ARTICLE 7 - CHANGES IN THE WORK

##### 7.1 *CHANGES*

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

- .1 Change Order;
- .2 Work Change Directive; or
- .3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

- .1 a single Change Order that exceeds five percent of Original Contract Price,
- .2 a Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price,

- .3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less. In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

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

7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 *WORK CHANGE DIRECTIVES*

7.2.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.

7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.

7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.

7.2.5 City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

7.3 *ADJUSTMENTS IN CONTRACT PRICE*

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

- .1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- .2 unit prices stated in the Contract or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or

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

.4 as provided in Paragraph 7.3.2.

7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

7.3.2.1 If City Engineer determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as City Engineer may prescribe, appropriate supporting data

for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by City Engineer shall constitute waiver of a Claim.

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

- .1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
  - .1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
- .2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of City Engineer;
- .4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
- .5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
- .6 allowances for overhead and profit as stated below.
  - .1 the maximum allowances for overhead and profit on increases due to Change Orders:
  - .2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for

overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.

7.3.4 When Contractor agrees with the determination made by City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.

#### 7.4 *MINOR CHANGES IN THE WORK*

7.4.1 A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

### ARTICLE 8 - TIME

#### 8.1 *PROGRESS AND COMPLETION*

8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.

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

8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.

8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to City Engineer for approval. Contractor's failure to submit updated schedule may, at City Engineer's discretion, constitute a material

breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24-hour prior written notice and receiving written consent of City Engineer.

## 8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 Contractor may request extension of Contract Time for a delay in performance of work that arises from causes beyond control and without fault or negligence of Contractor. Examples of these causes are:

- .1 acts of God or of the public enemy,
- .2 acts of government in its sovereign capacity,
- .3 fires,
- .4 floods,
- .5 epidemics,
- .6 quarantine restrictions,
- .7 strikes,
- .8 freight embargoes,
- .9 unusually severe weather; and
- .10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Contractor's work, except for an extension of time as provided in this provision.

8.2.3 Contractor may request an extension of Contract Time for delay only if:

- .1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
- .2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.

8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by the Party making Claim to other Party. Claim must accurately describe occurrence generating Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.

- .1 Notwithstanding paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon written application by the Contractor within 48 hours from the claimed delay.

8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.

8.2.8 Adjustments to Contract Time are accomplished by Change Order.

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.1 UNIT PRICE WORK

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

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

9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4.1. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.

9.1.4 City Engineer may increase or decrease quantities of the Work within limitations

stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.

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

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

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

9.2.2 Before final completion, City Engineer will review and confirm with Contractor the actual final installed Unit Price quantities. City Engineer's determination of actual final installed Unit Price quantities will be included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities. Contractor shall file written notice of intent to appeal, if any, City Engineer's determination within 10 days of receipt of final Certificate for Payment. Upon expiration of the 10-day period, City Engineer's decision is final and binding on the Parties. If Contractor submits notice within the 10-day period, Contractor shall submit a Claim in accordance with Section 4.4.

#### 9.3 *STIPULATED PRICE WORK*

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

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

9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.

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

#### 9.5 *CERTIFICATES FOR PAYMENT*

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

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

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

#### 9.6 *COMPUTATIONS OF CERTIFICATES FOR PAYMENT*

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

- .1 that portion of Contract Price allocated to completed work as determined by:
  - .1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of

- Values by the value of that portion of the Work, or
- .2 multiplying Unit Price quantities installed times the Unit Prices listed in the Contract;
  - .2 plus progress payments for completed work that has been properly authorized by Modifications;
  - .3 less retainage of five percent;
  - .4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;
  - .5 less any previous payments by the City.

9.7 *DECISIONS TO WITHHOLD CERTIFICATION*

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

- .1 nonconforming work has not been remedied;
- .2 the Work cannot be completed for unpaid balance of Contract Price;
- .3 there is damage to the City or another contractor;
- .4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
- .5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
- .6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
- .7 Contractor has persistently failed to carry out work in accordance with the Contract.
- .8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
- .9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.

9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7.3 City Engineer may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

9.8 *PROGRESS PAYMENTS*

9.8.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment.

9.8.2.1 The City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.

9.8.2.2 Contractor shall prepare and submit to City Engineer a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.

9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.

9.9 *DATE OF SUBSTANTIAL COMPLETION*

9.9.1 When Contractor considers the Work, or a portion thereof designated by City Engineer, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not

alter the responsibility of Contractor to comply with the Contract.

9.9.1.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Subparagraph 9.9.4.3.

9.9.2 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

9.9.3 Prior to City Engineer's issuing a Certificate of Substantial Completion, Contractor shall also provide:

- .1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and
- .2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and City Engineer so confirms, City Engineer may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

9.9.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:

- .1 Date of Substantial Completion;
- .2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and
- .3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.

9.9.5 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties may not commence on items not substantially completed.

9.9.6 After Date of Substantial Completion and upon application by Contractor and approval by City Engineer, the City may make payment, reflecting adjustment in retainage, if any, as follows:

- .1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.

9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.

#### 9.10 *PARTIAL OCCUPANCY OR USE*

9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.

9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.

#### 9.11 *FINAL COMPLETION AND FINAL PAYMENT*

9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to City Engineer that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.

9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. City Engineer will, within 10 days, issue Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.

9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the City Engineer will issue Certificate of Final Completion to Contractor as provided in Paragraph 9.11.2.

9.11.4 Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

- .1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
- .2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
- .3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
- .4 consent of Surety to final payment; and
- .5 copies of record documents, maintenance manuals, tests, inspections, and approvals.

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

9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, City Engineer may, but is not obligated to:

- .1 deduct liquidated damages accrued from monies held;
- .2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
- .3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.

9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon application by Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.

9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at time of final Application for Payment.

#### 9.12 *LIQUIDATED DAMAGES*

9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in

Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

#### ARTICLE 10 - SAFETY PRECAUTIONS

##### 10.1 SAFETY PROGRAMS

10.1.1 Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to City Engineer prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.

##### 10.2 POLLUTANTS AND POLLUTANT FACILITIES

10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.

10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.

##### 10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

- .1 employees performing work on-site, and other persons who may be affected thereby;
- .2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- .3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to City Engineer.

10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.

#### 10.4 *EMERGENCIES*

10.4.1 In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

### ARTICLE 11 - INSURANCE AND BONDS

#### 11.1 *GENERAL INSURANCE REQUIREMENTS*

11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Paragraphs 3.25 and 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

#### 11.2 *INSURANCE TO BE PROVIDED BY CONTRACTOR*

11.2.1 *Risks and Limits of Liability:* Contractor shall provide at a minimum insurance coverage and limits of liability set out in Table 1.

11.2.1.1 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

11.2.2 *Form of Policies:* Insurance may be in one or more policies of insurance, form of which is subject to approval by City Engineer. It is agreed, however, that nothing City Engineer does or fails to do with regard to insurance policies relieves Contractor from its duties to provide required coverage and City Engineer's actions or inactions will never be construed as waiving the City's rights.

11.2.3 *Issuers of Policies:* Issuer of any policy shall have:

- .1 a Certificate of Authority to transact business in Texas, or
- .2 have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, and the issuer must be an eligible nonadmitted insurer in the State of Texas.

Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements, pursuant to Paragraph 11.2.2.

11.2.4 *Insured Parties:* Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must name the City, its officers, agents, and employees as additional insured parties on original policy and all renewals or replacements during term of the Contract. The City's status as additional insured under Contractor's insurance does not extend to instances of sole negligence of the City unmixed with any fault of Contractor.

11.2.5 *Deductibles:* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.

11.2.6 *Cancellation:* Contractor shall notify the Director in writing 30 days prior to any cancellation or material change to Contractor's insurance coverage. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Engineer, at his or her sole discretion, may:

- .1 immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default, or
- .2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Contract.

11.2.7 *Subrogation:* Each policy except Owner's and Contractor's Protective Liability must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against the City, its officers, agents, or employees.

11.2.8 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

11.2.9 *Liability for Premium:* Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.

11.2.10.1 Definitions:

- .1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.
- .2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.
- .3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of

whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.2.10.2 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of Contractor providing services on the Work, for duration of the Work.

11.2.10.3 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.

11.2.10.4 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.

11.2.10.5 Contractor shall obtain from each person providing services on the Work, and provide to City Engineer:

- .1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
- .2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

11.2.10.6 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

11.2.10.7 Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of

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

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

11.2.10.9 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:

- .1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
- .2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
- .3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
- .4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
- .5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
- .6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially

affects provision of coverage of any person providing services on the Work; and

.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.10.11 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from City Engineer.

11.2.11 *Subcontractor Insurance Requirements:* Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Paragraph 11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1  
REQUIRED COVERAGE

(Coverage)	(Limit of Liability)
------------	----------------------

.1 Workers' Compensation	Statutory Limits for Workers' Compensation
.2 Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
.3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate.
.4 Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit each Occurrence/aggregate
.5 Installation Floater (Unless alternative coverage approved by City Attorney)	Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work
.6 Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
.7 Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
Defense costs are excluded from face amount of policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.3 *PROOF OF INSURANCE*

11.3.1 Prior to commencing services and at time during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Contractor confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance

documents provided by Contractor, its agents, employees, or assigns.

11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request. The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Paragraph 11.2.

11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall

- .1 be less than 12 months old;
- .2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- .3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
- .4 include the Contractor's email address in the Certificate Holder Box;

- .5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
- .6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.

11.4 **PERFORMANCE AND PAYMENT BONDS**

11.4.1 For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.

11.5 **MAINTENANCE BONDS**

11.5.1 *One-year Maintenance Bond:* Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Paragraph 12.2. The Maintenance Bond must be for 100 percent of the Original Contract Price.

11.6 **SURETY**

11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount

reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:

- .1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,
- .2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 **DELIVERY OF BONDS**

11.7.1 Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

**ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK**

12.1 *UNCOVERING OF THE WORK*

12.1.1 If a portion of the Work has been covered which City Engineer has not specifically requested to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Contractor. If such work is in accordance with the Contract, the costs of uncovering and covering such work are charged to the City by Change Order. If such work is not in accordance with the Contract, Contractor shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 *CORRECTION OF THE WORK*

12.2.1 Contractor shall promptly correct or remove work rejected by City Engineer or work failing to conform to requirements of the Contract, whether observed before or after Date of Substantial Completion and whether fabricated, Installed, or completed.

12.2.2 Contractor bears costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby.

12.2.3 If within one year after Date of Substantial Completion, or after date for commencement of warranties established under Paragraph 9.9.5 or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 One-year correction period for portions of the Work completed after Date of Substantial Completion will begin on the date of acceptance of that portion of the Work. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.

12.2.5 The one-year correction period does not establish a duration for the Contractor's general warranty under Paragraph 3.12. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations.

12.2.6 If Contractor does not proceed with correction of the nonconforming work within time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products

at Contractor's expense. Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by Contractor, including compensation for services of Design Consultant and necessary expenses. If the proceeds of sale do not cover costs which Contractor should have borne, Contractor shall pay the value of the deficiency to the City.

12.2.7 Contractor bears cost of correcting work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.

12.3 *ACCEPTANCE OF  
NONCONFORMING WORK*

12.3.1 If City Engineer prefers to accept work which is not in accordance with requirements of the Contract, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer will determine Contract Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 *GOVERNING LAWS*

13.1.1 The Contract is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

13.1.2 Venue for any litigation relating to the Contract is Harris County, Texas.

13.2 *SUCCESSORS*

13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.

13.3 *BUSINESS STRUCTURE AND  
ASSIGNMENTS*

13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

#### 13.4 *WRITTEN NOTICE*

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

- .1 the date the Notice is actually received;
- .2 the third day following deposit in a United States Postal Service post office or receptacle; or
- .3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Paragraph at least 15 days prior to the date the change is affected.

#### 13.5 *RIGHTS AND REMEDIES*

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by the City or Contractor is a waiver of rights or duties afforded them under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a

breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of the City, signed by City Engineer.

#### 13.6 *TESTS AND INSPECTIONS*

13.6.1 Contractor shall give City Engineer, Construction Manager, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:

- .1 inspections or tests covered by Paragraph 13.6.3;
- .2 those otherwise specifically provided in the Contract; or
- .3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.

#### 13.7 *INTEREST*

13.7.1 No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

#### 13.8 *PARTIES IN INTEREST*

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

#### 13.9 *ENTIRE CONTRACT*

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions,

covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 *WRITTEN AMENDMENT*

13.10.1 Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 *COMPLIANCE WITH LAWS*

13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.

13.12 *SEVERABILITY*

13.12.1 If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.

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

14.1 *TERMINATION BY THE CITY FOR  
CAUSE*

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

- .1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- .2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- .3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract;
- .4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
- .5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may

have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:

- .1 request that Surety complete the Work; or
- .2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- .3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Contractor shall:

- .1 stop the Work on the date and to the extent specified in the Notice of Termination;
- .2 place no further orders or subcontracts for Products or services;
- .3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
- .4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- .6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- .7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

14.1.4 If the City terminates the Contract or terminates Contractor's performance under the

Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.

14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

#### 14.2 *TERMINATION BY THE CITY FOR CONVENIENCE*

14.2.1 City Engineer may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with a seven days written notice.

14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by City Engineer, Contractor shall conform to requirements of Paragraph 14.1.3.

14.2.3 After receipt of the Notice of Termination, Contractor shall submit to the City its termination Claim, in forms required by City Engineer. The Claim will be submitted to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Contractor fails to submit its termination Claim within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.

14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the amount due, if any, to Contractor for the termination as follows:

- .1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly

payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

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

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

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

14.2.6 Contractor shall cooperate with City Engineer during the transition period.

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

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

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

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

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

- .1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
- .2 adjustment is made or denied under another provision of the Contract.

#### 14.4 *TERMINATION BY CONTRACTOR*

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

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 act of government, such as a declaration of national emergency which makes material unavailable; or
- .3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

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

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

END OF DOCUMENT

**EXHIBIT "N"**  
**CITY OF HOUSTON SUPPLEMENTAL CONDITIONS**  
**DOCUMENT 00800**  
*(See next page)*

Document 00800  
**SUPPLEMENTARY CONDITIONS**

The following Paragraphs amend and supplement the 2005 edition of General Conditions. Unaltered portions of General Conditions remain in effect.

**ARTICLE 3 - THE CONTRACTOR**

3.5 *LABOR: Insert the following Paragraph 3.5.3.1.1.*

3.5.3.1.1 Contractor shall make good faith efforts to comply with the City ordinances regarding Minority and Women Business Enterprises (MWBE) and Persons with Disabilities Business Enterprises (PDBE) participation goals which are as follows:

- 1 the MBE goal is 14 percent, and
- .2 the SBE goal is 8 percent.

**3.28 CONTRACTOR DEBT**

3.28.1 **IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFORE.**

**ARTICLE 8 - TIME**

8.1 *PROGRESS AND COMPLETION: Delete Paragraph 8.1.6. and replace with the following 8.1.6.*  
8.1.6.1 Contractor shall credit the City by Change Order for inspection services for overtime work or work performed on Sundays or Legal Holidays. The amount Contractor credits the City will be **\$50.00 per hour** per inspector for inspection services.

**ARTICLE 9 - PAYMENTS AND COMPLETION**

9.1 *UNIT PRICE WORK: Delete Section 9.1 in its entirety and insert the following Section 9.1.*

9.1 References to Unit Prices in individual Specification sections are not applicable to the Contract. Include payment for portions of the Work required by these sections in the Stipulated Price for the Contract.

9.12 *LIQUIDATED DAMAGES: Insert the following Paragraph 9.12.1.1.*

9.12.1.1 The amount of liquidated damages provided in General Conditions Paragraph 9.12.1 payable by

Contractor or Surety for each and every day of delay beyond Contract Time, are \$500.00 per day.

## **ARTICLE 11 - INSURANCE AND BONDS**

- 11.2 *INSURANCE TO BE PROVIDED BY CONTRACTOR: Delete Paragraph 11.2.8. and replace with the following 11.2.8.*
- 11.2.1.4 Contractor shall provide Owners and Contractor's Protective Liability Insurance only if the contractor's bid price is equal to or greater than \$100,000.00.
- 11.2.8 *Endorsement of Primary Insurance:* Each policy except Workers' Compensation Insurance must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising under the Contract.