



**CITY OF HOUSTON  
HOUSTON AIRPORT SYSTEM  
INVITATION TO BID (ITB)  
SOLICITATION NO.: HOA-SINKREP-2024-009  
STANDIFER STREET AND LEE ROAD SINKHOLE REPAIR AND ENTRANCE  
REPAVING AT GEORGE BUSH INTERNATIONAL AIRPORT (IAH)**

**Date Issued:** December 01, 2023

**Pre-Bid Conference:** December 15, 2023, at 2:00 P.M., CT

**In-Person** HAS Infrastructure Division Office (IDO) Building  
Auditorium No. 1  
111 Standifer Drive, Humble, Texas, 77338

**Questions Deadline:** December 28, 2023, at 03:00 P.M., CT

**Bid Due Date:** February 01, 2024, at 10:30 A.M., CT  
City Secretary's Office, City of Houston City Hall Annex,  
900 Bagby Street, Room P101, Public Level  
Houston, TX 77002

**Solicitation Contact Person:** Ola Al Hammami  
Sr. Procurement Specialist  
Supply Chain Management, Houston Airport System  
(281) 230-8014

[Ola.alhammami@houstontx.gov](mailto:Ola.alhammami@houstontx.gov)

**Project Summary:** HAS is seeking to demolish and reconstruct the existing asphalt pavement with continuously reinforced concrete pavement (CRCP). The project includes full-depth excavation, repair of a previously repaired sinkhole, replacement of approximately 180LF of reinforced concrete pavement (RCP) on Standifer Street, and repair work at the intersection of Standifer Street and Lee Road. The purpose is to address the aging asphalt pavement and ensure the site remains fully operational.

**DBE Goal: 0%**

DS  
CA

DocuSigned by:

6121834A077C41A

Jedediah Greenfield  
Chief Procurement Officer  
City of Houston

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Document 00010

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NOTE: Capitalized Specification Sections are included in <https://www.houstonpermittingcenter.org/media/6386/download>, and are incorporated in Project Manuals by reference as if copied verbatim. Documents listed "for filing" are to be provided by Bidder and are not included in this Project Manual unless indicated for example only. The Document numbers and titles hold places for actual documents to be submitted by Contractor during Bid, post-bid, or construction phase of the Project. Specification Sections marked with an asterisk (\*) are amended by a supplemental specification, printed on blue paper and placed in front of the Specification it amends. Documents in the 00200, 00300 and 00400 series of Division 00, except for Document 00410B – Bid Form, Part B, are not part of the Contract.

**Doc.  
No.      Document Title**

**INTRODUCTORY INFORMATION**

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00015 List of Drawings

**BIDDING REQUIREMENTS**

**INSTRUCTIONS TO BIDDERS**

00200 Instructions to Bidders  
00210 Supplementary Instructions to Bidders  
00220 Request for Bid Information

**INFORMATION AVAILABLE TO BIDDERS**

00320 Geotechnical Information  
00330 Existing Conditions  
00340 Environmental Information

**BID FORMS AND SUPPLEMENTS (NOTE: TO BE PROVIDED WITH BID)**

00410 Bid Form, Parts A & B  
00430 Bidder's Bond (For filing; Example Form)  
00454 Affidavit of Non-interest  
00455 Ownership Information Form

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00457	Conflict of Interest Questionnaire
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00480	Reference Verification
00495	Post Bid Procedures

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- 00501 Resolution of Corporation
- 00520 Agreement

#### BONDS AND CERTIFICATES: NOTE: TO BE PROVIDED AFTER RECEIPT OF NOTICE OF INTENT TO AWARD)

- 00600 List of Proposed Subcontractors and Suppliers, Parts A & B
- 00601 Drug Policy Compliance Agreement
- 00604 History of OSHA Actions and List of On-the-job Injuries
- 00605 List of Safety Impact Positions
- 00607 Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- 00610 Performance Bond
- 00611 Statutory Payment Bond
- 00613 One-year Surface Correction Bond
- 00620 Affidavit of Insurance
- 00621 ACORD Certificate of Insurance Form

#### GENERAL CONDITIONS

- 00700 General Conditions

#### SUPPLEMENTARY CONDITIONS

- 00800 Supplementary Conditions
- 00801 FAA Supplementary Conditions
- 00810 Federal Wage Rate - Highway
- 00820 Wage Scale for Engineering Construction
  
- 00830 Trench Safety Geotechnical Information

END OF DOCUMENT

Document 00015

LIST OF DRAWINGS

DRAWING NO.	DRAWING TITLE
G-001	<b>COVER SHEET</b>
G-002	<b>INDEX OF DRAWINGS AND LEGEND</b>
G-003	<b>GENERAL NOTES - 1</b>
G-004	<b>GENERAL NOTES - 2</b>
G-005	<b>SUMMARY OF QUANTITIES</b>
Vr101	EXISTING CONDITIONS PLAN
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CD102	PROPOSED DEMOLITION PLAN SINKHOLE <b>REPAIR</b>
CD301	PROPOSED DEMOLITION SECTIONS
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CS301	PROPOSED PAVEMENT SECTIONS
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CG501	PRECAST SAFETY END TREATMENT DETAILS
CG502	BEDDING AND BACKFILL DETAILS
CM101	PAVEMENT STRIPING LAYOUT
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Document 00200

**INSTRUCTIONS TO BIDDERS**

1.0 *RELATED DOCUMENTS*

- A. Document 00210, Supplementary Instructions to Bidders.
- B. Document 00320, Geotechnical Information.
- C. Document 00330, Existing Conditions.
- D. Document 00410 – Bid Form, Parts A & B.
- E. Document 00495, Post-Bid Procedures.
- F. Document 00520, Agreement.
- G. Document 00700, General Conditions.
- H. Document 00800, Supplementary Conditions.

2.0 *DEFINITIONS*

- A. Definitions set forth in Document 00700, General Conditions, and in other documents of Project Manual, are applicable to Bid Documents.
- B. *Addendum*: Written or graphic instrument issued prior to Bid opening, which clarifies, modifies, corrects, or changes Bid Documents.
- C. *Alternate*: The total amount bid for additions to work, as described in Section 01110, Summary of Work. Each Alternate includes cost of effects on adjacent or related components, and Bidder's overhead and profit.
- D. *Bid*: A complete and properly signed offer to perform the Work in accordance with this Document and Document 00210, Supplementary Instructions to Bidders.
- E. *Bid Date*: Date and time set for receipt of Bids as stated in Document 00210, Supplementary Instructions to Bidders, or as modified by Addenda.
- F. *Bid Documents*: Project Manual, Drawings, and Addenda.
- G. *Bid Supplement*: A Bid submittal that is required in Document 00410, Bid Form.
- H. *Bidder*: Person or firm, identified in Document 00410B, Bid Form, Part B, including its successors, and its authorized representative.

- I. *Code*: Code of Ordinances, Houston, Texas.
- J. *Low Bidder*: Apparent successful Bidder that qualifies as a responsible Bidder and that submits Bid with lowest Total Bid Price.
- K. *Project Manager*: Person designated in Document 00100, Advertisement for Bids, and Document 00220, Request for Bid Information, to represent the City during bidding and post-bid periods.
- L. *Project Manual*: Volume assembled for the Work that includes the bidding requirements, sample forms, Conditions of the Contract, and Specifications.
- M. *Security Deposit*: A certified check, cashier's check, or bid bond in the amount of 10 percent of the Total Bid Price.
- N. *Total Bid Price*: Total amount bid for performing the Work as identified by Bidder in Document 00410B, Bid Form, Part B, which amount includes:
  - 1. Stipulated Price;
  - 2. Total Base Unit Prices;
  - 3. Total Extra Unit Prices;
  - 4. Total Cash Allowances; and
  - 5. Total Alternates.

3.0 *NOTICE TO BIDDERS*

- A. Chapter 18, Ethics and Financial Disclosure, of the City of Houston Code of Ordinances makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, all partners of partnerships, and all officers, directors, and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the names and business addresses of each of those persons will be required to be submitted with each bid or proposal; for a City Contract. Bidder shall complete and submit Document 00455, Ownership Information Form, with its Bid to comply with this requirement. See Chapter 18 of

the Code for further information.

- B. Chapter 15, Article VIII, of the City's Code provides that no contract shall be let, nor any other business transaction entered into, by the City with any person indebted to the City or a qualifying entity, if the contractor or transaction comes within the provisions of Section 15-1 (c) of the Code. Exceptions are provided in Section 15-126 of the Code. Bidder shall complete and submit Document 00455, Ownership Information Form, with its Bid to comply with this requirement.
- C. Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award, aside from bidder's formal response to the solicitation, through the pre-award phase, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action, or to a City Council committee convened to discuss a recommendation regarding the solicitation.
- D. **Compliance with Certain State Law Requirements.**
1. *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
  2. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
  3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
  4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.
- E. **Zero Tolerance Policy for Human Trafficking and Related Activities.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Contract for all purposes. Bidder has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Contract's effective date. Bidder shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Bidder or its subcontractors providing services or goods under this Contract within 7 days of Bidder becoming aware of or having a

reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

- F. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**G. Prospective Vendor Responsibility.**

The City will award contracts only to the responsible vendor possessing the ability to perform successfully under the terms and conditions of a proposed procurement. The City's policy is to award contracts only to a prospective vendor whom the City's contracting department has determined to be responsible, considering the following non-exhaustive factors:

- Record of integrity and business ethics, including timely payments to subcontractors/subconsultants, business judgment, reputation, and reliability.
- History of compliance with public policy and applicable laws, or the lack thereof.
- Record of past performance, including but not limited to, poor performance, failure to achieve reasonable progress, or defaulting on existing or previous City of Houston contracts, if any.
- Capacity to perform the required work or provide the required goods or services, which may include having (or having the ability to obtain) adequate financial and technical resources to perform the contract and any necessary equipment, facilities, organization, experience, efficiency, operational control, or technical skills, as applicable.
- Financial responsibility, including the ability to provide adequate bonds and insurance, as applicable.
- History of compliance with prevailing wage and other labor standards requirements.
- Record of failure to make good faith efforts to meet MWBE goals.
- Qualification and eligibility to receive an award under applicable laws and regulations, including any federal rules or regulations (e.g., 2 CFR Part 200).
- Ineligibility due to being suspended or debarred by federal, state, city, or county governmental agencies.

**4.0 BID DOCUMENTS**

- A. The Bid Documents may be obtained at

location specified in Document 00210, Supplementary Instructions to Bidders.

- B. The Bid Documents are made available only for the purpose of bidding on the Work. Receipt of Bid Documents does not grant a license for other purposes.

- C. On receipt of Bid Documents, Bidder shall verify that documents are legible and complete, compare contents of Project Manual with Document 00010, Table of Contents, and compare Index of Drawings with Document 00015, List of Drawings. Bidder shall notify Project Manager if Bid Documents are incomplete.

- D. If City of Houston Standard Specifications or Standard Details are required by the Project Manual, Bidder shall refer to Document 00210, Supplementary Instructions to Bidders for purchase information.

**5.0 EXAMINATION OF DOCUMENTS, SITE, AND LOCAL CONDITIONS**

- A. Bidder shall examine Project site, become familiar with local conditions under which the Work shall be performed, conduct appropriate investigations, and correlate personal observations with requirements of the Bid Documents before submitting a Bid.

- B. Bidder shall make site investigations to the extent Bidder deems necessary to ascertain extent of subsurface conditions.

- C. Failure of Bidder to perform the investigations prior to submitting a Bid does not relieve Bidder of responsibility for investigations, interpretations and proper use of available information in the preparation of its Bid.

- D. Bidder shall observe limitations of access to occupied or restricted site as stated in Document 00210, Supplementary Instructions to Bidders.

**6.0 INTERPRETATIONS DURING BIDDING**

- A. Bidder shall immediately submit Document 00220, Request for Bid Information, to Project Manager upon finding errors, discrepancies, or omissions in Bid Documents. Confirmation of receipt of questions by the City is the responsibility of Bidder. Verbal discussions and answers are not binding.

- B. Document 00220, Request for Bid Information, must be received at least 10 days before the Bid Date to allow issuance of Addenda in accordance with Paragraph 7.O.D. Replies, if issued, are by Addenda.



7.0 *ADDENDA*

- A. Addenda that affect bidding requirements are applicable only through issuance of the Notice to Proceed. Addenda that affect the Contract are a part of the Contract.
- B. BIDDERS WHO SUBMIT A BID ON THIS PROJECT SHALL BE PRESUMED TO HAVE RECEIVED ALL ADDENDA AND TO HAVE INCLUDED ANY COST THEREOF IN THEIR BIDS, REGARDLESS OF WHETHER THEY ACKNOWLEDGE THE ADDENDA OR NOT.
- C. The City will make Addenda available at same location where the Bid Documents may be obtained. The City will notify plan holders of record when Addenda are available. Bidders are responsible for obtaining Addenda after notification.
- D. No Addendum will be issued later than noon on Monday before Bid Date, except Addenda with minor clarifications, withdrawing request for Bids, or postponing Bid Date.

8.0 *SUBSTITUTION OF PRODUCTS*

- A. No substitutions of Products will be considered during the bidding period.

9.0 *PREPARATION OF BIDS*

- A. Bidder shall fill in applicable blanks in Document 00410A&B, Bid Form, Parts A & B, and Bid Supplements. In addition, Bidder shall bid all Alternates. Bidder shall properly sign Document 00410B, Bid Form.
- B. Bidder shall initial all pages, except signature page, of Document 00410B, Bid Form, Part B.
- C. Bidder is responsible for all costs incurred by the Bidder, associated with preparation of its Bid and compliance with Post-bid Procedures.
- D. Bidder may not adjust preprinted price on line items stating "Fixed Unit Price" in the description on the Bid Form.
- E. Bidder may increase, but not decrease, preprinted price on line items stating "Minimum Bid Price" in the description on the Bid Form by crossing out the minimum and inserting revised price on the line above. Bidder **may not** decrease the preprinted price on line items stating "Minimum Bid Price".

- F. Bidder may decrease, but not increase, preprinted price on line items stating "Maximum Bid Price" in the description on the Bid Form by crossing out the maximum and inserting revised price on the line above. Bidder **may not** increase the preprinted price on line items stating "Maximum Bid Price".
- G. Bidder shall insert a price no greater than the maximum preprinted range and no less than the preprinted range for line items stating "Fixed Range Unit Price" in the description on the Bid Form by crossing out prices noted and inserting revised price on the line above.
- H. Bidder may not adjust Cash Allowance amounts.

10.0 *BID SUBMISSION*

- A. City Secretary will receive Bids on Bid Date at location specified in Document 00210, Supplementary Instructions to Bidders.
- B. Bids submitted after Bid Date will be returned to Bidder unopened.
- C. Verbal, facsimile, or electronic Bids are invalid and will not be considered.
- D. Bidder shall submit in person or by mail one copy of the signed Document 00410, Bid Form, Parts A and B, along with required Security Deposit, and required Bid Supplements, in a sealed, opaque envelope. In addition, Bidder shall clearly identify Project, Bid Date and Bidder's name on outside of envelope. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed for postal delivery.

11.0 *BID SECURITY*

- A. Bidder shall submit a Security Deposit with its Bid.
- B. Certified Check or Cashier's Check
  - 1. Bidder shall make check payable to the City of Houston.
  - 2. A check is submitted on the condition that if Bidder is named Low Bidder and fails either to timely and properly submit documents required in Document 00495, Post-Bid Procedures, the City will cash the check in accordance with Paragraph 11.0.E.
- C. Bid Bond
  - 1. The bid bond must be a valid and

- enforceable bond, signed by a surety that complies with other requirements set out by law.
2. The bid bond must name the City of Houston as obligee, and be signed by the Bidder as principal and signed and sealed by the surety.
  3. The bid bond must be conditioned such that if Bidder is named Low Bidder and then fails to timely and properly submit documents required in Document 00495, Post-Bid Procedures, surety will be obligated to pay to the City an amount in accordance with Paragraph 11.0.E.
- D. Security Deposits will be retained until after the Contract is awarded or all Bids are rejected.
- E. Low Bidder forfeits Security Deposit if it fails to timely and properly submit documents required in Document 00495, Post-Bid Procedures. The City may claim an amount equal to the difference between the Total Bid Price of the defaulting Bidder and the Total Bid Price of the Bidder awarded the Contract. If Security Deposit is a check, the City will reimburse any remaining balance to the defaulting Bidder.
- 12.0 SUBCONTRACTORS AND SUPPLIERS**
- A. The City may reject proposed Subcontractors or Suppliers.
  - B. Refer to Document 00800,– Supplementary Conditions, for MWBE, PDBE, DBE and SBE goals.
- 13.0 MODIFICATION OR WITHDRAWAL OF BID**
- A. A Bidder may modify or withdraw a Bid submitted before the Bid Date by written notice to the City Secretary. The notice may not reveal the amount of the original Bid and must be signed by the Bidder.
  - B. Bidder may not modify or withdraw its Bid by verbal, facsimile, or electronic means.
  - C. A withdrawn Bid may be resubmitted up to the time designated for receipt of Bids.
- 14.0 BID DISQUALIFICATION**
- A. The City may disqualify a Bid if the Bidder:
    1. fails to provide required Security Deposit in the proper amount;
    2. improperly or illegibly completes information required by the Bid Documents;
  3. fails to sign Bid or improperly signs Bid;
  4. qualifies its Bid; or
  5. improperly submits its Bid.
- B. When requested, Low Bidder shall present satisfactory evidence that Bidder has regularly engaged in performing construction work as proposed, and has the capital, labor, equipment, and material to perform the Work.
- 15.0 PREBID MEETING**
- A. A prebid meeting is scheduled to be held at the place, time, and date listed in Document 00210, Supplementary Instructions to Bidders.
  - B. All Bidders, subcontractors, and suppliers are invited to attend.
  - C. Representatives of City Engineer will attend.
- 16.0 OPENING OF BIDS**
- A. Bids are opened by the City Secretary and publicly read in City Council Chambers on the Public Level in City Hall Annex at 11:00 a.m. on Bid Date.
  - B. Place and date of Bid opening may be changed in accordance with Sections 15-45(c) of the City Code.
- 17.0 EVALUATION AND CONSIDERATION OF BIDS**
- A. Project Manager will tabulate, record and evaluate Bids.
  - B. The City may reject all Bids or may reject any defective Bid.
- 18.0 ACCEPTANCE OF THE BID**
- A. The City will send to Low Bidder Document 00498, Notice of Intent to Award. Acceptance by the City is conditioned upon Bidder's timely and proper submittal of documents required in Document 00495, Post-Bid Procedures.
  - B. The Bid remains open to acceptance and is irrevocable for the period of time stated in Document 00410A, Bid Form, Part A.

END OF DOCUMENT

Document 00210

**SUPPLEMENTARY INSTRUCTIONS TO BIDDERS**

*The following Paragraphs modify Document 00200 - Instructions to Bidders. Where a portion of the Instructions to Bidders is modified or deleted by these Supplementary Instructions, the unaltered portions of the Instructions to Bidders remain in effect.*

**PARAGRAPH 2.0 – DEFINITIONS:**

Add the following sub-paragraphs to this Paragraph:

- O. *Office of Business Opportunity (OBO):* All references to Affirmative Action Contract Compliance Division (AACC) set forth in Document 00700 – General Conditions and in other documents of the Project Manual shall refer to and include the Office of Business Opportunity.

If there is no bid of a Local Business that meets these criteria, the City will award the contract to the lowest responsible bidder.

**PARAGRAPH 3.0 – NOTICE TO BIDDERS**

Add the following sub-Paragraph to this Paragraph:

H. The City will award this contract to a “Local Business”, as that term is defined in Section

15-176 of the City of Houston Code of Ordinances (“the Code”):

- If the bid of the Local Business is less than \$100,000 and is the lowest responsible bid or is within 5% of the lowest bid received, or.
- If the bid of the Local Business is more than \$100,000 and is the lowest responsible bid or is within 3% of the lowest bid received, and
- Unless the Director determines that such an award would unduly interfere with contract needs, as provided in Section 15-181 of the Code.

If there is no bid of a Local Business that meets these criteria, the City will award the contract to the lowest responsible bidder.

**PARAGRAPH 4.0 – BID DOCUMENTS**

Add the following sub-Paragraphs to this Paragraph:

A. Add the following Paragraph A.1:

1. Bid documents may only be obtained electronically at the Houston Airport System’s website: <https://www.fly2houston.com/biz/opportunities/solicitations/>

**D. Add the following Paragraph D.1:**

1. Copies of the City Standard Specifications and Details may be acquired at no cost on the Houston Airport System's website  
<https://www.fly2houston.com/biz/resources/building-standards-and-permits/>  
" *HOUSTON AIRPORTS DESIGN STANDARDS*"

- E. The following plan rooms, whose names, addresses, phone and fax numbers were last updated on April 9, 2007, have been authorized by the City to display Bid Documents for examination:

(Note: The Bid Documents furnished to the plan rooms for examination can be in electronic format, in hard copies, or in any other formats pertaining to each City Contracting Division's discretion.)

1. Associated General Contractors (AGC-HHUI), Highway, Heavy Utilities and Industrial Branch, 2400 Augusta St., Suite 305 , Houston, TX 77057, 713-334-7100, Fax 713-334-7130. Email: [msimons@agctx.org](mailto:msimons@agctx.org)  
(Attention: Mellora Connelly)
2. Houston Minority Business Development Center, 2900 Woodridge, Suite 124, Houston, TX 77087, 713-644-0821, Fax 713-644-3523. Email: [gtamez@gacompanies.com](mailto:gtamez@gacompanies.com)
3. The Builders' Exchange of Texas, Inc., 4047 Naco Perrin Blvd., Ste. 100 San Antonio, TX 78217, 210-564-6900, Email: [editor@virtualbx.com](mailto:editor@virtualbx.com)

- F. Add the following sub-Paragraph F.1:

1. **Designation as a Hire Houston First City Business (CB) or Local Business (LB)**

To be designated as a City Business ("CB") or as a Local Business ("LB") for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Declaration** to the Director of the Office of Business Opportunity and receive notice that the application has been processed and the appropriate designation (if any) is awarded, prior to the submission of a bid or proposal. Bidders must show evidence of HHF designation (as applicable) prior to, or accompanying, the submission of a bid or proposal.

The absence of a Hire Houston First designation does not preclude a business from bidding on City of Houston contracts.

**Download the HHF Application and Declaration** from the Office of Business Opportunity Webpage at the City of Houston e-Government Website, located at:

<http://www.houstontx.gov/obo/hirehoustonfirst.html>

or, delivered to:

Office of Business Opportunity  
611 Walker, 7th Floor  
Houston, Texas 77002.  
Phone: (832) 393-0951  
Fax: (832) 393-0646  
hirehoustonfirst@houstontx.gov

#### PARAGRAPH 5.0 – EXAMINATION OF DOCUMENTS, SITE, AND LOCAL CONDITIONS

D. Add the following sub-Paragraph D.1:

1. Work will be performed in public right-of-way. The site may be examined at any time during daylight hours.

#### PARAGRAPH 8.0 – SUBSTITUTION OF PRODUCTS

Delete the existing sub-Paragraph A in its entirety, and replace it with the following sub-Paragraphs A, B, C, and D:

- A. Where Bid Documents specify a specific Product with provision for consideration of substitutions (or equal), requests for pre-bid approval of substitutions will be considered from Bidders only if received by Project Manager 10 days or more prior to Bid Date.
- B. Requests for substitutions must provide complete information to determine acceptability of the Products, in accordance with provisions of Document 00700 - General Conditions.
- C. The City will consider requests for substitutions and, if approved, will issue an Addendum. Bidder shall base its Bid only on substitutions approved in Addenda. Substitutions, not listed in an Addendum, are not allowed.
- D. Bidder shall include in its Bid, costs of substitutions approved by Addenda.]

#### PARAGRAPH 9.0 – PREPARATION OF BIDS

Add the following sub-Paragraph I to this Paragraph:

- I. For math errors the City encounters in analyzing Bids, the following guidance will be used:

In the event of a conflict between:

The Bid Price is:

- |   |   |
|---|---|
| 1. Individual Unit Price and Extension of that Unit Price   | Individual Unit Price times Estimated Quantity  |
| 2. A Unit Price extension and total of Unit Price Extensions  | Sum of all Individual Unit Price Extensions   |
| 3. Individual Alternate and total of Alternates   | Sum of all Individual Alternates  |
| 4. Individual subtotals for Stipulated Price, Base Unit Prices, Extra Unit Prices, Contractor Bonus, Cash Allowances, and Alternates; and the Total Bid Price | Sum of Individual subtotals for Stipulated Price, Base Unit Prices, Extra Unit Prices, Contractor Bonus, Cash Allowances and Alternates |

#### PARAGRAPH 10.0 – BID SUBMISSION

Add the following sub-Paragraph A.1 to this Paragraph:

- A. Add the following sub-Paragraph A.1:

1. Sealed bids, in triplicate, one (1) original marked “Original” and two (2) copies of the bids (also includes two (2) USB drives of all required submittals identified in Document 00410 Section 1.0 Offer) will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Room P101, Houston, Texas 77002, until 10:30 a.m., (Local Time) on February 8, 2024.

- E. Add the following Paragraph “E.” to Section 10:

E. Bidders shall submit Document 00470 Bidder’s MWSBE Participation Plan (or 00470D Bidder’s DBE Participation Plan if FAA funded project) with the bid. If the MWSBE goal is not met, the Document 00471 Pre-bid Good Faith Efforts, and Document 00472 Bidder’s MWSBE Goal Deviation Request form shall also be included in the submission with the bid (If the DBE goal is not met, following Section 2.A.12. of Document 00806).

11.0 – BID SECURITY: Add the following Paragraph 1. to Section 11.0.A.:

1. Bidder shall submit a Security Deposit in the form of:
  - a.) Certified Check;
  - b.) Cashier's Check; or
  - c.) Bid BondBidder should submit just one form of Security Deposit among the three listed above, and such form shall be issued according to Section 11.0.B and 11.0.C.

#### PARAGRAPH 15.0 – PREBID MEETING

Add the following sub-Paragraph A.1 to this Paragraph:

- A. Add the following Paragraph A.1:
  1. A Prebid Meeting will be held at Houston Airport System (HAS) Infrastructure Division Office (IDO) Building, 111 Standifer Drive, Humble, Texas, 77338, Auditorium No.1, at 02:00 P.M., C.T.
  2. Pre-bid Meeting Questions will be due from bidders at 3:00 P.M., C.T, December 18, 2023
  3. A Site Visit will begin after the Pre-bid Meeting. The meeting and site visit are the only opportunity for bidders to see the site prior to the Bid Due Date.

16.0 – OPENING OF BIDS: Replace Section B with the following:

- B. Place and date of Bid opening may be changed in accordance with Section 15-45(c) of the City Code.

The following Section is added as part of this solicitation:

#### 3.0 – NOTICE TO BIDDERS

##### F. RESOLVING PROTESTS

1. Protests will be handled in accordance with City of Houston Administrative Policy AP 5-12. <http://www.houstontx.gov/adminpolicies/5-12.pdf>.

END OF DOCUMENT

Document 00220

REQUEST FOR BID INFORMATION

PROJECT: STANDIFER STREET AND LEE ROAD SINKHOLE REPAIR AND  
ENTRANCE REPAVING

PROJECT No.  219

TO: Ola Al Hammami  
16930 John F Kennedy Blvd  
Houston, Texas 77032

Phone No. 281-230-8014  
Fax No. N/A  
Email Addr. [ola.alhammami@houstontx.gov](mailto:ola.alhammami@houstontx.gov)

(Type or Print question legibly; use back if more space is needed)

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This request relates to \_\_\_\_\_ and/or \_\_\_\_\_  
Drawing / Detail No. Specification Section No.

Attachments to this request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Type or Print Company Name)

END OF DOCUMENT

00220-1  
02/03/2022



Document 00320

GEOTECHNICAL INFORMATION

1.0 DOCUMENT INCLUDES

- A. Soils investigation reports.
- B. Bidder's responsibilities.

2.0 RELATED DOCUMENTS

- A. Document 00340 – Environmental Information
- B. Section 02260 - Trench Safety Systems

3.0 SITE INVESTIGATION REPORTS

- A. In the design and preparation of Contract documents for this Project, the City and Design Consultant have used information in geotechnical reports for the investigation and analysis of soils and subsurface conditions at the Project site.
- B. A copy of each report is available for examination at [the City of Houston offices located at 611 Walker Street, Houston, Texas 77002].
- C. Neither the City nor Design Consultant is responsible for accuracy or completeness of any information or data.

4.0 GEOTECHNICAL REPORTS

- A. Report No. [\_\_\_\_], prepared by the firm of [\_\_\_\_], entitled [\_\_\_\_], dated [\_\_\_\_], consisting of [\_\_\_\_] pages.
- B. Report No. [\_\_\_\_], prepared by the firm of [\_\_\_\_], entitled [\_\_\_\_], dated [\_\_\_\_], consisting of [\_\_\_\_] pages.

5.0 BIDDER RESPONSIBILITIES

- A. Bidder shall take full responsibility for interpretation and use of information contained in above listed reports for its bidding and construction purposes.

**GEOTECHNICAL INFORMATION**

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- B. Bidder may perform additional soils investigations as Bidder deems appropriate.

END OF DOCUMENT

Document 00330

EXISTING CONDITIONS

1.0 DOCUMENT INCLUDES

- A. Subsurface investigation reports
- B. Existing structures

2.0 RELATED DOCUMENTS

- A. Document 00320 - Geotechnical Information

3.0 SUBSURFACE INVESTIGATION REPORT

- A. In the design and preparation of Contract documents for this Project, the City and Design Consultant have used information with respect to Underground Facilities and existing structures at or contiguous to the site, based on data furnished to the City or Design Consultant by owners of the Underground Facilities, as noted in reports listed below.
- B. A copy of each report is provided with Bid Documents as information to Bidders.
- B. A copy of each report is available for examination at the office of Design Consultant as information for Bidders.
- B. A copy of each report is available for examination at the office of Survey Company as information for Bidders.
- C. Neither the City nor Design Consultant is responsible for the accuracy or completeness of any such information or data.

4.0 UNDERGROUND FACILITIES REPORTS

- A. Report No. [ ] on [ ], prepared by [ ],  
entitled [ ], dated [ ], consisting  
of [ ] sheets of drawings and [ ] pages.
- B. Report No. [ ] on [ ], prepared by [ ],  
entitled [ ], dated [ ], consisting  
of [ ] sheets of drawings and [ ] pages.

5.0 EXISTING STRUCTURES

- A. Contract documents indicate physical conditions in or relating to existing surface and subsurface structures which are at or contiguous to the site that were known to, and have been used by, the City and Design Consultant in preparation of Contract documents.

6.0 VIDEO TAPES OF SANITARY SEWER

- A. In the design and preparation of Contract documents for this Project, the City and Design Consultant have used information contained on video tapes with respect to the trunk sewer at the site.
- B. For bidding purposes, the trunk sewer has been televised to show the most current information.
- C. The video tapes are available for inspection by contacting Eric Cardwell at 281-233-1671. Give at least 24 hours advance notice to reserve a viewing time. Television Inspection Reports created using the videotapes are also available.
- D. Pavement core testing was performed for the determination of the existing pavement material properties. The report is provided with the Project Manual.
- E. Neither the City nor the Design Consultant shall be responsible for the accuracy or completeness of any information or data.

7.0 BIDDER RESPONSIBILITIES

- A. Bidder shall have full responsibility for reviewing and verifying information and data, for locating Underground Facilities and existing structures shown or indicated in the Contract documents, and for coordination of the Work with the owners of such Underground Facilities and existing structures during construction.

END OF DOCUMENT

Document 00340

ENVIRONMENTAL INFORMATION

1.0 DOCUMENT INCLUDES

- A. Environmental Site Assessment, if applicable.
- B. Asbestos and Lead Surveys, if applicable.
- C. Bidder's responsibilities.

2.0 RELATED DOCUMENTS

- A. Document 00320 - Geotechnical Information

3.0 SITE INVESTIGATION REPORTS

- A. In the design and preparation of Contract documents for this Project, the City and Design Consultant have used information in environmental site assessment reports for the investigation and analysis of soils and subsurface conditions at the Project site.
- B. In the design and preparation of Contract documents for this Project, the City and Design Consultant have relied upon information in surveys taken for Asbestos-containing Materials (ACMs) and lead at the Project site.
- C. A copy of each report is available for examination at **[the City of Houston offices located at 611 Walker Street, Houston, Texas 77002]**.
- D. Neither the City nor Design Consultant is responsible for accuracy or completeness of any information or data.

4.0 REPORTS

- A. Environmental Assessment Surveys

- 1. Report No. [ \_\_\_\_\_ ], prepared by the firm of [ \_\_\_\_\_ ], entitled [ \_\_\_\_\_ ], dated [ \_\_\_\_\_ ], consisting of [ \_\_\_\_\_ ] pages.

**ENVIRONMENTAL INFORMATION**

2. Report No. [ \_\_\_\_\_ ], prepared by the firm of [ \_\_\_\_\_ ],  
entitled [ \_\_\_\_\_ ], dated [ \_\_\_\_\_ ],  
consisting of [ \_\_\_\_\_ ] pages.

B. Asbestos and Lead Surveys

1. Report No. [ \_\_\_\_\_ ], prepared by the firm of [ \_\_\_\_\_ ],  
entitled [ \_\_\_\_\_ ], dated [ \_\_\_\_\_ ],  
consisting of [ \_\_\_\_\_ ] pages.

2. Report No. [ \_\_\_\_\_ ], prepared by the firm of [ \_\_\_\_\_ ],  
entitled [ \_\_\_\_\_ ], dated [ \_\_\_\_\_ ],  
consisting of [ \_\_\_\_\_ ] pages.

5.0 BIDDER RESPONSIBILITIES

- A. Bidder shall take full responsibility for interpretation and use of information contained in above listed reports for bidding and construction purposes.
- B. Bidder may perform additional investigations as Bidder deems appropriate.

END OF DOCUMENT

Document 00410A

BID FORM – PART A

To: **The Honorable Mayor and City Council of the City of Houston  
City Hall Annex  
900 Bagby Street  
Houston, Texas 77002**

Project: Standifer Street And Lee Road Sinkhole Repair and Entrance Repaving

Project No.: 219

Bidder: \_\_\_\_\_  
(Print or type full name of business entity, such as corporation, LLC, etc)

### 1.0 OFFER

- A. Total Bid Price:** Having examined the Project location and all matters referred to in Bid Documents for the Project, we, the undersigned, offer to enter into a Contract to perform the Work for the Total Bid Price shown on the signature page of this Document
- B. Security Deposit:** Included with the Bid is a Security Deposit in the amount of 10 percent of the Total Bid Price subject to terms described in Document 00200 – Instructions to Bidders.
- C. Period for Bid Acceptance:** This offer is open to acceptance and is irrevocable for 180 days from Bid Date. That period may be extended by mutual written agreement of the City and Bidder.
- D. Addenda:** All Addenda have been received. Modifications to Bid Documents have been considered and all related costs are included in the Total Bid Price.
- E. Bid Supplements:** The following documents are attached:
  - Security Deposit (*as defined in Document 00200 – Instructions to Bidders*)
  - Document 00450 - Bidder's Statement of MWSBE Status
  - Document 00454 - Affidavit of Non-interest
  - Document 00455 - Ownership Information Form
  - Document 00456 - Bidder's Certificate of Compliance with Buy American Program (*required for AIP funded project*)
  - Document 00457 – Conflicts of Interest Questionnaire (CIQ)
  - Document 00458 - Bidder's Certificate Regarding Foreign Trade Restriction (*required for AIP funded project*)
  - Document 00459 - Contractor's Statement Regarding Previous Contracts Subject to EEO (*required for AIP funded project*)
  - Document 00460 – Pay or Play Acknowledgement Form (POP 1-A)
  - Document 00461 – Hire Houston First Affidavit
  - Document 00470 – Bidder's MWSBE Participation Plan (*required unless no MWSBE participation goal is provided in Document 00800 (the "Goal")*).
  - Document 00470D - Bidder's DBE Participation Plan (*required for AIP funded project*)

- Document 00471 – Bidder’s Record of Good Faith Efforts *(required if the goal in Bidder’s Participation Plan–Document 00470 is lower than the Goal).*
  - Document 00472 – Bidder’s Goal Deviation Request *(required if the goal in Bidder’s Participation Plan–Document 00470 is lower than the Goal).*
  - Document 00480 – Form SCM-1 Reference Verification
  - Document 00481 – Non-Collusion Statement
  - Document 00842 – Letter of Intent
- Others as listed: \_\_\_\_\_  
\_\_\_\_\_

**2.0 CONTRACT TIME**

- A.** If offer is accepted, Contractor shall achieve Date of Substantial Completion within 60 days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.



Document 00410B

**BID FORM – PART B**

**1.0 TOTAL BID PRICE HAS BEEN CALCULATED BY BIDDER, USING THE FOLLOWING COMPONENT PRICES AND PROCESS (PRINT OR TYPE NUMERICAL AMOUNTS):**

**A. STIPULATED PRICE:** \$ \_\_\_\_\_  
 (Total Bid Price; minus Base Unit Prices, Extra Unit Prices, Cash Allowances and All Alternates, if any)

**B. BASE UNIT PRICE TABLE:**

Item No.	Spec Ref.	Base Unit Short Title	Unit of Measure	Estimated Quantity	Unit Price (this column controls)	Total in figures
[1]	NA	NA	NA	NA		
[2]	NA	NA	NA	NA		
<b><u>TOTAL BASE UNIT PRICES</u></b>						\$ _____

**C. EXTRA UNIT PRICE TABLE:**

Item No.	Spec Ref.	Extra Unit Short Title	Unit of Measure	Estimated Quantity	Unit Price <sup>(1)</sup> (this column controls)	Total in figures
1	01502-100	Mobilization	LS	1		
2	01554-100	Installation or Replacement of Permanent Signs (Signs, Poles, Anchors, and Hardware Provided by City)	EA	2		
3	01555-100	Traffic Control and Regulation	LS	1		
4	01570-100	Implementation and Maintenance of Storm Water Pollution Prevention Structures	LS	1		
5	02086-100	Adjust Existing Manhole Frame and Cover to New Grade	EA	2		
6	02221-250	Remove and Dispose of Existing Concrete Curb or Curb and Gutter	LF	315		
7	02221-252	Remove and Dispose of Asphaltic Surface with or without Base	SY	2000		
8	02221-521	Remove and Dispose of 24-inch to 36-inch Storm Sewers and Leads	LF	180		
9	02315-100	Roadway Excavation with or without Subgrade	CY	750		
10	02319-100	Borrow/Embankment	CY	400		
11	02336-106	Lime Stabilized Subgrade, 8-inch	SY	1200		
12	02336-300	Lime Slurry	TON	28		
13	02631-105	24-inch Diameter RCP Storm Sewer by Open Cut	LF	180		
14	02633-800	Headwall Including Parallel Wingwalls (Precast), Safety End Treatment	EA	2		
15	02751-111	11-inch Reinforced Concrete Pavement	SY	1050		
16	02764-200	Raised Reflective Pavement Marker, Double-Sided (Yellow)	EA	250		
17	02767-100	Reflectorized Paint on 6-inch Curb, Yellow	LF	190		
18	02767-301	Thermoplastic Pavement Marking, Elongated Word "ONLY"	EA	2		
19	02767302L	Thermoplastic Pavement Marking, Turning Arrow (Left)	EA	1		
20	02767-302R	Thermoplastic Pavement Marking, Turning Arrow (Right)	EA	1		
21	02767-405	Thermoplastic Pavement Marking (4-inch-wide) White	LF	325		
22	02767-409W	Thermoplastic Pavement Marking (24-inch-wide) White	LF	24		
23	02767-409Y	Thermoplastic Pavement Marking (24-inch-wide) Yellow	LF	75		
24	02771-100	6-inch Concrete Curb	LF	660		
25	02921-100	Hydro Mulch Seeding	AC	0.2		
<b>TOTAL EXTRA UNIT PRICES</b>					\$	

REST OF PAGE INTENTIONALLY LEFT BLANK

**D. CASH ALLOWANCE TABLE:**

Item No.	Spec Ref.	Cash Allowance Short Title	Cash Allowance in figures (1)
1		N/A	[Insert Amount]
			[Insert Amount]
			[Insert Amount]
<b><u>TOTAL CASH ALLOWANCES</u></b>			[Insert Total]

REST OF PAGE INTENTIONALLY LEFT BLANK

**E. ALTERNATES TABLE:**

Item No.	Spec Ref.	Alternate Short Title	Unit of Measure	Estimated Quantity	Unit Price (this column controls)	Total Price for Alternate in figures
[1]		[N/A, if no Alternate used]				
<b>TOTAL ALTERNATES</b>						\$ _____

REST OF PAGE INTENTIONALLY LEFT BLANK

**F. TOTAL BID PRICE:**

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

(Add Totals for Stipulated Price, Base Unit Price, Extra Unit Price, Cash Allowance, and All Alternates, if any)

**2.0 SIGNATURES:** By signing this Document, I agree that I have received and reviewed all Addenda and considered all costs associated with the Addenda in calculating the Total Bid Price.

Bidder:

\_\_\_\_\_  
(Print or type full name of your proprietorship, partnership, corporation, or joint venture.\*)

\*\* By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name:

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
Title

Address:

\_\_\_\_\_  
(Mailing)

\_\_\_\_\_  
(Street, if different)

Telephone and Fax Number:

\_\_\_\_\_  
(Print or type numbers)

- \* If Bid is a joint venture, add additional Bid Form signature sheets for each member of the joint venture.
- \*\* Bidder certifies that the only person or parties interested in this offer as principals are those named above. Bidder has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding.

Note: This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

Footnotes for Tables B through E:

- (1) Fixed Unit Price determined prior to Bid. Cannot be adjusted by the Bidder.
- (2) Minimum Bid Price determined prior to Bid. Can be increased by the Bidder, but not decreased, by crossing out the Minimum and inserting revised price on the line above. **Cannot** be decreased by the Bidder.
- (3) Maximum Bid Price determined prior to Bid. Can be decreased by the Bidder, but not increased, by crossing out the Maximum and inserting revised price on the line above. A Bid that increases the Maximum Bid Price may be found non-conforming and non-responsive. **Cannot** be increased by the Bidder.
- (4) Fixed Range Bid Price determined prior to Bid. Unit Price can be adjusted by Bidder to any amount within the range defined by crossing out prices noted and noting revised price on the line above.

Document 00430

**BIDDER'S BOND**

THAT WE, \_\_\_\_\_, as Principal,  
(Bidder)  
("Bidder"), and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (an amount equal to 10 percent of the Total Bid Price, including Cash Allowances and Alternates, if any), for the payment of which sum, well and truly to be made to the City of Houston and its successors, the Bidder 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 Bidder has submitted on or about this day a proposal offering to perform the following:

\_\_\_\_\_  
\_\_\_\_\_  
(Project Name, Location and Number)

in accordance with the Drawings, Specifications, and terms and conditions related thereto to which reference is hereby made.

**NOW, THEREFORE**, if the Bidder's offer as stated in the Document 00410 – Bid Form is accepted by the City, and the Bidder executes and returns to the City Document 00520 – Agreement, required by the City, on the forms prepared by the City, for the Work and also executes and returns the same number of the Performance, Payment and Maintenance Bonds (such bonds to be executed by a Corporate Surety authorized by the State Board of Insurance to conduct insurance business in the State of Texas, and having an underwriting limitation in at least the amount of the bond) and other submittals as required by Document 00495 - Post-Bid Procedures, in connection with the Work, within the Contract Time, then this obligation shall become null and void; otherwise it is to remain in full force and effect.

If Bidder is unable to or fails to perform the obligations undertaken herein, the undersigned Bidder and Surety shall be liable to the City for the full amount of this obligation which is hereby acknowledged as the amount of damages which will be suffered by the City on account of the failure of such Bidder to perform such obligations, the actual amount of such damages being difficult to ascertain.

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 Bidder 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)

\_\_\_\_\_  
(Name of Bidder)

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

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

ATTEST/SURETY WITNESS: (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

\_\_\_\_\_  
(Address of Surety for Notice)

\_\_\_\_\_  
(Telephone Number of Surety)

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

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

Document 00454

AFFIDAVIT OF NON-INTEREST

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who

Affiant

being by me duly sworn on his oath stated that he is \_\_\_\_\_, of

Title

\_\_\_\_\_  
Name of Firm

the firm named and referred to and in the foregoing; and that he knows of no officer, agent, or employee of the City of Houston being in any manner interested either directly or indirectly in such Contract.

\_\_\_\_\_  
Affiant's Signature

SWORN AND SUBSCRIBED before me on \_\_\_\_\_.

Date

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
Print or type name

My Commission Expires: \_\_\_\_\_  
Expiration Date

END OF DOCUMENT



Document 00455

OWNERSHIP INFORMATION FORM

The City of Houston Ownership Information Form is used to gather information to comply with:

- a. The City of Houston Contractor Ownership Disclosure Ordinance ([Chapter 15 of the Code of Ordinances, Article VIII. City Contracts; Indebtedness to City](#));
- b. The City of Houston Fair Campaign Ordinance ([Chapter 18 of the Code of Ordinances](#)); and,
- c. The State of Texas Statement of Residency Requirements ([Tex. Govt. Code Chapter 2252](#)).

**Please complete the form, in its entirety, and submit it with the Official Bid or Proposal Form. Except as noted below regarding the Statement of Residency, failure to provide this information may be just cause for rejection of your bid or proposal.**

NOTICE OF AFFIRMATIVE ACCEPTANCE OF THE CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE

By submitting a bid or proposal to the City of Houston for a Contract in excess of \$50,000 or for which a request is presented to City Council for approval, all respondents agree to comply with the Chapter 18 of the Code of Ordinances.

Further, pursuant to Section 18-36 of the Code of Ordinances, it shall be unlawful either for any person who submits a bid or proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

INSTRUCTIONS

1. Please **type** or **legibly print in dark ink** responses. Individuals and entities should disclose their full, legal names (not initials) and all required corporate letters ("Inc", "LLP", etc.).
  - a. If a firm is operating under an assumed name, the following format is recommended:  
*Corporate/Legal Name DBA Assumed Name.*
2. Full addresses are required, including street types ("St", "Rd", etc.) and unit number.
3. Individuals or entities with 10% or more ownership of the corporation, partnership, or joint venture (including persons who own 100%) are required to be disclosed with their full name and full address. All officers and directors are also required to be disclosed with their full name and full address.

PROJECT AND BID/PROPOSAL PREPARER INFORMATION

**Project or Matter Being Bid:** \_\_\_\_\_

**Bidder's complete firm/company business information**

Name: \_\_\_\_\_

Business Address [No./Street] \_\_\_\_\_

City / State / Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

**Bidder's email address**

Email Address: \_\_\_\_\_

STATEMENT OF RESIDENCY

(THE STATEMENT OF RESIDENCY PORTION OF THIS DOCUMENT IS **NOT APPLICABLE** IF THE SOLICITATION INDICATES FEDERAL FUNDS WILL BE USED)

**TEX. GOV'T CODE §2252.001(4)** defines a "**Resident bidder**" as a bidder whose principal place of business\* is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

**TEX. GOV'T CODE §2252.001(3)** defines a "**Nonresident bidder**" as a bidder who is not a resident in this state.

\* Principal Place of Business in Texas means that the business entity:

- has at least one permanent office located within the **State of Texas**, from which business activities other than submitting bids to governmental agencies are conducted and from which the bid is submitted; and
- has at least one employee who works in the Texas office.

Based on the definitions above, your business is a:

- TEXAS RESIDENT BIDDER  
 NONRESIDENT BIDDER

If you are a Nonresident Bidder, does your home state have a statute giving preference to resident bidders? If so, you must attach a copy of the statute to this Document.

A copy of the State of \_\_\_\_\_ statute is attached.

**NOTE:** The State of residency of a bidder is not used in the decision-making criteria for the award of contracts for projects receiving federal funding, whether in whole or in part.

CONTRACTING ENTITY ORGANIZATIONAL ENTITY TYPE

**FOR PROFIT ENTITY:**

**NON-PROFIT ENTITY:**

- SOLE PROPRIETORSHIP
- CORPORATION
- PARTNERSHIP
- LIMITED PARTNERSHIP
- JOINT VENTURE
- LIMITED LIABILITY COMPANY
- OTHER (*specify in space below*)

- NON-PROFIT CORPORATION
- UNINCORPORATED ASSOCIATION

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LISTING OF ADDRESSES

List all current and prior addresses where the bidder does/has done business or owns property (real estate and/or business personal property) in the city of Houston ("Houston") in the past 3 years from the date of submittal of this form. If within the past 3 years from the date of submitting this form, the bidder does not and has not done business and has not or does not own property (real estate and/or business personal property) in Houston, please state "None" on the first line below.

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Address

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Address

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Address

**ATTACH ADDITIONAL SHEETS AS NEEDED.**

LISTING OF OFFICERS

LIST ALL OFFICERS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

Name _____ Officer	_____
Address	_____
Name _____ Officer	_____
Address	_____
Name _____ Officer	_____
Address	_____
Name _____ Officer	_____
Address	_____
Name _____ Officer	_____
Address	_____
Name _____ Officer	_____
Address	_____

LISTING OF DIRECTORS OR MEMBERS

LIST ALL DIRECTORS OF THE ENTITY, REGARDLESS OF THE AMOUNT OF OWNERSHIP (IF NONE STATE "NONE")

Name _____ Director or Member	_____
Address	_____
Name _____ Director or Member	_____
Address	_____
Name _____ Director or Member	_____
Address	_____
Name _____ Director or Member	_____
Address	_____
Name _____ Director or Member	_____
Address	_____

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS)

Bidders are required to disclose all owners of 10% or more of the Contracting Entity. For non-profit entities, please provide the complete information for the President, Vice-President, Secretary, and Treasurer.

**IN ALL CASES, USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED.**

**ATTACH ADDITIONAL SHEETS AS NEEDED.**

**Contracting Entity:**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_

DISCLOSURE OF OWNERSHIP (OR NON-PROFIT OFFICERS) *continued.*

**Owner(s) of 10% or More (IF NONE, STATE "NONE."):**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Residence Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_

**Owner(s) of 10% or More (IF NONE, STATE "NONE."):**

Name: \_\_\_\_\_  
Business Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Residence Address [No./Street] \_\_\_\_\_  
City / State / Zip Code \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS AS NEEDED.**

OPTIONAL: TAX APPEAL INFORMATION

If the firm/company or an owner/officer is actively protesting, challenging, or appealing the accuracy and/or amount of taxes levied with a tax appraisal district, please provide the following information:

Debtor (Firm or Owner Name):	
Tax Account Nos.:	
Case or File Nos.:	
Attorney/Agent Name:	
Attorney/Agent Phone No.:	
Tax Years:	

Status of Appeal [**DESCRIBE**]:

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**If an appeal of taxes has been filed on behalf of your company, please include a copy of the official form received by the appropriate agency.**

REQUIRED: UNSWORN DECLARATION

I certify that I am duly authorized to submit this form on behalf of the firm, that I am associated with the firm in the capacity noted below, and that I have personal knowledge of the accuracy of the information provided herein. I affirm that all the information contained herein is true and correct to the best of my knowledge. I understand that failure to submit accurate information with my submission may result in my submission being considered non-responsive and non-responsible.

---

<b>Preparer's Signature</b>	<b>Date</b>
<hr/>	<hr/>
<b>Printed name</b>	
<hr/>	
<b>Title</b>	

**NOTE:** This form constitutes a governmental record, as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record and falsification of a governmental record are crimes, punishable as provided in Section 37.10 of the Texas Penal Code.

Document 00457

Conflict of Interest Questionnaire

Local Government Code Chapter 176 requires Bidders with the City of Houston ("City") to file a Conflict of Interest Questionnaire with the City Secretary of the City of Houston.

The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission's website at: <http://www.ethics.state.tx.us>

The completed Conflict of Interest Questionnaire will be posted on the City Secretary's website. Also you will find a list of the City Local Government Officers on the City Secretary's website.

For your convenience the CIQ form is attached as part of this document. Although the City has provided this document for the Bidders convenience, it is the Bidders responsibility to submit the latest version of the CIQ form as promulgated by the Texas Ethics Commission.

The Failure of any Bidder to comply with this law is a Class C misdemeanor.

END OF DOCUMENT

**1.0 REFERENCES**

- 1.1 Contractor must be able to demonstrate that they have sufficient expertise, qualified personnel experienced and that their company has done or currently providing the services of similar size as specified in the statement of work. Contractor must have been actively engaged as an actual business entity in the activities described in the bid document for at least the five (5) years immediately prior to the submission of their bid.
- 1.2 The reference(s) must be included in the space provided below. Additional pages may be added if necessary. References must be included at the time of bid submittal.

**LIST OF CURRENT/PREVIOUS CUSTOMERS**

- 1. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_
- 2. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_
- 3. Company Name: \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_



SAMPLE	REFERENCE VERIFICATION
Houston Airport System	
Planning, Design & Construction	
Reference Verification for _____ (Respondent's Company Name)	
<b>Name of Company:</b>	
<b>Name of Contact:</b>	
<b>Phone Number of Contact:</b>	
<b>E-Mail Address of Contact:</b>	
<b>QUESTIONS TO BE ASKED BY HOUSTON AIRPORT SYSTEM</b>	
1. When did this company perform work for you?	
2. What type of service did this company perform for you?	
3. Did they perform the work as agreed?	
4. Was the company timely with responding to your needs?	
5. How many instances of services has this company provided for you?	
6. Did company representatives conduct themselves in a professional manner?	
7. Would you do business with this company again?	
Additional Comments:	
Name/Phone Number of Person conducting Reference Verification:	
SIGNATURE: _____ DATE: _____	

Document 00495

POST-BID PROCEDURES

1.0 DOCUMENT ADDRESSES

- A. Notice of Intent to Award.
- B. Monitoring Authority
- C. Requirements of Bidder.
- D. Failure of Bidder to comply with requirements.
- E. Notice to Proceed.

2.0 NOTICE OF INTENT TO AWARD

- A. The City will provide written Notice of Intent to Award to Low Bidder.

3.0 DEFINITIONS

- A. The "Monitoring Authority" for this Project is:

Houston Airport System Office of  
Business Opportunity Contract  
Compliance Section  
HAS Infrastructure Division Office  
(IDO) Building  
111 Standifer Drive, Humble, Texas,  
77338

4.0 REQUIREMENTS OF BIDDER

- A. Within 10 work days of receipt of Notice of Intent to Award, Low Bidder shall execute and deliver to Ola Alhamami, Senior Procurement Specialist (Supply Chain Management) and Monitoring Authority, for the City's approval, documents indicated by an "X" below:

- Document 00501 - Resolution of Contractor
- Document 00520 – Agreement
- Document 00570 – Revised MWSBE Participation Plan *(Only submit if you have changed your MWBE participation plan from the original 00470)*
- Document 00571 – Post-Bid Good Faith Efforts *(Only submit if you could not meet MWBE participation goals from the 00570)*

- Document 00572 – Contractor’s Goal Deviation Request (*Only submit if you could not meet MWBE participation goals from the 00570*)
- Document 00600 - List of Proposed Subcontractors and Suppliers
- Document 00601 - Drug Policy Compliance Agreement
- Document 00602 - Contractor's Drug-free Workplace Policy (*Contractor creates this document.*)
- Document 00604 - History of OSHA Actions and List of On-the-job Injuries
- Document 00605 - List of Safety Impact Positions (*Contractor completes this list. Do not submit if submitting Document 00606.*)
- Document 00606 - Contractor's Certification of No Safety Impact Positions (*Do not submit if submitting Document 00605.*)
- Document 00607 - Certification Regarding Debarment, Suspension, and Other Responsibility Matters (For AIP Grant only)
- Document 00608 - Contractor's Certification Regarding Non-segregated Facilities for Project Funded by AIP Grant (For AIP Grant only)
- Document 00609 – List of Nonroad Diesel Equipment (Do not need to submit if not participating in Clean Air Incentive under Document 00800 Section 9.13.2)
- Document 00610 - Performance Bond (100% of total amount of bid)
- Document 00611 - Statutory Payment Bond (100% of total amount of bid)
- Document 00612 - One-year Maintenance Bond (100% of total amount of bid)
- Document 00613 - One-year Surface Correction Bond (4% of total amount of bid)
- Document 00620 - Affidavit of Insurance
- Document 00621 – City of Houston *Certificate of Insurance (for guidance, see Document 00800, Article 11)*
- Document 00622 - Name and Qualifications of Proposed Superintendent (*Contractor creates this document.*)
- Document 00628 - Affidavit of Compliance with DBE Program (For AIP Grant only)
- Document 00629 - Affidavit for FAA Form 7460-1
- Document 00630 – Agreement to comply with POP Program
- Document 00631 - City of Houston Pay or Play Program – List of Participating Subcontractors
- Document 00632 – EEO Certification by Material Suppliers, Professional Service Providers
- Document 00636 – Certificate of Interested Parties FORM 1295
- Document 00810 – Wage Scale for Engineering Construction; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees (For AIP Grant only)

- Document 00811 – Wage Scale for Building Construction; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees (For AIP Grant only)
  - Document 00812 – Wage Scale for Engineering Heavy Construction [For Water and Sewer]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - Document 00814 – Wage Scale for Engineering Heavy Construction [For Flood Control]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - Document 00820 – Wage Scale for Civil Engineering Construction [For CIP Funded Project]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
  - Document 00821 – Wage Scale for Building Construction [For CIP Funded Project]; Exhibit B, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees; Exhibit C, Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees
- B. Original forms contained in Document 00805 - Equal Employment Opportunity Program Requirements:
1. Original forms contained in Document 00805 - Equal Employment Opportunity Program Requirements:
    - EEO-3, Certification by Bidder Regarding Equal Employment Opportunity
    - EEO-6, Total Work Force Composition of the Company *or in lieu thereof, a copy of the latest Equal Employment Opportunity Commission's EEO-1 form (This information is required only if the Contractor has a work force of 50 or more people and the Contract is \$50,000 or more.)*
    - EEO-7, Company's Equal Employment Opportunity Compliance Program
    - EEO-26, Certification by Proposed Subcontractor Regarding Equal Employment Opportunity

- C. Designations of Subcontractors and Suppliers, who have been selected by Bidder in Part B - Schedule of Non-MWBE/PDBE/DBE/SBE Subcontractors and Suppliers of Document 00600 - List of Proposed Subcontractors and Suppliers, and accepted by the City, may be changed only with prior notice and acceptance by Project Manager as provided in Conditions of the Contract.
  - D. On Bidder's written request, Ola Al Hammami, Senior Procurement Specialist, may grant an extension of time, not to exceed 5 days, to furnish documents specified in Paragraphs 4.0.A and 4.0.B. If Bidder is required to resubmit documents specified in Paragraph 4.0.A or 4.0.B, Bidder shall do so within time limits provided in the request for resubmission.
  - E. Designations of Subcontractors and Suppliers, who have been selected by Bidder in its Participation Plan, and accepted by the City, may be changed only with prior notice and acceptance by the Monitoring Authority as provided in Document 00808 - Minority and Women-owned Business Enterprise (MWBE), Persons with Disabilities Business Enterprise (PDBE) and Small Business Enterprise (SBE) Program.
- 5.0 FAILURE OF BIDDER TO COMPLY WITH REQUIREMENTS
- A. Should Bidder, on receipt of Notice of Intent to Award, fail to comply with requirements of this Document 00495 within stated time, the City may declare award in default and require forfeiture of the Security Deposit.
  - B. After the City's written notice of default to Low Bidder, the City may award the Contract to Bidder whose offer is the next lowest bid, and Security Deposit of Bidder in default shall be forfeited to the City in accordance with provisions of Document 00200 - Instructions to Bidders.
- 6.0 NOTICE TO PROCEED
- A. Upon the City's execution of the Agreement and delivery to Contractor, SCM will give Document 00551 - Notice to Proceed to Contractor, which establishes Date of Commencement of the Work.

END OF DOCUMENT

Document 00501

**RESOLUTION OF CONTRACTOR**

\_\_\_\_\_ (“Contractor”),  
(Name of Contractor, e.g., “Biz. Inc.”, “Biz LLP”)  
is a \_\_\_\_\_,  
(Type of Organization, e.g.: Corporation, Limited Partnership, Limited Liability Partnership, Limited Liability Company, etc.)  
which is bound by acts of \_\_\_\_\_,  
(Name and Form of Governing Entity, e.g., “Biz Inc. Board of Directors”, “Bill Smith, GP”,  
etc.)  
 (“Governing Entity”).

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Governing Entity resolved, in accordance with all documents, rules, and laws applicable to the Contractor, that \_\_\_\_\_, is authorized to act as the  
(Contractor’s Representative)  
Contractor’s Representative in all business transactions (initial one) \_\_\_\_ conducted in the State of Texas OR \_\_\_\_ related to this Contract; and

The Governing Entity warrants that the above resolution (a) was entered into without dissent or reservation by the Governing Entity, (b) has not been rescinded or amended, and (c) is now in full force and effect; and

In authentication of the adoption of this resolution, I subscribe my name on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature for Governing Entity)

\_\_\_\_\_  
(Print or Type Name and Title of Authorized Signatory)

**SWORN AND SUBSCRIBED** before me on \_\_\_\_\_  
Date

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_  
Expiration Date

\_\_\_\_\_  
Print or Type Name of Notary Public

**INSTRUCTIONS:** Contractor must execute a Resolution of Contractor for each individual authorized to sign Contract Documents related to this Contract. Contractor may rescind Resolutions of Contractor through a written document in similar form.

END OF DOCUMENT

Document 00520

**AGREEMENT**

**Project:** STANDIFER STREET AND LEE ROAD SINKHOLE REPAIR AND ENTRANCE REPAVING

**Project Location:** Standifer Street and Lee Road

**Project No:** 219

**The City:** THE CITY OF HOUSTON, 900 Bagby Street, Houston, Texas 77002 (the "City")  
and

**Contractor:** \_\_\_\_\_

(Address for Written Notice) \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

Fax #: N/A

**E-mail Address:** \_\_\_\_\_

**City Engineer, with respect to Section 4.1.9 and 4.3 thru 4.5 of the General Conditions, is:**

Eren Selcen, P.E., – HAS City Engineer, City of Houston Airport. Aviation Department, Infrastructure  
Division (or his or her successor)

Address for Written Notice: 111 Standifer Drive, Humble, TX 77338

Phone Number: 281-233-1605 Fax #: N/A

Email Address: eren.selcen@houstontx.gov

**City Engineer, City Employee designated by the Director of Department of Aviation to represent  
the City Engineer, with respect to all other terms of the General Conditions, is:**

**Eric Cardwell, P.E. (or his or her successor)**

Phone Number: 281-233-1671

E-mail Address: [Eric.Cardwell@HoustonTX.gov](mailto:Eric.Cardwell@HoustonTX.gov)

**THE CITY AND CONTRACTOR AGREE AS FOLLOWS:**

**ARTICLE 1**

**THE WORK OF THE CONTRACT**

1.1 Contractor shall perform the Work in accordance with the Contract.



**ARTICLE 2  
CONTRACT TIME**

2.1 Contractor shall achieve Date of Substantial Completion within **60** days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount stipulated in Document 00800 – Supplementary Conditions, for each day beyond Contract Time.

**ARTICLE 3  
CONTRACT PRICE**

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$ [*Original Contract Price*], which includes Alternates, if any, accepted below.

3.2 The City accepts Alternates as follows:

Alternate No. 1 \_\_\_\_\_ [*Accepted, Not Accepted or Not Applicable*]

Alternate No. 2 [*Accepted or Not Accepted*]

Alternate No. 3 \_\_\_\_\_ [*Accepted or Not Accepted*]

**ARTICLE 4  
PAYMENTS**

4.1 The City will make progress payments to Contractor as provided below and in Conditions of the Contract.

4.2 The Period covered by each progress payment is one calendar month ending on the **25th** day of the month.

4.3 The City will issue Certificates for Payment and will make progress payments on the basis of such Certificates as provided in Conditions of the Contract.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in Conditions of the Contract.

**ARTICLE 5  
CONTRACTOR REPRESENTATIONS**

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

- 5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.
- 5.1.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
- 5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.
- 5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto
- 5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.
- 5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.
- 5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.
- 5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.
- 5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 6**

### **MISCELLANEOUS PROVISIONS**

- 6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.
- 6.2 The Work may be suspended by the City as provided in Conditions of the Contract.

## **ARTICLE 7**

**ENUMERATION OF CONTRACT DOCUMENTS**

- 7.1 The following documents are incorporated into this Agreement:
- 7.1.1 Document 00700 - General Conditions.
  - 7.1.2 Document 00800 - Supplementary Conditions.
  - 7.1.3 General Requirements Division 01.
  - 7.1.4 Technical Specs: Divisions 02 through 17 of Specifications (Division 17 – Telecommunications - may be substituted by the Division 27 under the CSI Masterformat 04 numbering system.)
  - 7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.
  - 7.1.6 Addenda which apply to the Contract, are as follows:
    - Addendum No. 1, dated [\_\_\_\_\_]
    - Addendum No. 2, dated [\_\_\_\_\_]
    - Addendum No. 3, dated [\_\_\_\_\_]
  - 7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[ X ] 00410B	Bid Form – Part B
[ ] 00470	Pre-bid MWSBE Participation Plan
[ ] 00470D	Pre-bid DBE Participation Plan for Project Funded by AIP Grant
[ ] 00471	Pre-bid Good Faith Efforts
[ ] 00472	Pre-bid Goal Deviation Request
[ X ] 00501	Resolution of Corporation (if a corporation)
[ ] 00570	Post-bid MWSBE Participation Plan
[ ] 00571	Post-bid Good Faith Efforts
[ ] 00572	Post-bid Goal Deviation Request
[ ] 00607	Contractor's Certification Regarding Debarment, Suspension for Project Funded by AIP Grant
[ ] 00608	Contractor's Certification Regarding Non-Segregated Facilities for Project Funded by AIP Grant
[ X ] 00610	Performance Bond
[ X ] 00611	Statutory Payment Bond
[ ] 00612	One-year Maintenance Bond
[ X ] 00613	One-year Surface Correction Bond
[ X ] 00620	Affidavit of Insurance
[ X ] 00621	City of Houston Certificate of Insurance

- 00628 Affidavit of Compliance with Disadvantaged Business Enterprise (DBE) Program for Project Funded By AIP Grant
- 00630 Agreement to Comply with Pay or Play Program
- 00631 List of Participating Subcontractors (POP-3)
- 00801 FAA Supplementary Conditions (for AIP Only)
- 00804 ARRA requirements (for ARRA grants Only)
- 00805 EEO Program Requirements
- 00806 Disadvantaged Business Enterprise (DBE) Program (For AIP Only)
- 00807 Bidder/Contractor Requirements For Disadvantaged Business Enterprise (DBE) Program (For AIP Only)
- 00808 Bidder Requirements for MWSBE Program
- 00810 Federal Wage Rate - Highway
- 00811 Federal Wage Rate - Building
- 00812 Wage Rate for Engineering Heavy – Water & Sewer Line
- 00814 Wage Rate for Engineering Heavy – Flood Control
- 00820 Wage Rate for Engineering Construction
- 00821 Wage Rate for Building Construction
- 00840 Pay or Play Program
- 00842 Letter of Intent

**ARTICLE 8  
SIGNATURES**

8.1 This Agreement is executed in two original copies and is effective as of the date of countersignature by City Controller.

**CONTRACTOR:**

(If Joint Venture)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Tax Identification Number: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Tax Identification Number: \_\_\_\_\_

**CITY OF HOUSTON, TEXAS**

APPROVED:

SIGNED:

By: \_\_\_\_\_  
Director, Department of Aviation

By: \_\_\_\_\_  
Mayor

COUNTERSIGNED:

By: \_\_\_\_\_  
City Controller

ATTEST/SEAL:

Date Countersigned:

By: \_\_\_\_\_  
City Secretary

\_\_\_\_\_

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

\_\_\_\_\_  
Legal Assistant

\_\_\_\_\_  
Date

END OF DOCUMENT

**LIST OF PROPOSED SUBCONTRACTORS AND SUPPLIERS**

PROJECT NAME: Standifer Street And Lee Road Sinkhole Repair And Entrance REPAVING  
ORIG. CONTRACT PRICE: \$ \_\_\_\_\_ TOTAL MWSBE AWARD: \$ \_\_\_\_\_  
PROJECT NO.: 219 TOTAL HUB AWARD: \$ \_\_\_\_\_  
DATE OF REPORT: \_\_\_\_\_ TOTAL PDDBE AWARD: \$ \_\_\_\_\_

NAICS (6 digits)	SUBCONTRACTOR OR SUPPLIER (INCLUDE "MWSBE", "PDDBE", "DBE", OR "HUB" DESIGNATION) <sup>2</sup>	ADDRESS	SCOPE OF WORK <sup>3</sup>

- NOTES:**
1. RETURN FOR ALL PROJECTS AS REQUIRED IN DOCUMENT 00800 – SUPPLEMENTARY CONDITIONS. RETURN WITHIN THE SPECIFIED NUMBER OF DAYS AFTER RECEIPT OF NOTICE OF INTENT TO AWARD
  2. DESIGNATE FIRMS CERTIFIED BY THE CITY OFFICE OF BUSINESS OPPORTUNITY ON THIS FORM.
  3. DESCRIBE THE WORK TO BE PERFORMED, FOR WHICH THE FIRM IS CERTIFIED, SUCH AS "PAVING", "ELECTRICAL", ETC.
  4. **CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED. COPIES OF CONTRACTS WITH DESIGNATED FIRMS MUST BE SENT TO THE OFFICE OF BUSINESS OPPORTUNITY.**

SIGNATURE: \_\_\_\_\_ COMPANY NAME: \_\_\_\_\_  
NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Type or Print)

PROJECT NAME: Standifer Street And Lee Road Sinkhole Repair And Entrance REPAVING

DATE OF REPORT: \_\_\_\_\_

PROJECT NO.: 219

NAICS (6 digits)	SUBCONTRACTOR OR SUPPLIER (INCLUDE "MWSBE", "PDBE", "DBE", OR "HUB" DESIGNATION) <sup>2</sup>	ADDRESS	SCOPE OF WORK <sup>3</sup>

SIGNATURE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Type or Print)

TITLE: \_\_\_\_\_

END OF DOCUMENT

Document 00601

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_, \_\_\_\_\_,  
Name Title

of \_\_\_\_\_  
Contractor

have authority to bind Contractor with respect to its Bid, Proposal, 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 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 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 an HHS-certified drug-testing laboratory to perform drug tests.
3. Monitor and keep records of drug tests given and 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 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 or documentation in compliance with the Mayor's Drug Policy 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.

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Signature Date

END OF DOCUMENT



Document 00604

HISTORY OF OSHA ACTIONS AND LIST OF ON-THE-JOB INJURIES

Prior to award of the Contract, Low Bidder will be required to file the following with the City:

1. A history of all OSHA actions, advisories, etc., Contractor has received on all jobs worked in any capacity, prime or subcontractor. The history shall be for the two-year period preceding the Bid Date of the Project.
2. A list of all on-the-job injuries, accidents, and fatalities suffered by any present or former employees of Contractor during the same two-year period.
3. If less than the two-year period, give the date Contractor started doing business.

This information must be submitted to the City within the time period stated in Document 00498 - Notice of Intent to Award. An officer of the company must certify in a notarized statement that the information submitted is true and correct.

END OF DOCUMENT

Document 00605

LIST OF SAFETY IMPACT POSITIONS

Employee Classification

Number of Employees

END OF DOCUMENT

00605-1  
02-01-2004

Document 00607

**CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five years, or both.

Company:

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify the above statements. My explanation is attached.

END OF DOCUMENT

Document 00610

**PERFORMANCE BOND**

**THAT WE,** \_\_\_\_\_, as Principal, (the "Contractor"), and the other subscriber hereto, \_\_\_\_\_, 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 \$\_\_\_\_\_ 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 \_\_\_\_\_, \_\_\_\_\_, 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.

**Any party wishing to file a claim may call the Texas Department of Insurance at [1-800-252-3439](tel:1-800-252-3439) to obtain Surety's address for claims processing.**

**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)

\_\_\_\_\_  
Name of Contractor

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

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

ATTEST/SURETY WITNESS:  
(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice  
\_\_\_\_\_

\_\_\_\_\_  
Telephone Number of Surety

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

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

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

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00611

**STATUTORY PAYMENT BOND**

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of Houston, a municipal corporation, in the sum of \$\_\_\_\_\_ 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 \_\_\_\_\_  
\_\_\_\_\_,  
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.

Any party wishing to file a claim may obtain Surety's address for claims processing on file with the Texas Department of Insurance by calling [1-800-252-3439](tel:1-800-252-3439).

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

\_\_\_\_\_  
Name of Contractor

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

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

ATTEST/SURETY WITNESS:  
(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

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

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

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

\_\_\_\_\_  
Date

END OF DOCUMENT



Document 00613

**ONE-YEAR SURFACE CORRECTION BOND**

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor, and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of \$\_\_\_\_\_, such sum being equal to four percent of the Original Contract Price, for the payment of which sum to be made to the City of Houston and its successors, Contractor and Surety do bind themselves, their successors, jointly and severally.

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

**WHEREAS,** the Contractor has entered into a Contract in writing with the City of Houston, Texas, dated of even date herewith, for \_\_\_\_\_, all of such work to be done in accordance with the Contract documents therein referred to, and adopted by the City Council of the City of Houston.

**NOW THEREFORE,** if the Contractor shall comply with the provisions of Paragraph 11.5.1 of the General Conditions, and repair, replace, restore, and correct surface work associated with backfill operations of subsurface work not in accordance with the Contract documents discovered within one year from the date that the One-year Maintenance Bond has expired, 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 Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

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

\_\_\_\_\_  
Name of Contractor

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

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

ATTEST/SURETY WITNESS:

(SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice  
\_\_\_\_\_

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title: Attorney-in-Fact

Date:

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

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00620

AFFIDAVIT OF INSURANCE

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who  
Affiant

being by me duly sworn on his oath stated that he is \_\_\_\_\_, of  
Title

\_\_\_\_\_,  
Contractor's Company Name

the Contractor named and referred to within the Contract documents; that he is fully competent and authorized to give this affidavit and that the attached original insurance certificate truly and accurately reflects the insurance coverage that is now available and will be available during the term of the Contract.

\_\_\_\_\_  
Affiant's Signature

SWORN AND SUBSCRIBED before me on \_\_\_\_\_.  
Date

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
Print or type Notary Public name

My Commission Expires: \_\_\_\_\_  
Expiration Date

END OF DOCUMENT



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A :	NAIC #
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR						AGGREGATE \$
	<b>EXCESS LIAB</b>						\$
	<input type="checkbox"/> CLAIMS-MADE						\$
	DED <input type="checkbox"/> RETENTION \$						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH)						OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project Name:  
Project No.:**CERTIFICATE HOLDER****CANCELLATION**

City of Houston Aviation Division 611 Walker Street Houston, Texas 77002	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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Document 00700

**GENERAL CONDITIONS**

AUGUST 7, 2023 EDITION

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**ARTICLE1**  
**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 V.
- 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:
- 1.1.6.1 a change in the Work;
  - 1.1.6.2 a change in Contract Price, if any; and
  - 1.1.6.3 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.



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

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- 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.

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- 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.

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- 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.** 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.**

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- 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.** 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

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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.***

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- 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; MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE.**
- 3.5.1 Contractor shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract. The City may, by written notice, require Contractor to remove from the Work any employee of Contractor or Subcontractors to whom City Engineer makes reasonable objection.
- 3.5.2 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs set out in this Agreement and in the Supplementary Conditions, and as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. When Original Contract Price is greater than \$1,000,000, Contractor shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.
- 3.5.2.1 Contractor shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. 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 For purposes of this paragraph, "Contract Year" means a 12-month period during the term of the contract commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal(s); (2) the reason for the discrepancy; and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with this Section of this Agreement and Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.
- 3.5.4 The OBO Director, in consultation with the Director may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts

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policy, the OBO Director may:

- 3.5.4.1 After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:
  - 3.5.4.1.1 Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;
  - 3.5.4.1.2 Suspend Contractor from engaging in any contract with the City for a period up to, but not to exceed, five years, pursuant to Section 15-86 of the City's Code of Ordinances, as may be amended from time to time; or
  - 3.5.4.1.3 Take any other appropriate remedy.
- 3.5.4.2 Make a recommendation to the Director and the Chief Procurement Officer, to:
  - 3.5.4.2.1 Withhold payment or reimbursement under this Agreement;
  - 3.5.4.2.2 Make a finding that Contractor is in default or has breached this Agreement;
  - 3.5.4.2.3 Determine not to renew this Agreement;
  - 3.5.4.2.4 Terminate for cause this Agreement; or
  - 3.5.4.2.5 Take any other appropriate remedy.
- 3.5.5 Contractor shall maintain records showing:
  - 3.5.5.1 Subcontracts and supply agreements with Minority Business Enterprises;
  - 3.5.5.2 Subcontracts and supply agreements with Women Business Enterprises;
  - 3.5.5.3 Subcontracts and supply agreements with Small Business Enterprises (if any);
  - 3.5.5.4 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
  - 3.5.5.5 Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.5.6 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

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



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

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

3.6 ***PREVAILING WAGE RATES.***

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

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

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

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

3.7 ***LABOR CONDITIONS.***

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

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

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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:
  - 3.8.1.1.1 contracts authorized by Emergency Purchase Orders,
  - 3.8.1.1.2 contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
  - 3.8.1.1.3 contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
  - 3.8.1.1.4 contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
  - 3.8.1.1.5 contracts with federal, state, or local governmental entities.
- 3.8.1.2 Prior to execution of the Contract, Contractor shall have filed with the City:
  - 3.8.1.2.1 a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
  - 3.8.1.2.2 a copy of Contractor's drug free workplace policy, and
  - 3.8.1.2.3 a written designation of all safety impact positions, if applicable, or a Contractor's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).
- 3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Contractor shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Contractor shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of completion of the Contract. The first six-month period shall begin on Date of Commencement of the Work.
- 3.8.1.4 Contractor shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee workforce during performance of the Work.
- 3.8.1.5 Contractor shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Contractor is responsible for securing and maintaining required documents from Subcontractors and Suppliers for the City inspection throughout the term of the Contract.
- 3.8.1.6 Failure of Contractor to comply with requirements will be a material breach of the Contract entitling the City to terminate in accordance with Section 14.1.

3.9 **MATERIALS & EQUIPMENT.**

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

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- 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:
- 3.9.2.1 new, unless otherwise required or permitted by the Contract, and
- 3.9.2.2 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:
- 3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- 3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.
- Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.
- 3.9.3.3 Contractor shall obtain 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:
- 3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;
- 3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;

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- 3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
  - 3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;
  - 3.10.5.5 waives Claim for additional costs or time extensions that may subsequently become apparent; and
  - 3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
- 3.10.6 City Engineer will not consider and will not approve substitutions when:
- 3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
  - 3.10.6.2 acceptance will require revision to the Contract.
- 3.10.7 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:
- 3.12.1.1 free of defects in title;
  - 3.12.1.2 of good quality; and
  - 3.12.1.3 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:
- 3.12.6.1 improper or insufficient maintenance by the City;
  - 3.12.6.2 normal wear and tear under normal usage; or
  - 3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

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- 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.** Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:
- 3.14.1 necessary for proper execution and completion of the Work; and
- 3.14.2 legally required at time bids are received.
- 3.15 **CONSTRUCTION SCHEDULES.**
- 3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for 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.
- 3.17.1 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

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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.** 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.** 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:

3.25.1.1 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;

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

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

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



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- 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:
- 3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR
- 3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.
- IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.
- 3.27 **INDEMNIFICATION PROCEDURES.**
- 3.27.1 *Notice of Indemnification Claims:* If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:
- 3.27.1.1 a description of the indemnification event in reasonable detail,
- 3.27.1.2 the basis on which indemnification may be due, and
- 3.27.1.3 the anticipated amount of the indemnified loss.
- This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.
- 3.27.2 *Defense of Indemnification Claims:*
- 3.27.2.1 *Assumption of Defense:* Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

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- 3.27.2.2 *Continued Participation:* If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:
- 3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
  - 3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or
  - 3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS 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.**

**3.29 PRESERVATION OF CONTRACTING INFORMATION.**

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

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

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otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

#### **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.

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- 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.** 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:
- 4.3.5.1.1 those indicated by the Contract; or
- 4.3.5.1.2 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:
- 4.3.6.1.1 written interpretation of City Engineer;
  - 4.3.6.1.2 order by City Engineer to stop the Work when Contractor is not at fault;
  - 4.3.6.1.3 suspension of the Work by City Engineer;
  - 4.3.6.1.4 termination of the Contract by City Engineer; or
  - 4.3.6.1.5 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:
- 4.4.1.1 submit a suggested time to meet and discuss the Claim with City Engineer;
  - 4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;
  - 4.4.1.3 recommend approval of the Claim by the other Party;
  - 4.4.1.4 suggest a compromise; or
  - 4.4.1.5 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.

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- 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. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.
- 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.*

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- 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.* 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

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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.** 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:

- 7.1.1.1 Change Order;
- 7.1.1.2 Work Change Directive; or
- 7.1.1.3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

- 7.1.2.1 a single Change Order that exceeds five percent of Original Contract Price,
- 7.1.2.2 a Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price,
- 7.1.2.3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.

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

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

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:
  - 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
  - 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
  - 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
  - 7.3.1.4 as provided in Paragraph 7.3.2.
- 7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by 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.

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

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- 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:
- 7.3.2.2.1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
    - 7.3.2.2.1.1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
  - 7.3.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
  - 7.3.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, with prior approval of City Engineer;
  - 7.3.2.2.4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
  - 7.3.2.2.5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
  - 7.3.2.2.6 allowances for overhead and profit as stated below.
    - 7.3.2.2.6.1 the maximum allowances for overhead and profit on increases due to Change Orders:
    - 7.3.2.2.6.2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.
- 7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with 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.** 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.

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**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:

- 8.2.1.1 acts of God or of the public enemy;
- 8.2.1.2 acts of government in its sovereign capacity;
- 8.2.1.3 fires;
- 8.2.1.4 floods;
- 8.2.1.5 epidemics;
- 8.2.1.6 quarantine restrictions;
- 8.2.1.7 strikes;
- 8.2.1.8 freight embargoes;
- 8.2.1.9 unusually severe weather; and
- 8.2.1.10 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

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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:
  - 8.2.3.1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
  - 8.2.3.2 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.
  - 8.2.6.1 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. 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.

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- 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 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, including evidence of electronic submission of certified payrolls.
- 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.*** 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 the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.
- 9.5 ***CERTIFICATES FOR PAYMENT.***
- 9.5.1 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.

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9.6 **COMPUTATIONS OF CERTIFICATES FOR PAYMENT.**

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

9.7 **DECISIONS TO WITHHOLD CERTIFICATION.**

- 9.7.1 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:
- 9.7.1.1 nonconforming work has not been remedied;
  - 9.7.1.2 the Work cannot be completed for unpaid balance of Contract Price;
  - 9.7.1.3 there is damage to the City or another contractor;
  - 9.7.1.4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
  - 9.7.1.5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
  - 9.7.1.6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
  - 9.7.1.7 Contractor has persistently failed to carry out work in accordance with the Contract.
  - 9.7.1.8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
  - 9.7.1.9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.
- 9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 9.7.3 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

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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. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

9.8.2.1 The City may, upon request and at the discretion of 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:

9.9.3.1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and

9.9.3.2 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:

9.9.4.1 Date of Substantial Completion;

9.9.4.2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and

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- 9.9.4.3 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:
- 9.9.6.1 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:



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- 9.11.4.1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
  - 9.11.4.2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
  - 9.11.4.3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
  - 9.11.4.4 consent of Surety to final payment; and
  - 9.11.4.5 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:
    - 9.11.5.1 deduct liquidated damages accrued from monies held;
    - 9.11.5.2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
    - 9.11.5.3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.
  - 9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and 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 the time of final payment.
- 9.12 **LIQUIDATED DAMAGES.**
- 9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's

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failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

- 9.12.2 Contractor shall pay the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur diesel fuel usage.

## **ARTICLE 10**

### **SAFETY PRECAUTIONS**

- 10.1 **SAFETY PROGRAMS.** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Contractor shall submit a safety program to 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:
- 10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;
- 10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.
- 10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.
- 10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).
- 10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

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- 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.** 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 maintain the insurance coverages in the listed amounts, as set out in Table 1.
- 11.2.2 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.
- 11.2.3 *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the

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Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

- 11.2.4 *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements.
- 11.2.5 *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 11.2.6 *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.
- 11.2.7 *Notice.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 11.2.8 *Subrogation.* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.
- 11.2.9 *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.

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11.2.10 *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.

11.2.11 *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.

11.2.12 Definitions.

11.2.12.1 *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.

11.2.12.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.

11.2.12.3 *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.

11.2.13 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.

11.2.14 Contractor shall provide a Certificate of Coverage to the City prior to being awarded the Contract.

11.2.15 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.

11.2.16 Contractor shall obtain from each person providing services on the Work, and provide to City Engineer:

11.2.16.1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and

11.2.16.2 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.

11.2.17 Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

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- 11.2.18 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.
- 11.2.19 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.
- 11.2.20 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:
- 11.2.20.1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
  - 11.2.20.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
  - 11.2.20.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
  - 11.2.20.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
  - 11.2.20.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
  - 11.2.20.6 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
  - 11.2.20.7 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.
- 11.2.21 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.
- 11.2.22 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.
- 11.2.23 *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
Workers' Compensation	<ul style="list-style-type: none"> <li>• Texas Statutory Limits for Workers' Compensation</li> </ul>
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: Including Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit (each occurrence), subject to general aggregate Limit of \$2,000,000</li> <li>• Products and Completed Operations \$2,000,000 aggregate Limit</li> </ul>
Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 each Occurrence/ aggregate</li> </ul>
Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> <li>• Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work</li> </ul>
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
Excess Coverage	<ul style="list-style-type: none"> <li>• \$1,000,000 each occurrence/ aggregate in excess of limits specified for Commercial General Liability, and Automobile Liability</li> </ul>
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.3 **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

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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
- 11.3.4.1 be less than 12 months old;
  - 11.3.4.2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
  - 11.3.4.3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
  - 11.3.4.4 include the Contractor's email address in the Certificate Holder Box;
  - 11.3.4.5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
  - 11.3.4.6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.
- 11.4 **PERFORMANCE AND PAYMENT BONDS.** 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 – 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.



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

## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF THE WORK**

- 12.1 **UNCOVERING OF THE WORK.** 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.** 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 LAW AND VENUE.** This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.
- 13.2 **SUCCESSORS.** 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.

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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:

13.4.1.1 the date the Notice is actually received;

13.4.1.2 the third day following deposit in a United States Postal Service post office or receptacle; or

13.4.1.3 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:

13.6.2.1 inspections or tests covered by Paragraph 13.6.3;

13.6.2.2 those otherwise specifically provided in the Contract; or

13.6.2.3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

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.** No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

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- 13.8 **PARTIES IN INTEREST.** The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.
- 13.9 **ENTIRE CONTRACT.** The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.
- 13.10 **WRITTEN AMENDMENT.** Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.
- 13.11 **COMPLIANCE WITH LAWS.**
- 13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
- 13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.
- 13.12 **SEVERABILITY.** If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.
- 13.13 **COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.**
- 13.13.1 **Anti-Boycott of Israel.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 13.13.2 **Anti-Boycott of Energy Companies.** Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 13.13.3 **Anti-Boycott of Firearm Entities or Firearm Trade Associations.** Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 13.13.4 **Certification of No Business with Foreign Terrorist Organizations.** For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.
- 13.14 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

#### **ARTICLE 14**

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

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- 14.1 **TERMINATION BY THE CITY FOR CAUSE.**
- 14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:
- 14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
  - 14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
  - 14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically;
  - 14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
  - 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in 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:
- 14.1.2.1 request that Surety complete the Work; or
  - 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
  - 14.1.2.3 finish the Work by whatever reasonable method 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:
- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
  - 14.1.3.2 place no further orders or subcontracts for Products or services;
  - 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
  - 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by 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;
  - 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
  - 14.1.3.6 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
  - 14.1.3.7 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 and substantiate to the City its termination Claim, in forms required by City Engineer. The Claim will be submitted and substantiated to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by 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:

14.2.4.1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.

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

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

14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which 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.***

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- 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:
- 14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
  - 14.3.3.2 adjustment is made or denied under another provision of the Contract.
- 14.4 **TERMINATION BY CONTRACTOR.**
- 14.4.1 Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:
- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;
  - 14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or
  - 14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in 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]

Document 00800

SUPPLEMENTARY CONDITIONS

*Project Manager:* Eric Cardwell      *Project No.:* 219

The following Paragraphs amend and supplement the August 7, 2023 edition of the General Conditions. Unaltered portions of General Conditions remain in effect.

ARTICLE 1 - GENERAL PROVISIONS:

1.1            *DEFINITIONS:* *Insert the following Paragraphs 1.1.9.1, 1.1.23, and 1.1.25, and reorder the remaining definitions accordingly. Please insert the amended definition of "Specifications".*

1.1.9.1        The firm of \_\_\_\_\_ has been employed by the City as Construction Manager for the Work.

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

1.1.25        *Incidental Work:* Work described as incidental shall be work defined in Document 01110 - Summary of Work, that do not have a direct pay item listed in the Document 00410B - Bid Form Part B, or less than 1% of the Contract Price and not capable of being measured. If Work is identified as Incidental Work and also covered by Bid Form Part B quantities, then the unit price item quantities in the Bid Form Part B shall govern.

1.1.45        *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. All specifications are amended to include, under the Measurement and Payment Section, the following sentence: "Work described as Incidental Work shall not be paid as a separate unit price item."

1.1.11        *Consent Decree:* The document entitled Consent Decree between the City of Houston, the United States and the State of Texas, entered on April 1, 2021 in *United States v. City of Houston*, C.A. No. 4:18-cv-03368, in the United States District Court for the Southern



District of Texas, Houston Division. A copy of the Consent Decree is attached as Appendix A and electronically available at:

<http://www.publicworks.houstontx.gov/wastewater-cd>

1.1.12 Consent Decree Obligations: Any and all obligations or requirements set forth in the Consent Decree that are applicable to all or any part of the Scope of Work and any other Work performed by Contractor under the Agreement or amendments thereto, including Additional Services, if any.

### ARTICLE 3 - THE CONTRACTOR

3.16 *DOCUMENTS AND SAMPLES AT THE SITE: Insert Paragraphs 3.16.3 and 3.16.4.*

3.16.3 Notwithstanding the provisions in 3.16.2 or any contrary corporate, institutional or other document-retention policy, procedure or legal requirement, Contractor shall retain and preserve (and cause all of its Subcontractors and agents to retain and preserve) all non-identical copies of all records, documents and underlying data (including records, documents or data in electronic form) now in Contractor's or its Subcontractors' or agents' possession or control, or that come into Contractor's or its Subcontractors' or agents' possession or control, that relate in any manner to this Agreement, or the performance of any Work described in this Agreement covered by the Consent Decree or Consent Decree Obligations (the "Information") for the longer of: (a) 5 years after the termination of the Consent Decree, or (b) until such time as Contractor has received written approval from the City Attorney of the City of Houston that the Information or any part of the Information may be destroyed. Contractor agrees to implement a system to ensure compliance of Contractor, its Subcontractors and agents with the requirements of this paragraph.

3.16.4 All Information belongs to and is the property of the City. Contractor shall deliver copies of the Information to the City at no expense to the City upon the earlier to occur of: (i) the City's request, (ii) termination of the Agreement howsoever brought about, or (iii) completion of the Work. No Information may be withheld on the grounds that it is privileged; however, nothing in this Agreement shall require Contractor to provide documents to the City that are listed in a privilege log for which the Contractor can claim privilege recognized by federal law until the matter is resolved by the Parties or a court of law.

### ARTICLE 8 - TIME

8.1 *PROGRESS AND COMPLETION: Add the following Paragraph 8.1.6.1.*

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 [actual costs] per inspector for inspection services.

8.2 *DELAYS AND EXTENSIONS OF TIME: Delete Paragraph 8.2.1 in its entirety, replace it with the following Paragraph 8.2.1, and insert Paragraphs 8.2.9 through 8.2.13.*

8.2.1 Except as provided below with respect to Work covered by the Consent Decree, Contractor may request extension of Contract Time for a delay in performance of Work that arises from causes beyond the control and without fault or negligence of Contractor. Examples of these causes are:

8.2.9 Timely performance by both parties is essential to the Agreement. However, neither Party is liable for delays or other failures to perform its obligations under the Agreement to the extent the delay or failure is caused by a Force Majeure. For Work covered by the Consent Decree, Force Majeure shall mean any event arising from causes beyond the control of the City or Contractor, its Subcontractors or agents, that delays or prevents the performance of any Work despite the Contractor's, Subcontractors' or agents' best efforts to fulfill the obligation. "Best efforts" include using efforts to anticipate reasonably foreseeable Force Majeure events and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the extent reasonably practicable.

8.2.10 If any event occurs that may delay or prevent the performance by Contractor, its Subcontractors or agents of any Work or obligation of any kind under the Agreement covered by the Consent Decree, Contractor shall provide the City written notice immediately, but no later than 48 hours from the time Contractor or its Subcontractor or agent first knew, or by the exercise of due diligence, should have known, that the event might cause a delay. Within 10 days thereafter, or such other time as the City and Contractor agree in writing, Contractor shall provide to the City in writing the following: an explanation and description of the reasons for the delay; the anticipated duration of any delay; all actions taken to prevent or minimize the delay; a schedule for implementing any measure to be taken to prevent or mitigate the delay or the effect of the delay; and the Contractor's rationale for attributing the delay to a Force Majeure event, if it intends to assert such a claim. TIME IS OF THE ESSENCE in the performance of the requirements of this paragraph and of any Work to be performed by the Contractor under this Agreement. Failure to comply with the requirements of this paragraph may at the City's option, preclude the Contractor from asserting any claim of Force Majeure. The Contractor shall be deemed to know of any circumstance of which the Contractor, its Subcontractors, or any entity controlled by the Contractor or Subcontractor knew or, through best efforts, should have known.

8.2.11 If Contractor presents a claim of Force Majeure for any delay related to Work covered by the Consent Decree, and the City, in its sole and absolute discretion, considers the claim to be a good faith claim of Force Majeure, the City may present the claim of Force Majeure to the United States and the State of Texas under the terms of the Consent Decree. If the United States and the State of Texas agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for the Contractor to perform the Work covered by the Consent Decree under this Agreement that are affected by the Force Majeure event will be extended by the amount of the extension afforded to the City under the Consent Decree.

8.2.12 If the City presents a claim for Force Majeure under the Consent Decree and an extension of time is not granted, no extension of time will be extended under this Agreement. It is within the City's sole and absolute discretion whether to invoke the Dispute Resolution procedures of the Consent Decree regarding any denied claim for Force Majeure.

8.2.13 Notwithstanding any other provision in this Agreement, Contractor's failure to comply with the Force Majeure provisions for Work covered by the Consent Decree will constitute a breach of this Agreement and an Event of Default.

**ARTICLE 9 - PAYMENTS AND COMPLETION**

*Using table below as a guideline, insert amount of calculated daily cost to City, to be used for liquidated damages, in Paragraph 9.12.1.1. Include calculations in Project files. Department will consider guidelines based on the Project and its Scope.*

<u>Est. Amount of Construction Cost</u>	<u>Liquidated Damages per Day</u>
Project less than \$2.5 M	\$800
Project \$2.5 M to \$7.5 M	\$1200
Non-facility Projects Greater than \$7.5 M	\$1500
Facility Projects greater than \$7.5 M	\$2000

9.12 **LIQUIDATED DAMAGES:** *Insert the following Paragraph 9.12.1.1.*

9.12.1.1 The amount of liquidated damages payable by Contractor or Surety for each and every day of delay beyond Contract Time, are «800» per day.

9.12.1.1.2 Consent Decree Notice and Acknowledgment; Liability for stipulated penalties

The City of Houston (The City), the United States of America and the State of Texas have entered into a Consent Decree in Civil Action No. 4:18-cv-03368, United States of America and State of Texas v. City of Houston (City) in the United States District Court for the Southern District of Texas, Houston Division (the "Consent Decree"). A copy of the Consent Decree is available at

<http://www.publicworks.houstontx.gov/wastewater-cd>

By its signature on this Agreement, Contractor acknowledges receipt, review and understanding of the Consent Decree and Consent Decree Obligations. Contractor agrees that it will provide a copy of the Consent Decree and the terms and provisions specifically applicable to Work covered by the Consent Decree to all of its Subcontractors and agents performing Work under this Agreement.

Work performed pursuant to this contract is work that the City is required to perform pursuant to the terms of the Consent Decree. In the event of any conflict between the terms and provisions of this Section 9.12.1.1.2 ("**Consent Decree Notice Provision**") and any other

terms and provisions of this Contract or the Contract Documents, the terms and provisions of this Consent Decree Notice Provision shall prevail.

9.12.1.1.2.1. Retention of documents.

Contractor shall retain and preserve all non-identical copies of all documents, reports, research, analytical or other data, records or other information of any kind or character (including documents, records, or other information in electronic form including, but not limited to e-mails) in its or its sub-contractors' or agents' possession or control, or that come into its or its sub-contractors' or agents' possession or control, and that relate in any manner to this contract, or the performance of any work described in this contract (the "Information"). This retention requirement shall apply regardless of any contrary corporate or institutional policy or procedure or legal requirement. Contractor, Contractor's sub-contractors and agents shall retain and shall not destroy any of the Information until such time as Contractor has received written approval from the City Attorney of the City of Houston that the Information or any part of the Information may be destroyed. Contractor shall, within 30 days after receipt of a written request by the City, deliver the Information to the City. Contractor shall instruct and require its agents and sub-contractors performing any part of the work described in this contract to comply with the requirements of this paragraph.

9.12.1.1.2.2. Notification of events that may cause delay.

If any event occurs that may delay performance by Contractor, or Contractor's agents or sub-contractors of any work or obligation of any kind under this contract, Contractor shall provide notice in accordance with the Notice Provisions of this contract to the City within two (2) business days of the date Contractor or Contractor's agents or sub-contractors first knew that the event might cause a delay. Contractor shall provide a written explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay. **TIME IS OF THE ESSENCE** in the performance of the requirements of this paragraph and of any work to be performed by the Contractor in this contract.

9.12.1.1.2.3. Liability for stipulated penalties

The Consent Decree provides that the City may be assessed stipulated penalties under Section X of the Consent Decree upon the occurrence of certain events. Contractor acknowledges that, under the Consent Decree, stipulated penalties accrue beginning the day after performance is due or on the day a violation occurs, as applicable. Contractor agrees that, in addition to any liquidated or other damages for which it may be responsible under this Contract, it shall pay to the City the full amount of any stipulated penalty which accrues against the City that is caused or contributed to, in whole or in part, by any of Contractor's or its Subcontractors' or agents' acts, failures to act, or failures to act within the time required by any provision of this Contract or the Consent Decree. Contractor shall also pay to the City all costs, attorney fees, expert witness fees and all other fees and expenses incurred by the City in connection with any such stipulated penalties, or in contesting any such stipulated penalties pursuant to the Dispute Resolution procedures in the Consent Decree. It is within the City's

sole and absolute discretion whether to invoke the Dispute Resolution procedures of the Consent Decree regarding any stipulated penalties. Payment of stipulated penalties for which Engineer is responsible under this Contract is due within 30 days of demand, in writing, by the City. In addition to any and all other remedies to which the City may be entitled at law or in equity, Contractor expressly authorizes the City to withhold the amount of any stipulated penalties for which Contractor is responsible under this Contract, and all associated costs, fees, or expenses from any amount unpaid to Contractor under the terms of this Contract, or from any retainage provided in the Contract.

Without limiting anything set forth elsewhere in this construction contract regarding liquidated damages, Contractor acknowledges that damages are an intended factor in the calculation of the amount of the liquidated damages under this construction contract.

9.12.1.2 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 the time stipulated in Summary of Work Paragraph 1.08.B are as follows:

9.12.1.2.1 **Repair Items:** If Contractor does not complete replacement, improvement and/or new installations on existing service lines and any associated work of all work orders within twelve (12) days from the date the work orders were issued, the City of Houston may, at its discretion, collect \$400.00 (four hundred dollars) in liquidated damages per day for each repair not completed within twelve (12) days.

9.12.1.2.2 **Restoration Items:** If Contractor does not complete the repairing, resurfacing and/or sodding of concrete, asphalt and/or lawn areas and any associated work disturbed by construction within six (6) days after the repair items are completed, the City of Houston may, at its discretion, collect \$400.00 (four hundred dollars) in liquidated damages per day for each restoration not completed within six (6) days.

9.13 **CONTRACTOR BONUS:**

*Include bonus for early completion for construction contracts involving street reconstruction with an estimated Contract Price in excess of three million dollars or Contract Time over 120 days. This applies to storm drainage, water and wastewater projects that involve significant street reconstruction. Department will consider guidelines based on the Project and its Scope. General Guideline:*

<i>Estimate of \$3 - \$6 million</i>	<i>\$1,000/day (max. 30 - 60 days)</i>
<i>Estimate of \$6 - \$10 million</i>	<i>\$1,500/day (max. 30 - 90 days)</i>
<i>Estimate over \$10 million</i>	<i>\$2,000/day (max. 60 - 90 days)</i>

*The maximum allowable bonus will not exceed 3% of the estimated Original Contract Price on a thoroughfare or 1.5% on local streets without authorization.*

ARTICLE 11 - INSURANCE AND BONDS

*Use Paragraph 11.2.1.2 if any of the following additional insurance is required by the nature of the contract. DO NOT require any additional insurance that is unnecessary; notify the Legal Department when requiring any additional insurance. When inserting additional insurance requirements into Table 2, number them consecutively, starting with .1 as follows:*

*Example:*

*Table 2*

- .1 Property and Casualty Coverage*
- .2 Contractor's Pollution Liability Coverage*
- .3 Etc.*

11.2 **INSURANCE TO BE PROVIDED BY CONTRACTOR:** *Insert the following Paragraph 11.2.1.2., and Table 2, "Additional Required Coverage".*

11.2.1.2 Contractor shall purchase for the duration of the Contract the insurance set out in Table 2 in addition to the minimum insurance coverage set out in section 11.2.1.

TABLE 2  
ADDITIONAL REQUIRED COVERAGE  
DEFENSE COSTS EXCLUDED FROM FACE AMOUNT OF POLICY.

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Property and Casualty Coverage: "All Causes of Loss" Builder's Risk Form for directing physical change to building or plant construction on the Work site and/or all land improvements including all work. (Including but not limited to earthquake, flood, boiler, and machinery including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (management,	100% of Contract Price, including change orders

architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage).

Contractor's Pollution Liability:

\$1,000,000 each occurrence

Including pollution coverage for Contractual Liability, Clean-up costs, Abatement, Transport, and Non-owned disposal sites. Including Bodily Injury Liability, Property Damage Liability, and environmental damage arising from pollution conditions caused in performance of operations. Including Asbestos and Lead if part of operations.

(MCS - 90 endorsement to Auto Policy and removal of Pollution Exclusion)

\$1,000,000  
CSL

11.5            *MAINTENANCE BONDS: Insert the following Paragraph 11.5.2.*

11.5.2            One-year Surface Correction Bond: Contractor shall provide, on the City standard form, an additional One-Year Bond in an amount equal to four percent of the Original Contract Price or cost of repair. Bond shall provide for Contractor's correction, replacement, or restoration of backfill or subsurface and surface work not in accordance with the Contract, within one year from the date the One-Year Maintenance Bond has expired.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

END OF DOCUMENT

Document 00820

**WAGE SCALE AND PAYROLL REQUIREMENTS FOR ENGINEERING  
CONSTRUCTION**

**Wage Scale Requirements**

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91 and 2006-168, and 2009- 247 all as amended from time to time. City Council has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.4 The wage scale for engineering construction is to be applied to all site work greater than five feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.5 If 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 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.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.8 The City may withhold money required to be withheld under Chapter 2258 of the Texas Government Code from the final payment to Contractor or earlier payments if City



Council makes a determination that there is good cause to believe that Contractor has not complied with these provisions and Chapter 2258 of the Government Code, in which case the City may withhold the money at any time subsequent to the finding by City Council.

1.9 Contractor and Subcontractors must keep records specifying:

- (1) the name and classification of each worker employed under the Contract; and
- (2) the actual per diem wages paid to each worker, and the applicable hourly rate.

The records must be open at all reasonable hours for inspection by the officers and agents of the City.

1.10 The hourly cost of salary for non-exempt workers for labor in excess of 40 hours per worker per week, shall be calculated at 1.5 times the worker's base pay, plus 1.0 times fringe benefits, for the applicable craft and level.

### **Certified Payroll Requirements**

2.1 Employees are paid weekly, and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258-023 for all contracts.

2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the contract.

2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.

2.4 Payrolls must cover a seven-day period from the start of the work week and must be consecutive seven-day periods until all work is complete.

2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.

2.6 A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes.

2.7 Employees must be paid overtime (time and a half) for all hours worked over 40 hours a week on both federally and City-funded contracts.

2.8 The Contractor has the responsibility to comply with all Internal Revenue Service rules

- and regulations. Contractors who submit certified payrolls with **Owner Operators (truckers)** must submit a signed tax liability statement from Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.
- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. You must comply with the listed number of journeymen to apprentices as listed.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the work, ALL Subcontractors shall submit the "Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "C") to the Monitoring Authority listed in Document 00495.
- 2.13 Upon completion of the Project, as part of the contract-awarding department's total clearance process, the Office of Business Opportunity's Contract Compliance Section must review whether the Wage Rate and Payroll Requirements were met and report the results to the department.

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EXHIBIT "A"

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR  
ENGINEERING CONSTRUCTION 2023

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Cement Mason / Concrete Finisher- Paving and Structures	\$12.98 **	Power Equipment Operator, Foundation Drill, Truck Mounted	\$15.89 **
Electrician * 3 Journeyman to 2 Apprentices Allowed	\$27.11	Power Equipment Operator, Front End Loader, 3 CY or less	\$13.32 **
Form Builder / Form Setter- Paving and Curb	\$12.34 **	Power Equipment Operator, Front End Loader, over 3 CY	\$13.17 **
Form Builder / Form Setter- Structures	\$12.23 **	Power Equipment Operator, Loader/Backhoe	\$14.29 **
Laborer, Asphalt Raker	\$12.36 **	Power Equipment Operator, Mechanic	\$16.96
Laborer, Common	\$11.02 **	Power Equipment Operator, Milling Machine	\$13.53 **
Laborer, Flagger	\$10.33 **	Power Equipment Operator, Motor Grader, Fine Grade	\$15.69 **
Laborer, Pipelayer	\$12.12 **	Power Equipment Operator, Motor Grader, Rough	\$14.23 **
Laborer, Utility	\$11.73 **	Power Equipment Operator, Off Road Hauler	\$14.60 **
Laborer, Work Zone Barricade Servicer	\$11.67 **	Power Equipment Operator, Pavement Marking Machine	\$11.18 **
Painter (Structures)	\$18.62	Power Equipment Operator, Piledriver	\$14.95 **
Power Equipment Operator, Asphalt Distributor	\$14.06 **	Power Equipment Operator, Roller, Asphalt	\$11.95 **
Power Equipment Operator, Asphalt Paving Machine	\$14.32 **	Power Equipment Operator, Roller, Other	\$11.57 **
Power Equipment Operator, Broom or Sweeper	\$12.68 **	Power Equipment Operator, Scraper	\$13.47 **
Power Equipment Operator, Concrete Paving Finishing Machine	\$13.07 **	Power Equipment Operator, Spreader Box	\$13.58 **
Power Equipment Operator, Concrete Paving, Curing, Float Texturing Machine	\$11.71 **	Servicer	\$13.97 **
Power Equipment Operator, Concrete Saw	\$13.99 **	Steel Worker, Reinforcing Steel	\$15.15 **
Power Equipment Operator, Crane, Hydraulic 80 tons or less	\$13.86 **	Steel Worker, Structural Steel	\$14.39 **
Power Equipment Operator, Crane, Lattice boom 80 tons or less	\$14.97 **	Steel Worker, Structural Steel Welder	\$12.85 **
Power Equipment Operator, Crane, Lattice boom over 80 tons	\$15.80 **	Truck Driver, Low Boy Float	\$16.03 **
Power Equipment Operator, Crawler Tractor	\$13.68 **	Truck Driver, Single Axle	\$11.46 **
Power Equipment Operator, Excavator, 50,000 pounds or less	\$12.71 **	Truck Driver, Single-or Tandem Axle Dump	\$11.48 **
Power Equipment Operator, Excavator, over 50,000 pounds	\$14.53 **	Truck Driver, Tandem Axle Tractor w/ Semi-Trailer	\$12.27 **
Power Equipment Operator, Foundation Drill, Crawler Mounted	\$17.43		
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			
** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.			

**Engineering Prevailing Wages Classification Definitions**

**Asphalt Distributor Operator**

Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and adjust equipment as needed. Performs other related duties.

**Asphalt Paving Machine Operator**

Operates paving machine that spreads and levels asphaltic concrete on highway subgrade. Controls movement of machine, raises and lowers screed, regulates width of screed. May, oil, grease, service and adjust equipment as needed. Performs other related duties.

**Asphalt Raker**

Distributes asphaltic materials evenly over road surface by raking and brushing material to correct thickness; directs Laborers when to add or take away material to fill low spots or to reduce high spots. Performs other related duties.

**Asphalt Shoveler**

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

**Broom or Sweeper Operator**

Operates a self-propelled machine to sweep and clean roadway surfaces. They may also oil, grease, service and adjust equipment as needed. Performs other related duties.

**Bulldozer Operator**

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

**Carpenter, Rough**

Works from plans to build, assemble, fit together, align, plum, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks form while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools Performs other related duties.

**Concrete Finisher, Paving**

Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures to the final grade and contour structures to the final grade and contour with the use of straight edges and steel trowels. Operates bridge deck finishing machine. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.

**Concrete Finisher, Structures**

A worker semi-skilled in concrete finishing who assists Concrete finisher by performing specific or general duties of lesser skill and keeping Concrete Finisher supplied with materials, tools, and supplies; cleaning working area an equipment; and holding materials and tools. Performs other related duties.

**Concrete Paving Curbing Machine Operator**

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

**Concrete Paving Finishing Machine Operator**

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

**Concrete Paving Joint Sealer Operator**

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

**Concrete Paving Saw Operator**

Operates a water-cooled power saw with either or an abrasive blade to saw expansion and contraction joints in concrete paving. May also be used to saw asphaltic pavements. May oil grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Concrete Paving Spreader Operator**

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

**Concrete Rubber**

Finishes the exposed surface of concrete masonry after the forms have been removed by patching holes and broken corners with fresh concrete, rubbing surface with abrasive stone to remove rough spots, and removing high spots and defective concrete with hand chisel and hammer or pneumatic chisel and powered abrasive stone. Performs other related duties.

**Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator**

A worker who operates a lattice boom type crane can hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Crusher and Screed Plant Operator**

Operates a crusher or screening plant through which rock is run to break it into crushed stone for construction or to control flow of materials not needed. May include minor repairs and may service and make necessary adjustments to equipment as needed. Performs other related duties.

**Electrician \* 1 Journeyman to 1 Electrician Trainee and 1 Apprentice Allowed**

Plans and directs the layout of metal electrical conduit, installs wiring systems, switch-panels, buss bars, works on overhead distribution systems and underground distribution systems. Performs other related duties.

**Flagger**

A worker who directs traffic in or around a construction site. May use signs or devices to direct traffic. May help assemble, position and clean devices or equipment used to direct traffic. Must be able to effectively communicate with the public. May require certain level of training by TXDOT specifications. Performs other related duties.

**Form Builder/Setter, Structures**

Fits together, aligns and sets to grade metal and wooden forms for placement of concrete. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties.

**Form Liner, Paving & Curb**

Fits together, panels align and sets to grade metal and wooden forms for placement of concrete. Works with survey crew to set stringline for panels or moles. Performs other related duties.

**Form Setter, Paving & Curb**

Fits together, align and set to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter curb. Performs other related duties.

**Foundation Drill Operator, Crawler Mounted**

Operates a hole-drilling machine that is crawler mounted. May include geotechnical operations such as soils nails, rock nails, tiebacks, anchors and jet grouting. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Foundation Drill Operator, Truck Mounted**

Operates a hole drilling machine that is mounted on the rear of a rubber-tired vehicle or truck. May include soils nails, rock nails, tiebacks, anchors and jet grouting. Drive truck from location to location or may have laborer who drives truck. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Front End Loader Operator**

Operates a rubber tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Laborer, Common**

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

**Laborer, Utility**

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close

direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

### **Manhole Builder**

Constructs a means of permanent access to water and sewer lines for maintenance purposes. This work consists of laying brick or concrete slab at bottom of ditch up to an approximate grade line near the surface of the ground. Brick or block is normally laid to form a nearly circular manhole. Brick or block is laid in by eyesight and is normally to a plumb line. Chipped or culled brick can be used quite often is. No effort may be made to keep mortar off the face of the brick and joints are not pointed. May apply coating of concrete to interior and exterior surface. Performs other related duties.

### **Mechanic**

Assembles, set up, adjusts and maintains and repairs all types of construction equipment and trucks. He may perform the duties of a welder in repair of equipment. Performs other related duties.

### **Milling Machine Operator, Fine Grade**

Operates a power-driven milling machine that planes material of the to roadbed and discharges the material into a hauling unit or a windrow. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

### **Mixer Operator**

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

### **Motor Grader Operator, Rough**

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

### **Motor Grader Operator**

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make

necessary adjustments to equipment as needed. Performs other related duties.

**Oiler**

A learner or semi-skilled worker who under the direction of the watch engineer. May oil and grease or otherwise service all engines and necessary equipment as needed. He may clean, and paint engine room as needed. Performs other related duties.

**Painter, Structures**

Paints and stains structural steel and concrete surfaces of bridges, retaining walls, or other structures. Directs cleaning and abrasive blasting of surfaces prior to painting or staining. Performs other related duties.

**Pavement Marking Machine Operator**

Operates machine used in laying paint stripes or markers on all types of paving. Loads machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Piledriverman**

Sets in place, aligns, plumbs direct driving of timber, concrete, steel, pipe and any other type of piling. Sets, drives and pulls steel, concrete and other types of sheet piling. Rigs pile and leads and bracing. Signals operator. Splices piles before and after driving. Directs pile cutoff. May direct jetting or drilling equipment in connection with installing piles to grade. Performs other related duties.

**Pipelayer**

Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.

**Reinforcing Steel Setter, Paving**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Reinforcing Steel Setter, Structure**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Roller Operator, Pneumatic, Self-Propelled**

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Roller Operator, Steel Wheel, Flat Wheel/Tamping**

Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact earth fills, subgrade, flexible base and all other types of materials except bituminous. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.



**Roller Operator, Steel Wheel, Plant Mix Pavement**

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Scraper Operator**

Operates a self-contained wheeled tractor scraper both self loading or assisted by crawler tractors or other scrapers. Used to excavate and transport earth or other materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Servicer**

Drives a truck, which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to the manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service preventive maintenance records. May have laborer assisting him. May require CDL if driving truck on public highways. Performs other related duties.

**Sign Installer (PGM)**

Sets forms, reinforcing steel, anchor bolts and pours concrete for Sign foundations. Fabricates and erects pipe and angle Frameworks by bolting, welding or other means prior to installation of signs that are normally prefabricated. Works from plans in location and drilling holes for proper location and alignment of signs. May direct hoisting of signs into place. Fastens signs to framework by bolting and other means. Locates and sets lighting brackets. May perform other work associated with signing projects. Supervises sign erector helper. Performs other related duties.

**Slip Form Machine Operator**

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

**Spreader Box operator**

Operates spreader box by adjusting hopper and strike off blade so that the gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Structural Steel Worker**

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

**Tractor operator, Crawler Type**

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

**Tractor Operator, Pneumatic**

Operates a gasoline or diesel powered agricultural tractor that tows compaction rollers, plow, disc. water

tanks, scrapers and other similar operations. May use other miscellaneous attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

**Traveling Mixer Operator**

Drives a gasoline or diesel truck upon which is mounted a concrete mixer. Operates concrete mixer and dumps concrete on the grade, into forms or into concrete pumps or buckets. Cleans mixer drum. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Truck driver, lowboy-Float**

Drives a heavy-duty diesel-powered truck to which is attached a trailer upon which heavy equipment is hauled. Driver is often required to operate heavy equipment to load or unload the lowboy. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Truck driver, Single Axle, Heavy**

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties.

**Truck driver, Single Axle-Light**

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties.

**Truck Driver, Tandem Axle, Semi-Trailer**

Drives a diesel-powered tractor pulling a semi trailer hauling materials. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

**Work Zone Barricade Servicer**

Fabricates, erects and maintains temporary traffic control devices, including arrow boards, signs, barricades, channelizing devices, barrels and all message boards. May operates a truck during traffic control operations.

**Welders** - Receives rate for craft being performed to which welding is incidental.

EXHIBIT "B"

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO  
SUPERVISE PAYMENT OF EMPLOYEES

Project Name \_\_\_\_\_

Project WBS#: \_\_\_\_\_ Date \_\_\_\_\_

Email Address: \_\_\_\_\_

(I) (We) hereby certify that (I am) (we are) the **Prime Contractor** for \_\_\_\_\_

\_\_\_\_\_  
(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed \_\_\_\_\_, whose signature appears below, to supervise the payment of (my) (our) employees beginning \_\_\_\_\_, 20\_\_\_\_; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

\_\_\_\_\_  
(Identifying Signature of Appointee) Phone: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Name of Firm or Corporation)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

EXHIBIT "C"

CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO SUPERVISE  
PAYMENT OF EMPLOYEES

Project Name \_\_\_\_\_

Project WBS#: \_\_\_\_\_ Date \_\_\_\_\_

Email Address: \_\_\_\_\_

(I) (We) hereby certify that (I am) (we are) the **Sub Contractor** for \_\_\_\_\_

\_\_\_\_\_  
(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed \_\_\_\_\_, whose signature appears below, to supervise the payment of (my) (our) employees beginning \_\_\_\_\_, 20\_\_\_\_; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

\_\_\_\_\_  
(Identifying Signature of Appointee) Phone: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Name of Firm or Corporation)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

END OF DOCUMENT

Document 00830

TRENCH SAFETY GEOTECHNICAL INFORMATION

1.0 DOCUMENT INCLUDES

- A. Trench Safety Geotechnical Information: Geotechnical Information obtained for use in design of the trench safety system is included as an attachment to this document.

2.0 RELATED DOCUMENTS

- A. Section 01561 – Trench Safety Systems.

END OF DOCUMENT